

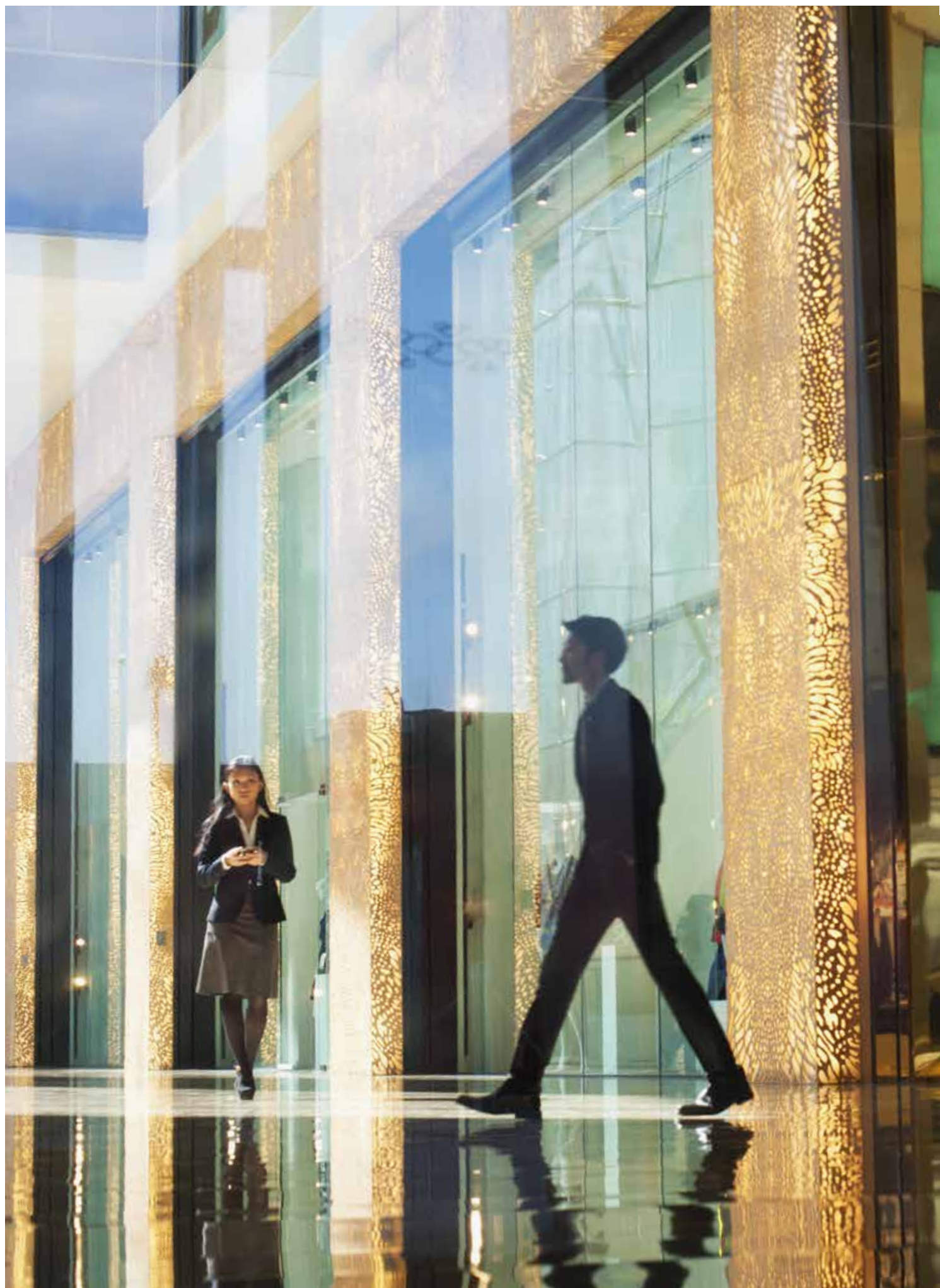
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# CMS Guide to Employment Issues in an M&A Transaction

April 2017



# Index

Introduction	4	Poland	99
Albania	6	Portugal	109
Austria	14	Romania	111
Belgium	18	Russia	120
Bulgaria	24	Serbia	125
China	34	Slovakia	127
Croatia	40	Slovenia	134
Czech Republic	46	Spain	139
France	53	Switzerland	146
Germany	64	Turkey	152
Hungary	71	Ukraine	156
Italy	78	United Kingdom	164
Luxembourg	84	Contacts	175
The Netherlands	92	CMS offices	178

# Introduction

Although M&A projects tend to be driven by corporate or tax lawyers, in many cases labour law issues have a significant influence on whether or not the deal is successful. Information/consultation/codetermination rights (of both employees and their representatives), as well as sophisticated case law relating to business transfers, may jeopardise the satisfactory completion of a transaction or create additional costs and sometimes even administrative fines or other liabilities.

This CMS Guide to Labour Law in M&A Transactions provides a comprehensive overview of labour law requirements to be taken into account when dealing with an M&A transaction in Albania, Austria, Belgium, Bulgaria, China, Croatia, Czech Republic, France, Germany, Hungary, Italy, Luxembourg, The Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom. Cross-border mergers, which are the subject of a separate CMS guide, are beyond the scope of this document.

We are confident that this guide will be a valuable resource facilitating proactive planning and helping to avoid major mistakes related to labour law. However, should you need more detailed advice please contact any of the CMS labour law specialists in your country, who will be able to actively and efficiently support you on your journey to success.

Bernd Roock



## CMS Employment and Pensions Group

The CMS Employment and Pensions Group advises national and international organisations on the employment law issues which affect businesses operating across Europe and beyond. Our solutions are based on broad experience of specific business environments and industry sectors.

We offer coordinated advice through a single point of contact. This means clients can deal with a local firm in their own country in their own language, whilst at the same time benefiting from the integrated expertise of a wide multi-jurisdictional team of more than 250 practitioners.

## Full range of employment law services

Our lawyers have specific expertise in the following areas:

- Compliance with national and international laws and standards
- Individual and collective dismissals
- Employee share/stock ownership
- Employee pension schemes
- Social security contributions
- Equal opportunities and discrimination
- Employee information and consultation
- Redundancy programmes
- Labour/trade union issues/disputes
- Employee and pensions aspects of mergers and acquisitions, outsourcing, nationalisation, privatization
- Enforcement of restrictive covenants and confidentiality provisions
- Drafting employment contracts, company policies and collective agreements
- Works councils at company, national and international levels

# Albania

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a representative trade union, employees' representative or a health and safety committee (art. 14 of Law no. 10237) has been set up at the target company;
- 1.2. any individual employees or groups of employees enjoy special rights as a result of the share deal which may be set out in an individual employment contract, collective agreement, internal regulation of the target, etc.;
- 1.3. any risks are identified during the due diligence assignment carried out over the target company, e.g. any pending employment related litigation, inspections by labour control authorities, etc.

#### 2. Prepare

the following in draft form:

- 2.1. appropriate information in written form to the trade union, employee representatives and/or employees at least 30 days before the transaction takes place, setting out:
  - the proposed date of the change of employer;
  - the reasons for the change of employer;
  - the legal, economic and social consequences for the employees, and any proposed measures to mitigate such consequences.

#### 3. Inform/Notify

- 3.1. The seller/target company to carry out a consultation with the trade union representatives and/or employee representatives regarding:
  - a) the contemplated restructure and the date on which this restructuring will be carried out;
  - b) the reasons for the restructuring;
  - c) the eventual legal, economic and social impact of the restructuring for employees.
- 3.2. Any proposed measures with regard to the employees. The seller must notify its employees at least 30 days before the restructuring takes place.

- |              |  |
|--------------|--|
| 4. Consult   | 4.1. The purchaser is not obliged to consult with the employees of the target company. Instead, the seller/target company has a direct obligation to carry out consultations regarding the transfer consequences in the event of a share deal. The consultation process must be performed by the seller within 30 days of the notification period. |
| 5. Implement | 5.1. Closing formalities with regard to filing with the commercial register of a share transfer agreement signed between the parties, approvals of the competition authority (if applicable), etc.   |

## ***II. Obligations of the target***

- |            |  |
|------------|--|
| 1. Check   | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. a representative trade union, employees' representative or a health and safety committee (art. 14 of Law no. 10237) has been set up at the target company;</li> <li>1.2. any individual employees or groups of employees enjoy special rights as a result of the share deal which may be set out in an individual employment contract, internal regulation of the target, etc. Such rights may include additional entitlements in the event of a share sale etc.;</li> <li>1.3. any special rights to information and/or consultation exist, other than those provided for in the Albanian Labour Code.</li> </ul> |
| 2. Prepare | <p>the following in draft form:</p> <ul style="list-style-type: none"> <li>2.1. appropriate information in written form to the employee representatives and/or employees at least 30 days before the transaction takes place, setting out:             <ul style="list-style-type: none"> <li>• proposed date of the change of employer;</li> <li>• the reasons for the change of employer;</li> <li>• the legal, economic and social consequences for the employees, and any measures to mitigate such consequences.</li> </ul> </li> </ul>   |

- |                  |  |
|------------------|--|
| 3. Inform/Notify | <p>3.1. Trade union representatives and/or employee representatives on the transfer regarding:</p> <ul style="list-style-type: none"> <li>a) the contemplated restructure and the date on which this restructuring will be carried out;</li> <li>b) the reasons for the restructuring;</li> <li>c) the eventual legal, economic and social impact of the restructuring for employees.</li> </ul> <p>3.2. Any proposed measures with regard to the employees. Employees of the target must be notified at least 30 days before the restructuring being planned takes place. Trade union representatives and employee representatives, in turn, must transmit the information received from the employer to the other employees and consider their opinions during the course of the consultations with the employer/target company.</p> |
| 4. Consult       | <p>4.1. There is a direct obligation on the target company to carry out consultations regarding the transfer consequences in the event of a share deal. The consultation process must be performed within the 30 days of notification period.</p>  |
| 5. Implement     | <p>5.1. Closing formalities with regard to filing with the commercial register of a share transfer agreement signed between the parties, approvals of the competition authority (if applicable), etc.</p>  |

## B. Asset Deal

### ***1. Obligations of the seller***

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. a representative trade union and/or an employees' representative and/or a health and safety committee (art. 14 of Law no. 10237) exist within the company;</li> <li>1.2. one or more employees will be transferred to the purchaser of the assets as a result of the contemplated transfer;</li> <li>1.3. it is important for the seller to identify the employees to be transferred jointly with the asset(s) in order to allow the seller and the purchaser to take appropriate measures allocating the workforce in a mutually acceptable way.</li> </ul> |
|----------|--|



## 2. Prepare

the following in draft form:

- 2.1. notification letters to the employee representatives, or the union representatives, providing for:
  - the possible changes to the employer's structure and the respective dates on which these changes are planned to be implemented;
  - the reasons for the abovementioned changes;
  - the possible legal, economic and social implications of the changes to the employees;
- 2.2. the information listed in point 2.1. above, to be presented to the employee representatives at least 30 days before the transaction takes place;
- 2.3. amendments to the existing staff schedule reflecting the changes in the workforce of the seller as a result of the transaction;
- 2.4. the relevant information pursuant to any individual or collective bargaining agreement, or internal regulations of the seller (if applicable).

## 3. Inform/Notify

- 3.1. Trade union representatives and employee representatives of the seller regarding:
  - a) the proposed new structure and the date on which this restructuring will be carried out;
  - b) the reasons for the restructuring;
  - c) the possible legal, economic and social impact of the restructuring for employees.
- 3.2. Any proposed measures with regard to the employees. Employees of the seller must be notified at least 30 days before the restructuring takes place.
- 3.3. In cases where trade union organisations' representatives or employee representatives do not exist, the employer must make available such information, publishing it in every workplace.

## 4. Consult

- 4.1. In the event that measures are being planned, the employer is obliged to consult the trade union organisations' representatives and/or employee representatives, and to strive to reach an agreement with such organisations.

5. Implement

- 5.1. Any relevant agreements and regulations containing information and/or consultation obligations must be fulfilled by the employer.
- 5.2. The file and information data of every transferred employee must be handed over to the purchaser.

***II. Obligations of the purchaser***

1. Check

whether:

- 1.1. the deal falls within the definition of an asset deal, in order to verify whether the regulations of transfer of undertakings shall apply;
- 1.2. employees are to be transferred to the purchaser of the assets as a result of the transfer. It is also important to identify the payment scheme applicable to these employees, including basic remuneration, any additional bonuses, payments and other incentives, labour regulations, holiday entitlements, etc., as well as to check whether any outstanding liabilities exist towards employees. This is because both the former and the new employer will be jointly and individually liable for any such outstanding liabilities as a result of the asset deal;
- 1.3. any risks are identified during the due diligence process of the target, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.

2. Prepare

the following in draft form:

- 2.1. in case of an operational change the seller has to send notification letters to the employee representatives or the union representatives providing for:
  - the possible changes to the employer's structure and the respective dates on which these changes are planned to be implemented;
  - the reasons for the above-mentioned changes;
  - the possible legal, economic and social implications of the changes for the employees;
  - the measures to be implemented to fulfil the existing obligations of the employer towards its employees.

- 2.2. the information listed in point 2.1. above to be presented to employee representatives at least 30 days before the transaction takes place;
  - 2.3. any amendments to the existing staff schedule, incorporating new job positions and/or any transferred employees as a result of the transaction.
3. Inform/Notify
- 3.1. Trade union representatives and employee representatives of the purchaser regarding:
    - a) the proposed new structure and the date on which this restructuring will be carried out;
    - b) the reasons for the restructuring;
    - c) the possible legal, economic and social impact of the restructuring for employees.
  - 3.2 Any proposed measures with regard to the employees. Employees of the seller must be notified at least 30 days before the restructuring takes place.
  - 3.3. In cases where trade union organisations' representatives or employee representatives do not exist, the employer must make available such information, publishing it in every workplace.
  - 3.4. The terms for informing and consulting employee representatives must be in writing.
4. Consult
- 4.1. The purchaser is not subject to any consultation process. The consultation with the trade union organisations' representatives and/or employee representatives is an obligation imposed on the seller only;
5. Implement
- 5.1. The purchaser must provide to the transferred employees of the target company the same working conditions they enjoyed previously.
  - 5.2. If the transferred employees of the target company were subject to a collective agreement, the latter remains valid until its expiry.
  - 5.3. Provide each of the transferred employees with a copy of all HR policies, rules and regulations used by the purchaser, if applicable.
  - 5.4. Adjust any internal rules and regulations applicable to employees as a result of the transaction where necessary, and ensure that all employees (both new and old) read and understand these.

### C. Merger (except cross-border merger)

The steps, rules, and regulations applicable to a merger transaction are similar to *Section A. - Share Deal* above. Either, if such a merger occurs in one of its classical forms, (i) more than two companies are wound up to form a new company, or (ii) one company (the surviving) takes over the other company.

In addition, it is advisable for the buyer/the merging parties to verify in advance if:

- 1.1. any outstanding liabilities exist towards employees of the merging (absorbed) entity, which will be transmitted to the new/surviving entity;
- 1.2. employees enjoy particular status, in as much detail as possible, including the content of employment contracts, holiday and payment entitlements, presence of trade unions, any other special rights provided for in the individual employment contracts, and collective agreement and/or internal regulations, since all these will be transferred to the new/surviving entity.





# Austria

## A. Share Deal

### ***I. Obligations of the purchaser***

1. Check

whether:

- 1.1. any circumstances of the deal may trigger a requirement for a transfer of undertakings (*'Betriebsübergang'*) pursuant to Council Directive 2001/23/EC and its Austrian counterpart, the Austrian Act on the Amendment of Employment Contracts (*'AVRAG'*). This will not generally be the case in the event of a share deal, as mere changes to the ownership structure of an enterprise do not change the identity of the employer. Austrian statute does not contain significant requirements relating to labour law in such share deal arrangements. See *Section B.* for important rules relating to asset deals.

### ***II. Obligations of target***

1. Check

whether:

- 1.1. any circumstances of the deal may trigger a requirement for a transfer of undertakings (*'Betriebsübergang'*) pursuant to Council Directive 2001/23/EC and its Austrian counterpart, the Austrian Act on the Amendment of Employment Contracts (*'AVRAG'*). This will not generally be the case in the event of a share deal, as mere changes to the ownership structure of an enterprise do not change the identity of the employer. Austrian statute does not contain significant requirements relating to labour law in such share deal arrangements. See *Section B.* for important rules relating to asset deals.

## B. Asset Deal

### ***I. Obligations of seller***

1. Check

whether:

- 1.1. the circumstances of the deal do, in fact, trigger a requirement for a transfer of undertakings (*'Betriebsübergang'*) pursuant to Council Directive 2001/23/EC and its Austrian counterpart, the Austrian Act on the Amendment of Employment Contracts (*'AVRAG'*). This will generally be the case in the event of an asset deal provided that an economic entity (an organised grouping of persons and assets



exercising an economic activity which pursues a specific objective) is transferred to another employer whilst retaining its identity. All further comments in this section are based on this assumption;

- 1.2. the parties to the deal can prove that no recent or upcoming employment terminations are a result of the deal. If they cannot, then the pertinent terminations will be deemed null and void (§ 3 (1) AVRAG);
  - 1.3. sufficient reserves have been accrued to cover all theoretical severance and company pension entitlements at the time of the deal. If these assets are sufficient and transferred to the purchaser, seller liability will be limited to a period of one year after the deal; if they are not, it will be extended to a period of five years (§ 6 (2) AVRAG);
  - 1.4. contracted service providers (*‘Werkunternehmer’*) and freelancers (*‘freie Dienstnehmer’*) are not, in fact, acting as employees and thus entitled to the pertinent benefits. Claims raised in this regard may entail liability to provide additional social security contributions, taxes, bonuses, vacation remuneration and other benefits. Similar rules apply to employees hired for consecutive, limited periods of time; such conduct is deemed an evasion of statutory rules on indefinite employment.
2. Prepare
- 2.1. Since all affected employment relationships are transferred from the purchaser to the seller *ipso jure*, no contractual agreement is necessary in this regard. Exceptions may apply pursuant to the requirements of company pension schemes or works agreements, and in the event that a different collective bargaining agreement becomes effective.
3. Inform/Notify
- 3.1. All employees affected must be provided with certain written information in advance (if a works council has been set up, then this body can be notified instead). Such information must include the date and reason for the transfer, the legal, economic and social consequences thereof, and any measures planned which affect the workforce (§ 3a AVRAG).
4. Consult
- 4.1. All employees are entitled to refuse the transfer of their employment relationships if the protective standards of the previously applicable collective bargaining agreement or works agreements (often containing company pension schemes) are not maintained by the purchaser (§ 3–5 AVRAG). In the event of such a refusal, employment with the seller remains in force, including the obligation to provide salaries and benefits. As a result, it is recommended to consult with the purchaser and reach an agreement in this regard.
5. Implement
- 5.1. Subject to consideration of the above.

## **II. Obligations of the purchaser**

### 1. Check

whether:

- 1.1. the circumstances of the deal do, in fact, trigger a requirement for a transfer of undertakings (*'Betriebsübergang'*) pursuant to Council Directive 2001/23/EC and its Austrian counterpart, the Austrian Act on the Amendment of Employment Contracts (*'AVRAG'*). This will generally be the case in the event of an asset deal, provided that an economic entity (an organised grouping of persons and assets exercising an economic activity which pursues a specific objective) is transferred to another employer whilst retaining its identity. All further comments in this section are based on this assumption;
- 1.2. the parties to the deal can prove that no recent or upcoming employment terminations are a result of the deal. If they cannot, then the pertinent terminations will be deemed null and void (§ 3 (1) AVRAG);
- 1.3. the seller has accrued sufficient reserves to cover all theoretical severance and company pension entitlements at the time of the deal. If these assets are sufficient and transferred to the purchaser, then the seller will only remain liable in this regard for a period of one year after the deal; if they are not, its liability will be extended to a period of five years (§ 6 (2) AVRAG);
- 1.4. any employees enjoy special termination protection. This applies to employee representatives, registered disabled persons, persons on parental leave, and persons performing military or community service. Such employees may only be terminated with the prior consent of a competent court or authority;
- 1.5. a works council has been set up, or pertinent agreements are in place. Depending on their distinction as optional, enforceable or necessary, such agreements may only be terminable upon consideration of statutory notice periods, certain amendments to relevant individual agreements, or even non-terminable entirely (§ 96–97, Labour Constitution Act, *'ArbVG'*);
- 1.6. the seller has fulfilled all its obligations towards former employees, such as outstanding salaries, severance payments, company pensions, re-employment guarantees, etc. Any such outstanding obligations become the joint liability of the purchaser after the deal, and are only recoverable by means of redress.

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| 2. Prepare       | 2.1. Since all affected employment relationships are transferred from the purchaser to the seller <i>ipso jure</i> , no contractual agreement is necessary in this regard. Exceptions may apply pursuant to company pension scheme or works agreement-related requirements, and in the event that a different collective bargaining agreement becomes effective.   |
| 3. Inform/Notify | 3.1. Every individual employee must be notified by the seller of any change to his working conditions as a result of the deal (§ 3, AVRAG).  |
| 4. Consult       | 4.1. Employees who notice any deterioration in their working conditions as a result of the deal due to a change in the applicable collective bargaining agreement or works agreements may terminate their employment while still enjoying entitlement to all benefits that would usually only be applicable in the event of an unjustified termination expressed by the employer (§ 3 (5) AVRAG). It is therefore recommended to consult any such employees to avoid the potentially costly consequences of an unjustified employer termination. |
| 5. Implement     | 5.1. Subject to consideration of the above.  |

### C. Merger (except cross-border merger)

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|----------|--|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the identity of the employer changes for employees (this will always be the case for all employees in the event of a merger by means of new formation); or</li> <li>1.2. the identity of the employer remains the same for certain employees (this may be the case in the event of a merger by means of absorption);</li> <li>1.3. in the event of a merger pursuant to point 1.1., all pre-merger companies are subject to the obligations of the seller in an asset deal (see point B. I.), the post-merger company is subject to the obligations of the purchaser in an asset deal (see point B. II, above);</li> <li>1.4. in the event of a merger pursuant to point 1.2., the company acting as the employer of any such employees does not need to meet the requirements of an asset deal regarding those employees as outlined in point 1.3.</li> </ul> |
|----------|--|

# Belgium

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a works council, trade union delegation, or health and safety committee exists. The works council is competent in principle to be informed and consulted. In the absence of a works council, the trade union delegation is competent. In the absence of either of these bodies, the health and safety committee takes over the competences of the works council;
- 1.2. the share deal qualifies as a (public) takeover bid under the (Belgian) law of 1 April 2007 implementing the European 'Thirteenth Directive 2004/25 on Takeover Bids'.

#### 2. Prepare

the following in draft form:

- 2.1. a request for information and consultation for the attention of the Works Council;
- 2.2. a communication for the attention of the works council regarding the launch of the takeover bid; the works council must also be sent a copy of the prospectus.

#### 3. Inform/Notify

- 3.1. The works council about the share deal;
- 3.2. The works council regarding the takeover bid as soon as it is made public.

#### 4. Consult

- 4.1. The works council about the consequences (if any) of the share deal or takeover bid for the workforce, employment policy and labour conditions.

#### 5. Implement

- 5.1. The works council does not need to approve the share deal or the takeover bid.
- 5.2. The works council only has the right to offer advice regarding possible consequences for employees. Although there is no formal obligation for the employer to explain why the advice is not followed, if this is eventually the case, it may be advisable to do so, depending on the social climate.

## **II. Obligations of the target**

### 1. Check

whether:

- 1.1. a works council, trade union delegation, or health and safety committee has been set up. The works council is in principle competent to be informed and consulted. In the absence of a works council, the trade union delegation is competent. In the absence of either of these bodies, the health and safety committee takes over the competences of the works council;
- 1.2. the share deal qualifies as a (public) takeover bid under the (Belgian) law of 1 April 2007 implementing the European 'Thirteenth Directive 2004/25 on Takeover Bids'.

### 2. Prepare

the following in draft form:

- 2.1. a request for information and consultation for the attention of the works council;
- 2.2. a communication for the attention of the works council regarding the launch of the takeover bid; the works council must also be provided with a copy of the prospectus.

### 3. Inform/Notify

- 3.1. The works council about the share deal;
- 3.2. The works council on the takeover bid as soon as it is made public.

### 4. Consult

- 4.1. The works council about the consequences (if any) of the share deal or takeover bid for the workforce, employment policy or labour conditions.

### 5. Implement

- 5.1. The works council does not need to approve the share deal or the takeover bid.
- 5.2. The works council only has the right to offer advice on the possible consequences for the employees. Although there is no formal obligation for the employer to explain why this advice is (not) followed, if this is eventually the case, it may be recommendable to do so, depending on the social climate.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. a works council, trade union delegation or health and safety committee exists. The works council is competent in principle to be informed and consulted. In the absence of a works council, the trade union delegation is competent. In the absence of either of these bodies, the health and safety committee takes over the competences of the works council;
- 1.2. the asset deal qualifies as a transfer of undertakings according to the (Belgian) national CLA no. 32bis (which implements European Directive 2001/23/EC);
- 1.3. in the event of a transfer of the assets of a company or a part thereof, employees are involved in the targeted part of the company on a structural basis;
- 1.4. labour conditions deriving from individual and/or collective labour agreements (including pension schemes) are applicable to workers affected by the transfer.

#### 2. Prepare

the following in draft form:

- 2.1. a request for information and consultation for the attention of the works council;
- 2.2. the wording of individual letters confirming the change of employer (once the advice of the works council has been obtained, a more general communication is usually made to all staff first of all).

#### 3. Inform/Notify

- 3.1. The works council about the transfer.

#### 4. Consult

- 4.1. The works council about the consequences (if any) of the asset deal for the workforce, employment policy or labour conditions.



5. Implement

- 5.1. The decision to transfer assets. In principle, all labour and wage conditions are maintained after the transfer, although it is possible to harmonise differences in labour and wage conditions by a CLA. The transfer may not in itself lead to a dismissal or (unilateral) change of working conditions. After the transaction, the seller and purchaser remain liable for obligations of the seller which existed prior to the transaction. Include in the individual letters the date on which the transaction is to take place.

**II. Obligations of the purchaser**

1. Check

whether:

- 1.1. a works council, trade union delegation or health and safety committee exists. The works council is competent in principle to be informed and consulted. In the absence of a works council, the trade union delegation is competent. In the absence of either of these bodies, the health and safety committee takes over the competences of the works council;
- 1.2. the asset deal qualifies as a transfer of undertakings under the (Belgian) national CLA no. 32bis (implementing European Directive 2001/23/EC);
- 1.3. in the event of a transfer of the assets of a company or a part thereof, employees are involved in the targeted part of the company on a structural basis;
- 1.4. which labour conditions deriving from individual and/or collective labour agreements (including pension schemes) are applicable to workers being taken over.

2. Prepare

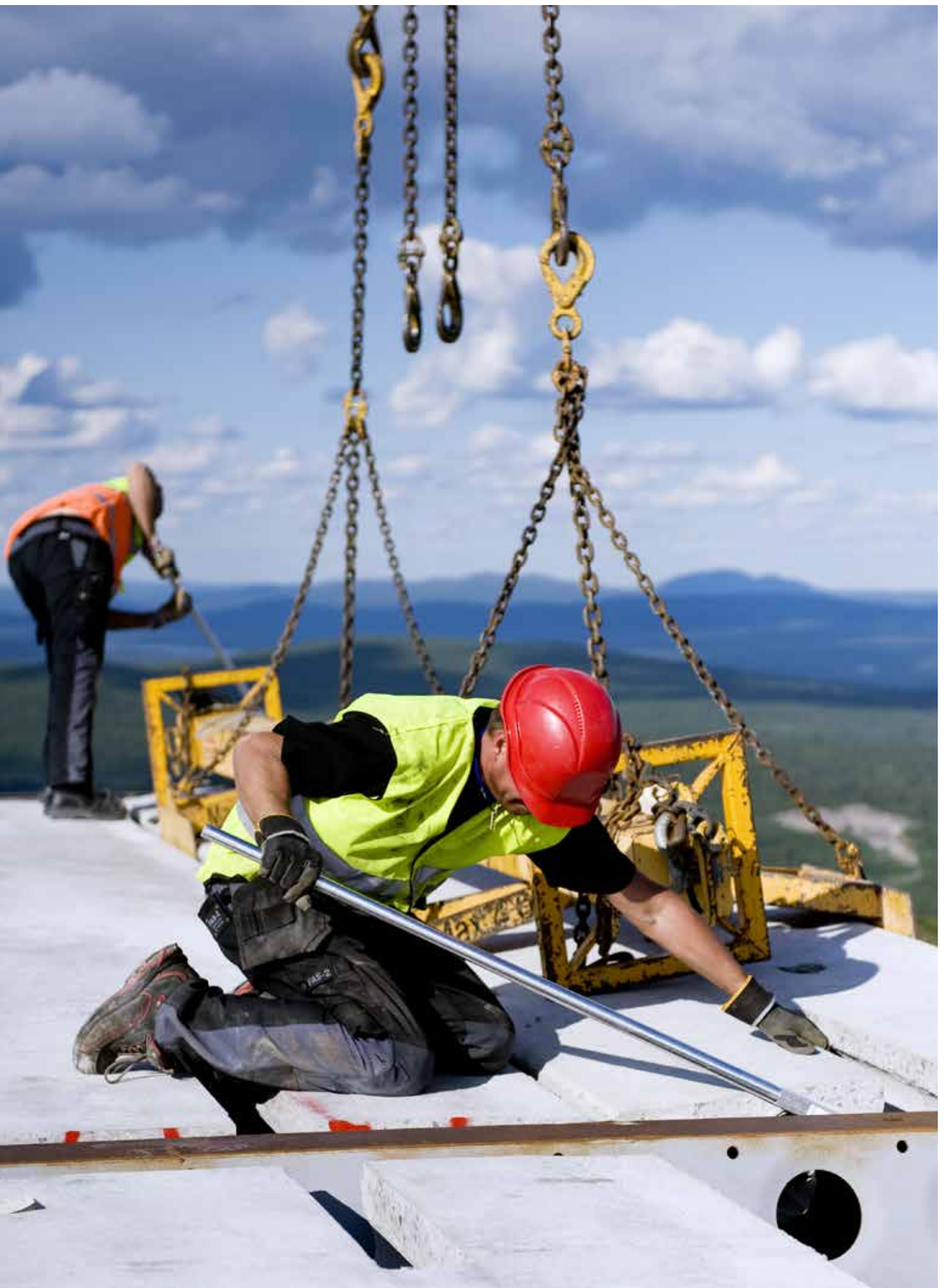
the following in draft form:

- 2.1. a request for information and consultation for the attention of the works council;
- 2.2. the wording of individual letters confirming the change of employer (once the advice of the works council has been obtained, a more general communication is usually sent out to all staff first). It is common for these letters to be signed by the seller as well as the purchaser/ new employer.

- |                  |  |
|------------------|--|
| 3. Inform/Notify | 3.1. the works council about the transfer.   |
| 4. Consult       | 4.1. the works council about the consequences (if any) of the asset deal for the workforce, employment policy or labour conditions.  |
| 5. Implement     | 5.1. the decision to transfer assets. In principle, all labour and wage conditions are maintained after the transfer, although it is possible to harmonise differences in labour and wage conditions by means of a CLA. The transfer in itself may not lead to dismissal or (unilateral) change of working conditions. After the transaction, the seller and purchaser remain liable for any obligations of the seller which existed prior to the transaction. Include these in the individual letters, depending on the date the transaction takes place. |

## C. Merger (except cross-border merger)

Belgian labour law equates a merger with a transfer of undertakings: see Section B., 'Asset Deal'.



# Bulgaria

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. any individual employees or groups of employees enjoy special rights as a result of the share deal which may be provided for in an individual employment contract, collective bargaining agreement, internal regulation of the target, etc. Such rights may include additional entitlements in the event of a share sale, golden parachute clauses, etc.;
- 1.2. any risks are identified in the course of a due diligence of the target, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.;
- 1.3. an European Works Council (EWC) exists if the target and the purchaser are not located in the same EU Member State.

#### 2. Prepare

the following in draft form:

- 2.1. information in written form to the trade union representatives and/or employee representatives, if this is provided for in an internal regulation of the purchaser or collective bargaining agreement.

#### 3. Inform/Notify

- 3.1. Trade union representatives and employee representatives, if the purchaser is contemplating major restructuring related to the workforce of the acquired target, e.g. mass layoffs, after the share transfer. Otherwise, the purchaser is under no direct legal obligation to inform employees in the event of a share deal.

#### 4. Consult

- 4.1. There is no direct obligation to carry out consultations in the event of a share deal.
- 4.2. Trade union representatives and employee representatives must be consulted if the purchaser is contemplating major restructuring related to the workforce of the acquired target, e.g. mass layoffs, after the share transfer. If this is the case, then the employer is obligated to carry out consultations with its employees, but this is not a direct obligation of the purchaser relating to the share deal.

#### 5. Implement

- 5.1. The formalities relating to the execution of a share deal, such as required registrations in commercial registries, approvals of competition protection authorities, amendments to the registered details of the

purchaser in the Personal Data Administrators Register related to employees data, etc. These would not normally trigger direct obligations related to employees, however.

## ***II. Obligations of the target***

### 1. Check

whether:

- 1.1. any individual employees or groups of employees enjoy special rights as a result of the share deal which may be provided for in an individual employment contract, internal regulation of the target, etc. Such rights may include additional entitlements in the event of a share sale, golden parachute clauses, etc.;
- 1.2. any special rights to information and/or consultation exist, other than those provided for in the Bulgarian Labour Code, which would not normally apply to share deals;
- 1.3. an European Works Council (EWC) exists, if the target and the purchaser are not located in the same EU Member State.

### 2. Prepare

the following in draft form:

- 2.1. appropriate information for the EWC if relevant;
- 2.2. written information to trade union representatives and/or employee representatives, if provided for in an internal regulation of the purchaser or collective bargaining agreement.

### 3. Inform/Notify

- 3.1. Not applicable unless otherwise provided for in an individual employment contract, internal regulation of the target, collective bargaining agreement, etc.

### 4. Consult

- 4.1. Not applicable unless otherwise provided for in an individual employment contract, internal regulation of the target, collective bargaining agreement, etc.

### 5. Implement

- 5.1. The formalities related to the execution of a share deal such as required registrations in commercial registries, approvals of competition protection authorities, amendments to the registered details of the purchaser in the Personal Data Administrators Register related to employees data, etc. These would not normally trigger direct obligations related to employees, however.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. any employee representatives exist which have been elected by the general assembly of all workers at the company. Such representatives are elected if more than 50 workers are employed at the company;
- 1.2. an European Works Council (EWC) exists, if the target is located in a different EU Member State;
- 1.3. the rights of the representatives described in Point 1.1., above, are not delegated to representatives designated by the leaderships of union organisations;
- 1.4. the deal falls within the definition of an asset deal, in order to verify whether the regulations of transfer of undertakings shall apply;
- 1.5. employees will be transferred to the purchaser of the assets as a result of the transfer of undertakings rules if the deal does qualify as an asset deal, and if so which ones. Since the transfer takes place automatically, employees the seller may wish to retain could end up being transferred to the purchaser without either the employees or the seller wanting such a transfer to take place. Identifying the employees to be transferred precisely together with the assets allows the seller and the purchaser to take adequate measures to allocate the workforce in a mutually acceptable way.

#### 2. Prepare

the following in draft form:

- 2.1. notification letters to the employee representatives as described in Point 1.1., above, or the union representatives described in Point 1.3., above, relating to:
  - a) the changes to the employer's structure being planned and the respective dates on which these changes are to take place;
  - b) the reasons for the above-mentioned changes;
  - c) the possible legal, economic and social implications of the changes for the workers;
  - d) the measures envisaged in relation to workers, including such measures being planned to fulfil the existing obligations of the employer towards workers.



- 2.2. the information described in Point 2.1., above, to be presented to the employee representatives at least two months prior to the change being made;
- 2.3. information to the EWC if Point 1.2., above, applies;
- 2.4. amendments to the existing staff schedule reflecting the changes in the workforce of the seller as a result of the transaction;
- 2.5. the relevant information pursuant to any individual or collective bargaining agreement, or internal regulations of the seller (if applicable).

### 3. Inform/Notify

- 3.1. Trade union representatives and employee representatives of the seller regarding: (I) the restructuring being contemplated and the date on which this restructuring is to be carried out; (II) the reasons for the restructuring; (III) the possible legal, economic and social impact of the restructuring on employees; (IV) any measures being planned with regard to employees. Employees of the seller must be notified at least two months before the restructuring being planned takes place. Trade union representatives and employee representatives in turn must pass on information they have received from the employer to other employees, and take their opinion into consideration when conducting consultations with the employer.
- 3.2. In cases where trade union organisations' representatives or factory and office employee representatives as described in Points 1.1. and 1.3., above, do not exist, the employer must provide the relevant workers with the respective information.
- 3.3. The terms for informing and consulting employee representatives must be regulated in a settlement between them and the employer, but in general there are no requirements regarding the form in which this has to be done. It may therefore be either oral or in writing.

### 4. Consult

- 4.1. In the event that measures are being planned as described in Point 2.1. d), above, the employer is obligated to consult the trade union organisations' representatives and employee representatives, and to strive to reach agreement with those organisations.

5. Implement

- 5.1. Any relevant agreements and regulations containing information and/or consultation obligations must be complied with appropriately.
- 5.2. The file of every transferred employee must be handed over to the purchaser.

***II. Obligations of the purchaser***

1. Check

whether:

- 1.1. any employee representatives exist which have been elected by the general assembly and consist of all workers at the company. Such representatives are elected if more than 50 workers are employed at the company;
- 1.2. an European Works Council (EWC) exists, if the target is located in a different EU Member State;
- 1.3. the rights of the representatives described in Point 1.1., above, are delegated to representatives designated by the leaderships of union organisations;
- 1.4. the deal falls within the definition of an asset deal, in order to verify whether the regulations of transfer of undertakings shall apply;
- 1.5. employees are to be transferred to the purchaser of the assets as a result of the transfer of undertakings rules, if the deal does qualify as an asset deal, and if so which employees. Since the transfer takes place automatically, employees the seller may wish to retain could end up being transferred to the purchaser, without either the employees or the seller wanting such a transfer to take place; it is also important to identify what payment scheme is applicable to these employees, including basic remuneration, any additional bonuses, payments and other incentives, labour regulations, holiday entitlements, etc., as well as to check whether any outstanding liabilities exist towards employees. This is because both the former and the new employer will be jointly and individually liable for any such outstanding liabilities as a result of the asset deal;
- 1.6. any collective bargaining agreements exist which will remain in force for the purchaser as an employer of the transferred employees;

- 1.7. any risks are identified in the course of a due diligence of the target, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.

## 2. Prepare

the following in draft form:

- 2.1. notification letters to the employee representatives as described in Point 1.1., above, or the union representatives described in Point 1.3., above, relating to:
  - a) the changes to the employer's structure being planned, and the respective dates on which these changes are to take place;
  - b) the reasons for the abovementioned changes;
  - c) the possible legal, economic and social implications of the changes for the workers;
  - d) the measures envisaged in relation to workers, including such measures being planned to fulfil the existing obligations of the employer towards workers.
- 2.2. the information described in Point 2.1., above, to be presented to employee representatives in good time, but no later than two months before the workers are directly affected by the changes;
- 2.3. this information for the EWC if Point 1.2., above, applies;
- 2.4. any amendments to the existing staff schedule, incorporating new job positions and/or employees transferred to it as a result of the transaction.

## 3. Inform/Notify

- 3.1. Trade union representatives and employee representatives of the purchaser regarding: (I) the restructuring being contemplated and the date on which this restructuring is to be carried out; (II) the reasons for the restructuring; (III) the possible legal, economic and social impact of the restructuring on employees; (IV) any measures being planned with regard to employees. Employees of the purchaser must be notified at least two months before the restructuring being planned takes place. Trade union representatives and employee representatives, in turn, must pass on the information they have received from the employer to the other employees and take their opinion into consideration when conducting consultations with the employer.
- 3.2. In cases where trade union organisations' representatives or factory and office employee representatives as described in Points 1.1. and 1.3., above, do not exist, the employer must provide the relevant workers with the respective information.

- 3.3. The terms for informing and consulting employee representatives must be regulated in a settlement between them and the employer, but in general there are no requirements regarding the form in which this has to be done. It may therefore be either oral or in writing.
- 3.4. Notify the National Revenue Agency after the restructuring takes place, registering the purchaser as a new employer.
- 4. Consult
  - 4.1. Trade union representatives and employee representatives of the disappearing and surviving entities if any special measures towards employees have been provided for.
- 5. Implement
  - 5.1. Register the employment contracts of the transferred employees with the National Revenue Agency, indicating that the purchaser is the new employer.
  - 5.2. Amend the records in the labour book of each employee, reflecting the change of the employer as a result of the merger. This has to be done by the new employer, i.e. the surviving company.
  - 5.3. Provide each new employee with a copy of all HR policies and rules used by the purchaser. Each new employee should sign to indicate they have read and understood these.
  - 5.4. Adjust any internal rules and regulations applicable to employees as a result of the transaction where necessary, and ensure that all employees (both new and old) read and understand these.

## C. Merger (except cross-border merger)

- 1. Check
  - whether:
    - 1.1. any employee representatives exist which have been elected by the general assembly and consist of all workers at the company. Such representatives are elected if more than fifty workers are employed at the company;
    - 1.2. an European Works Council (EWC) exists, if the target is located in a different EU Member State;
    - 1.3. the rights of the representatives described in Point 1.1., above, are delegated to representatives designated by the leaderships of union organisations;

- 1.4. any outstanding liabilities exist towards employees of the disappearing entity, as the surviving entity will take them over;
- 1.5. employees enjoy particular status, in as much detail as possible, including the content of employment contracts, holiday and payment entitlements, presence of trade unions, any other special rights provided for in individual employment contracts, and collective bargaining agreement and/or internal regulations, since all these will be transferred to the surviving entity;
- 1.6. any collective bargaining agreements exist which will remain in force for the purchaser as the employer of the transferred employees.

## 2. Prepare

the following in draft form:

- 2.1. notification letters to the employee representatives as described in Point 1.1., or the union representatives described in Point 1.3., relating to:
  - a) the changes to the employer's structure being planned and the respective dates on which these changes are to take place;
  - b) the reasons for the abovementioned changes;
  - c) the possible legal, economic and social implications of the changes for the workers;
  - d) the measures envisaged in relation to workers, including such measures being planned to fulfil the existing obligations of the employer towards workers;
- 2.2. the information described in Point 2.1., above, to be presented to employee representatives in good time, but no later than two months before the workers are directly affected by the changes;
- 2.3. this information for the EWC if Point 1.2., applies;
- 2.4. any amendments to the existing staff schedule, incorporating new job positions and/or employees transferred to it as a result of the transaction.

## 3. Inform/Notify

- 3.1. Trade union representatives and employee representatives of the disappearing and surviving entities must be informed by both the transferring and acquiring employers of: (I) the restructuring being planned, and the date on which this is to be carried out; (II) the reasons for the restructuring; (III) the possible legal, economic and social impact of the restructuring on the employees; (IV) the measures being planned relating to employees. The employees of both the disappearing

and surviving entities must be notified at least two months before the planned restructuring takes place.

- 3.2. The employer must provide the respective representatives with a copy of the management report regarding the merger. This report must be approved by a general meeting of the company.
- 3.3. The terms for informing and consulting the employee representatives shall be regulated in a settlement between them and the employer, but in general there are no requirements regarding the form. It may therefore be in either oral or written form.
- 3.4. In cases where trade union organisations' representatives or factory and office employee representatives as described in Points 1.1. and 1.3., do not exist, the employer must provide the relevant workers with the respective information.
- 3.5. Notify the National Revenue Agency after the restructuring takes place, registering the surviving company as a new employer.

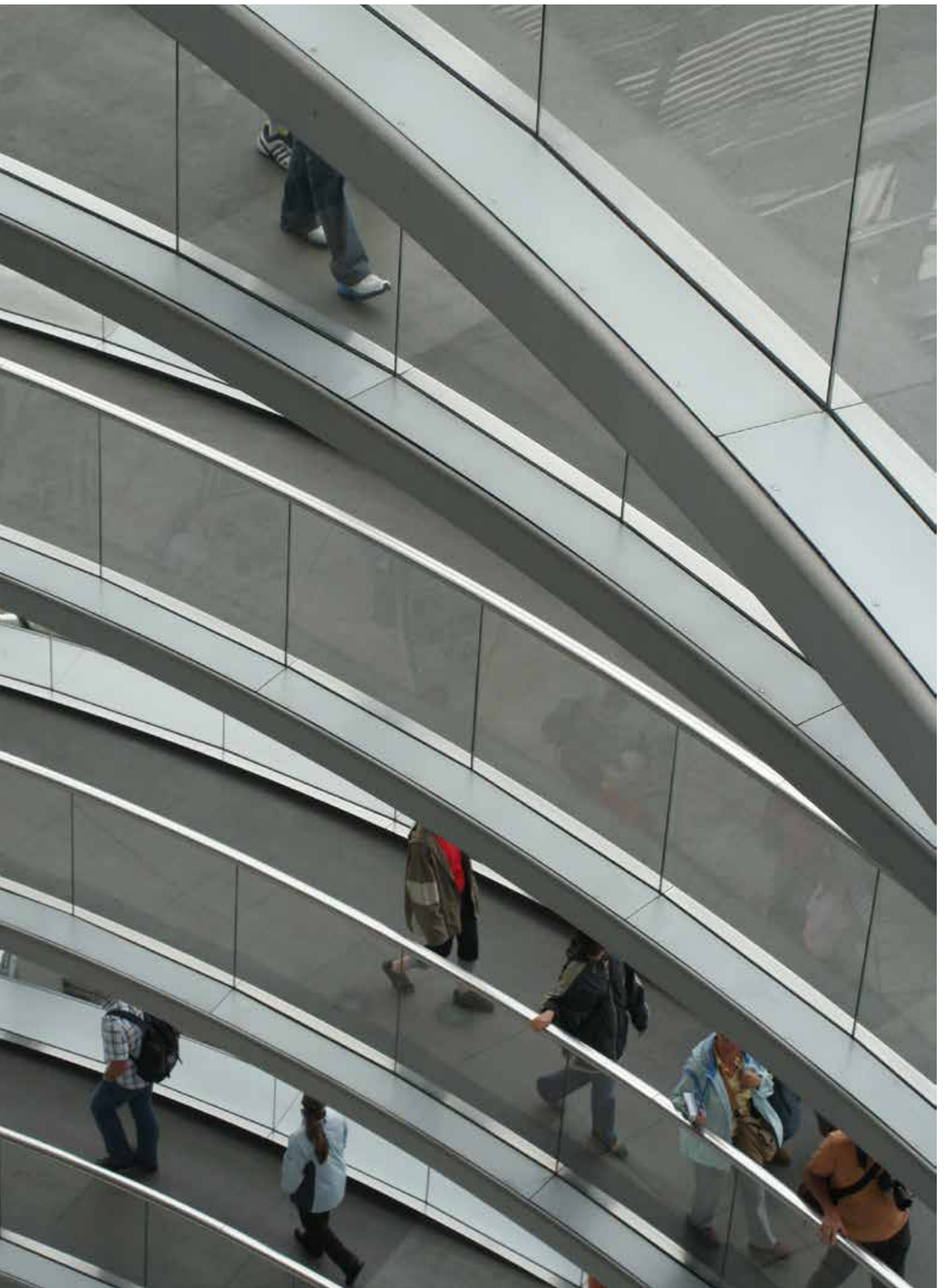
#### 4. Consult

- 4.1. Trade union representatives and employee representatives of the disappearing and surviving entities if any special measures towards employees have been provided for.

#### 5. Implement

- 5.1. Register the employment contracts of the transferred employees with the National Revenue Agency, indicating that the purchaser is the new employer.
- 5.2. Amend the records in the labour book of each employee, reflecting the change of employer as a result of the merger. This must be done by the new employer, i.e. the surviving company.
- 5.3. Hand over each transferred employee's file to the purchaser.
- 5.4. Provide each new employee with a copy of all HR policies and rules used by the purchaser. Each new employee should sign to indicate they have read and understood these.
- 5.5. Adjust internal rules and regulations applicable to employees where necessary as a result of the transaction, and ensure that all employees (both new and old) read and understand these.





# China

## A. Share Deal

### ***I. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations of the target company exist which may provide for special rights for employees or groups of employees in connection with the transaction;
- 1.2. any trade union exists at the target company, and whether any provisions of the collective bargaining agreement or internal regulations at the target company exist governing the information and/or consultation of the trade union in connection with the transaction;
- 1.3. whether the target company is a state-owned company, local company or a foreign invested company.

### ***II. Obligations of the target***

#### 1. Check

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations grant individual employees or groups of employees with any special rights in connection with the transaction;
- 1.2. any trade union exists, and whether any provisions of the collective bargaining agreement or internal regulations exist governing the information and/or consultation of the trade union in relation to the transaction;
- 1.3. whether the transaction is related to the transfer of so-called state-owned assets, i.e. shares held by the state-owned entities, the acquisition of a local company or a foreign invested company.

#### 2. Prepare

- 2.1. No documents need to be prepared unless stated otherwise in collective bargaining agreement or internal regulations in force at the target company.
- 2.2. If the transaction is related to the transfer of state-owned assets or the acquisition of a local company by a foreign company, an employee settlement plan shall be prepared.

- |                  |  |
|------------------|--|
| 3. Inform/Notify | <p>3.1. The target company is required by statutory law to seek the comments of the trade union and hear the opinions and proposals of the employees through the employees' representative congress or other means. However, there is no legal consequence if the target company fails to do so.</p> <p>3.2. If the transaction is related to the transfer of state-owned assets, if the legal interests of the employees are concerned, the target company must notify the transaction to the employees and consult the opinions of the employees' representative congress.</p> |
| 4. Consult       | <p>4.1. Not applicable, unless stated otherwise in collective bargaining agreement or internal regulations in force at the target company.</p> <p>4.2. If the transaction is related to the transfer of state-owned assets, if the legal interests of the employees are concerned, the employee settlement plan shall be approved by the employees' representative congress of the target company and be verified by the competent labour administrative authority.</p>  |
| 5. Implement     | <p>5.1. Not applicable, unless stated otherwise in collective bargaining agreement or internal regulations in force at the target company. All the employment relationships of the employees with the target company will remain unchanged after the transaction.</p>  |

## B. Asset Deal

### ***1. Obligations of the seller***

- |          |   |
|----------|---|
| 1. Check | <p>whether:</p> <p>1.1. any individual employment agreements, collective bargaining agreements or internal regulations grant individual employees or group employees with any special rights in connection with the transaction;</p> <p>1.2. any trade union exists, and whether any provisions of the collective bargaining agreement or internal regulations exist governing the information and/or consultation of the trade union in relation to the transaction;</p> <p>1.3. whether the transaction is related to the transfer of the assets of a state-owned company, a local company or a foreign invested company.</p> |
|----------|---|

2. Prepare the following in draft form:
  - 2.1. No documents need to be prepared unless stated otherwise in collective bargaining agreement or internal regulations in force at the target company.
  - 2.2. If the transaction is related to the transfer of the assets of a state-owned company or the acquisition of the assets of a local company by a foreign company, an employee settlement plan shall be prepared.
3. Inform/Notify
  - 3.1. The seller is required by statutory law to seek the comments of the trade union and hear the opinions and proposals of the employees through the employees' representative congress or other means. However, there is no legal consequence if the target company fails to do so.
  - 3.2. If the transaction is related to the transfer of the assets of a state-owned company, if the legal interests of the employees are concerned, the seller must notify the transaction to the employees and consult the opinions of the employees' representative congress.
4. Consult
  - 4.1. Not applicable, unless stated otherwise in collective bargaining agreement or internal regulations in force at the seller.
  - 4.2. If the transaction is related to the transfer of the assets of a state-owned company, if the legal interests of the employees are concerned, the employee settlement plan shall be approved by the employees' representative congress of the seller and be verified by the competent labor administrative authority.
5. Implement
  - 5.1. If the seller and the purchaser agree to transfer the employees, the seller shall terminate the current employment contracts with the transferred employees, and the purchaser shall conclude new employment contracts with them. The rights and obligations of the transferred employees towards the seller under their current employment contracts are only transferred to the purchaser if a relevant transfer agreement is concluded between the seller, the purchaser and the transferred employees. The rights and obligations of the transferred employees with the purchaser are subject to the new employment contracts.
  - 5.2. The implementation takes effective on the date as agreed by the seller, the purchaser and the transferred employee.

## ***II. Obligations of the purchaser***

### 1. Check

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations of the seller exist which may provide for special rights for employees or groups of employees in connection with the transaction;
- 1.2. any trade union exists at the seller, and whether any provisions of the collective bargaining agreement or internal regulations at the seller exist governing the information and/or consultation of the trade union in connection with the transaction;
- 1.3. the seller is a state-owned company, a local company or a foreign invested company.

### 5. Implement

- 5.1. The purchaser shall conclude a new employment contract with the transferred employees. No rights and obligations of the transferred employees under their employment contract with the seller will be taken over by the purchaser unless specifically otherwise agreed. The rights and obligations of the transferred employees with the purchaser are subject to the new employment contract.
- 5.2. The implementation takes effective on the date as agreed by the seller, the purchaser and the transferred employees.

## C. Merger (except cross-border merger)

A merger always results in a transfer of undertakings by law, i.e. the employees of the company(ies) involved in the merger as well as their employment relationships will be transferred automatically to the surviving entity (or the new entity) after the merger.

### 1. Check

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations grant individual employees or groups of employees of the company(ies) involved in the merger with any special rights in connection with the merger;
- 1.2. any trade union exists at the company(ies) involved in the merger, and whether any provisions of the collective bargaining agreement or internal regulations at the company(ies) involved in the merger exist governing the information and/or consultation of the trade union in connection with the transaction;
- 1.3. the company(ies) involved in the merger is a state-owned company.

### 2. Prepare

- 2.1. No documents need to be prepared unless stated otherwise in collective bargaining agreement or internal regulations in force at the company (ies) involved in the merger.
- 2.2. If any of the company(ies) involved in the merger is a state-owned company, an employee settlement plan shall be prepared.

### 3. Inform/Notify

- 3.1. The company(ies) involved in the merger is required by statutory law to seek the comments of the trade union and hear the opinions and proposals of the employees through the employees' representative congress or other means. However, there is no legal consequence if the company fails to do so.
- 3.2. If a state-owned company is engaged in the merger, if the legal interests of the employees are concerned, the company(ies) involved in the merger must notify the merger to the employees and consult the opinions of the employees' representative congress.

- |              |   |
|--------------|---|
| 4. Consult   | <p>4.1. Not applicable, unless stated otherwise in collective bargaining agreement or internal regulations in force at the company(ies) involved in the merger.</p> <p>4.3. If a state-owned company is engaged in the merger, if the legal interests of the employees are concerned, the employee settlement plan shall be approved by the employees' representative congress of the company(ies) involved in the merger and be verified by the competent labour administrative authority.</p>   |
| 5. Implement | <p>5.1. The employment contracts between the employees and the company(ies) involved in the merger shall continue to be valid after the merger. The surviving entity (or the new entity) shall succeed in the rights and obligations and continue to perform the employment contracts.</p> <p>5.2. The implementation takes effective on the date when the amended business licence of the surviving entity (in case of merger by absorption) or a new business licence of the new entity (in case of merger by establishment of a new entity) is issued.</p> |



# Croatia

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. the transfer is taking place during bankruptcy or rehabilitation proceedings (in this case, the rights being transferred to the new employer may be reduced pursuant to a special law, the collective agreement concluded, or the agreement between the works council and the employer);
- 1.2. a collective agreement has been concluded (if yes, a collective agreement applied to employees before the change of employer continues to apply until a new collective agreement is concluded, but for no longer than one year);
- 1.3. a works council has been established (if so, the works council shall continue its activities, but for no longer than the duration of the term for which it was elected);
- 1.4. obligations exist towards employees which arose before the date of transfer (if so, the new employer shall have joint and several liability together with the previous employer regarding those obligations towards employees which arose before the date of transfer);
- 1.5. the Act on the Takeover of Joint Stock Companies applies (if so, then the takeover bid should contain the offeror's strategic plans for the offeree company and possible repercussions of the implementation of these plans on the employment policy and the labour law status of employees of the offeree company and offeror company).

#### 2. Prepare

the following in draft form:

- 2.1. information to the Croatian Pension Insurance Institute about the beginning of the obligation;
- 2.2. information to the Croatian Institute for Health Insurance about the beginning of the obligation.

#### 3. Inform/Notify

- 3.1. Forward the information drafted to the respective addressees 'in good time' (within eight days to the Croatian Health Insurance Institute and within 24 hours to the Croatian Pension Insurance Institute, after the obligation occurred).

- 4. Consult
  - 4.1. No consultation requirement.
- 5. Implement
  - 5.1. In accordance with Points 1.–4.

## ***II. Obligations of the target***

- 1. Check
  - whether:
    - 1.1. a collective agreement exists;
    - 1.2. a works council exists;
    - 1.3. a shop steward has been nominated (if a works council does not exist);
    - 1.4. the Act on the Takeover of Joint Stock Companies applies.
- 2. Prepare
  - the following in draft form:
    - 2.1. full and accurate information in written form for the attention of the new employer regarding the rights of employees whose employment contracts are being transferred;
    - 2.2. information regarding the transfer in written form for the attention of the works council and any employees affected (this should include information about the date of transfer of the employment contract, the reasons for the transfer of the employment contract, the legal, economic and social implications of the transfer for the employees, and any measures being taken in relation to employees whose employment contracts are being transferred);
    - 2.3. information to Croatian Pension Insurance Institute regarding the end of the obligation;
    - 2.4. information to Croatian Institute for Health Insurance regarding the end of the obligation;
    - 2.5. in cases such as those described in Point 1.4., above, information for the attention of the representatives of the employees, or where no such representatives exist, the employees themselves, regarding the content of the received notification on the announcement of a takeover bid;

2.6. in cases such as those described in Point 1.4., the management board of the offeree company shall present its opinion regarding the takeover bid to the representatives of the employees, or where no such representatives exist, the employees themselves. The representatives or employees may then give their opinion regarding the takeover bid within three days of the presentation being made.

### 3. Inform/Notify

3.1. Forward the information drafted for the attention of the respective addressee 'in good time' (in cases such as those described in Point 2.2., this means before the date of the transfer; in cases such as those described in Points 2.3., within 24 hours of the obligation having been terminated; in cases such as those prescribed in Point 2.4., within eight days of the obligation having been terminated; in cases such as those described in Point 2.5., it should be done immediately; and in cases such as those described in Point 2.6., above, within five days after the day on which the takeover bid is announced).

### 4. Consult

4.1. The employer must consult the works council regarding the transaction being considered, and provide the works council with information important for understanding its impact on the position of employees. The works council must then forward its observations regarding the proposed transaction for the attention of the employer within eight days (if a works council has not been established, all its rights and obligations are to be assumed by a shop steward).

### 5. Implement

5.1. In accordance with Points 1.–4.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. a collective agreement exists;
- 1.2. a works council exists;
- 1.3. a shop steward has been nominated (if a works council does not exist).

## 2. Prepare

the following in draft form:

- 2.1. full and accurate information in written form for the attention of the new employer regarding the rights of employees whose employment contracts are being transferred;
- 2.2. information regarding the transfer in written form for the attention of the works council and any employees affected (this should include information about the date of transfer of the employment contract, the reasons for the transfer of the employment contract, the legal, economic and social implications of the transfer for the employees, and any measures being taken in relation to employees whose employment contracts are being transferred);
- 2.3. information to Croatian Pension Insurance Institute regarding the end of the obligation;
- 2.4. information to Croatian Institute for Health Insurance regarding the end of the obligation.

## 3. Inform/Notify

- 3.1. Forward the information drafted for the attention of the respective addressees 'in good time' (in cases such as those described in Point 2.2., above, before the date of the transfer; in cases such as those described in Point 2.3., above, within 24 hours of the obligation having been terminated; in cases such as those prescribed in 2.4. above, within eight days after the obligation has terminated).

## 4. Consult

- 4.1. The employer must consult the works council regarding the transaction being considered, and provide the works council with information important for understanding its impact on the position of employees. The works council must then forward its observations regarding the proposed transaction for the attention of the employer within eight days (if a works council has not been established, all its rights and obligations are to be assumed by a shop steward).

## 5. Implement

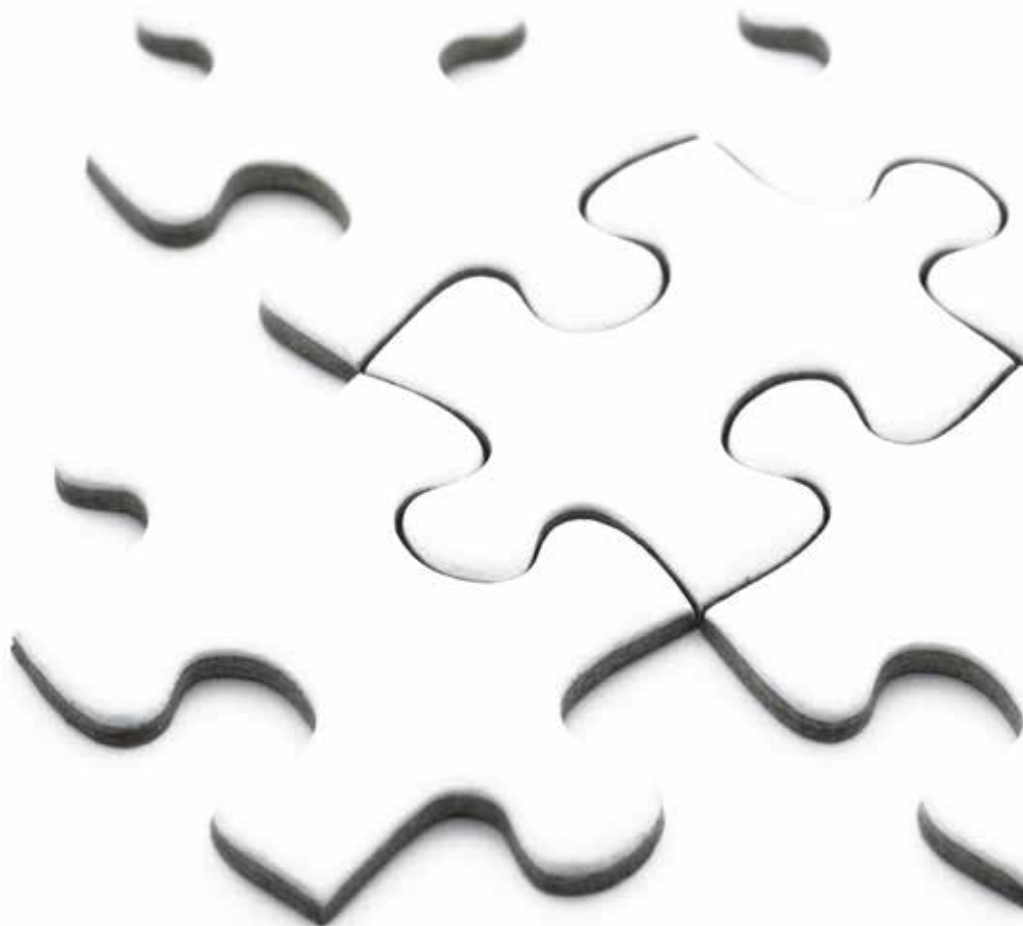
- 5.1. In accordance with Points 1.–4.

## ***II. Obligations of the purchaser***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the transfer is taking place during bankruptcy or rehabilitation proceedings (in this case, the rights being transferred to the new employer may be reduced pursuant to a special law, a collective agreement concluded, or an agreement between the works council and the employer);</li> <li>1.2. a collective agreement has been concluded (if so, a collective agreement applied to employees before the change of employer continues to apply until a new collective agreement is concluded, but for no longer than one year);</li> <li>1.3. a works council has been established (if so, the works council shall continue its activities, but for no longer than the duration of the term for which it was elected);</li> <li>1.4. obligations exist towards employees which arose before the date of transfer (if so, the new employer shall have joint and several liability together with the previous employer regarding those obligations towards employees which arose before the date of transfer).</li> </ul> |
| 2. Prepare       | <p>the following in draft form:</p> <ul style="list-style-type: none"> <li>2.1. information to Croatian Pension Insurance Institute about the beginning of the obligation;</li> <li>2.2. information to Croatian Institute for Health Insurance about the beginning of the obligation.</li> </ul>   |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. Forward the information drafted for the attention of the respective addressees 'in good time' (within eight days to the Croatian Health Insurance Institute and within 24 hours to the Croatian Pension Insurance Institute, after the obligation occurred).</li> </ul>   |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. No consultation requirement.</li> </ul>   |
| 5. Implement     | <ul style="list-style-type: none"> <li>5.1. In accordance with Points 1.–4., above.</li> </ul>  |

### C. Merger (except cross-border merger)

The regulations described as being applicable to a share deal are also applicable to a merger. As such, a merger comes into effect when entered in the relevant public register.



# Czech Republic

## A. Share Deal

### ***1. Obligations of the seller***

- |                  |  |
|------------------|--|
| 1. Check         | whether: <ul style="list-style-type: none"><li>1.1. any internal regulations exist at the companies involved granting individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes, etc.). Please note this remains rare in the Czech Republic;</li><li>1.2. the share deal will have any implications for the working conditions of employees, or will be associated with any measures affecting a higher number of employees;</li><li>1.3. any employee representative bodies such as trade unions, works councils, European works councils, etc. exist, and whether the internal regulations of the company grant these bodies additional rights in the event of a transaction.</li></ul> |
| 2. Prepare       | 2.1. Not applicable, unless stated otherwise by internal regulations in force.   |
| 3. Inform/Notify | <ul style="list-style-type: none"><li>3.1. The employee representatives. In the absence of such bodies, all employees who will in practice be affected should be informed about the change of the employer's ownership structure.</li><li>3.2. If Point 1.2, above, is fulfilled, then the employees affected or their representative bodies must be informed and consulted by both the seller and the purchaser about these implications and measures.</li></ul>  |
| 4. Consult       | <ul style="list-style-type: none"><li>4.1. Not applicable unless stated otherwise by internal regulations in force.</li><li>4.2. If Point 1.2, above, is fulfilled, then the employees affected or their representative bodies must be informed and consulted by both the seller and the purchaser about these implications or measures.</li></ul>   |
| 5. Implement     | 5.1. Not applicable unless stated otherwise by internal regulations in force.  |



## ***II. Obligations of the purchaser***

- |                  |  |
|------------------|--|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. any internal regulations exist at the companies involved granting individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes, etc.). Please note this remains rare in the Czech Republic;</li> <li>1.2. the share deal will have any implications for the working conditions of employees, or will be associated with any measures affecting a higher number of employees;</li> <li>1.3. any employee representative bodies, such as trade unions, works councils, European works councils, etc. exist, and whether the internal regulations of the company grant these bodies additional rights in the event of a transaction.</li> </ul> |
| 2. Prepare       | <ul style="list-style-type: none"> <li>2.1. Not applicable unless stated otherwise by internal regulations in force.</li> </ul>  |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. the employee representatives. In the absence of such bodies, all employees who will in practice be affected should be informed about the change of the employer's ownership structure.</li> <li>3.2. If Point 1.2, above, is fulfilled, then the employees affected or their representative bodies must be informed and consulted by both the seller and the purchaser about these implications and measures.</li> </ul>   |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. Not applicable, unless stated otherwise by internal regulations in force.</li> <li>4.2. If Point 1.2, above, is fulfilled, then the employees affected or their representative bodies must be informed and consulted by both the seller and the purchaser about these implications and measures.</li> </ul>  |
| 5. Implement     | <ul style="list-style-type: none"> <li>5.1. Not applicable, unless stated otherwise in internal regulations in force.</li> </ul>   |

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. the transfer of assets will result in transferring employees, and if so, which employees;
- 1.2. any internal regulations/collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;
- 1.3. any internal regulations exist regulating the information and/or consultation of employee representative bodies (trade unions or works councils, if such bodies exist) in relation to the transaction;
- 1.4. there are any obligations still outstanding from the employment of staff to be taken over, such as pending court disputes with former and existing employees, etc.;
- 1.5. any employee representatives, such as trade unions, works councils, European works councils etc., exist, and whether the internal regulations of the company grant these bodies additional rights in the event of a transaction;

Once employees learn about the transaction, they may decide to terminate their employment before the closing date of the transaction. In this case, they are no longer required to observe the statutory notice period of at least two months (they may give notice of one week before the closing date, for example, effective as of the day before this date).

#### 2. Prepare

Not applicable.

#### 3. Inform/Notify

- 3.1. At least 30 days before the effective date of the transfer of employees to another employer, the present and future employer are required to inform the trade union and works council of this fact, and discuss with them and agree the following:
  - a) an established or proposed date for the transfer;
  - b) the reasons for the transfer;
  - c) the legal, economic and social effects of the transfer for employees;
  - d) any measures being planned that relate to employees.

If trade unions/works councils do not exist, all employees affected must be informed.

- |              |                 |
|--------------|-----------------|
| 4. Consult   | Not applicable. |
| 5. Implement | Not applicable. |

## ***II. Obligations of the target***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the transfer of assets will result in the transfer of employees, and if so, which employees;</li> <li>1.2. any internal regulations/collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;</li> <li>1.3. any internal regulations exist regulating the information and/or consultation of employee representative bodies (trade unions or works councils, if such bodies) in relation to the transaction;</li> <li>1.4. there are any obligations still outstanding from the employment of staff to be taken over, such as pending court disputes with former and existing employees, etc.;</li> <li>1.5. any employee representatives, such as trade unions, works councils, European works councils etc., exist, and whether the internal regulations of the company grant these bodies additional rights in the event of a transaction.</li> </ul> |
| 2. Prepare       | Not applicable.   |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. At least 30 days before the effective date of the transfer of employees to another employer, the present and future employers are required to inform the trade union and works council of this fact, and discuss with them and agree the following: <ul style="list-style-type: none"> <li>a) an established or proposed date for the transfer;</li> <li>b) the reasons for the transfer;</li> <li>c) the legal, economic and social effects of the transfer for employees;</li> <li>d) any measures being planned relating to employees.</li> </ul> </li> </ul> <p>If no trade unions/works councils exist, all the employees affected must be informed.</p>   |

Once employees learn about the transaction, they may decide to terminate their employment before the closing date of the transaction. In this case, they are no longer required to observe the statutory notice period of at least two months and the notice is effective as of the day before the closing date (even if delivered, for example, a week before this date).

4. Consult

Not applicable.

5. Implement

5.1. The target should grant the transferred employees the same working conditions they enjoyed previously. If working conditions change, and the employees give notice within two months after the transfer has taken place as a result, then the employees may seek compensation before a court.

5.2. If the transferred employees were subject to a collective bargaining agreement, this remains valid until its expiry, but for no longer than the end of the year immediately following the transfer. After such a term has expired, a new collective bargaining agreement may be concluded to cover the transferred employees.

5.3. The target company should enter into court proceedings with any former and existing employees of the seller who were subject to the transfer.

## C. Merger (except cross-border merger)

1. Check

whether:

- 1.1. the merger will result in a transfer of employees, and if so, which employees;
- 1.2. any internal regulations/collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;
- 1.3. any internal regulations exist regulating the information and/or consultation of employee representative bodies (trade unions or works councils, if such bodies exist) in relation to the transaction;
- 1.4. there are any obligations still outstanding from the employment of staff to be taken over, such as pending court disputes with former and existing employees, etc.;

	1.5. any employee representatives, such as trade unions, works councils, European works councils etc., exist, and whether the internal regulations of the company grant these bodies additional rights in the event of a transaction.
2. Prepare	Not applicable.
3. Inform/Notify	<p>3.1. At least 30 days before the effective date of the transfer of employees to another employer (i.e. the merger), the present and future employers are required to inform the trade union and work council of this fact and discuss with them and agree the following:</p> <ul style="list-style-type: none"> <li>a) an established or proposed date for the transfer;</li> <li>b) the reasons for the transfer;</li> <li>c) the legal, economic and social implications of the transfer for employees;</li> <li>d) any measures to have been prepared that relate to employees.</li> </ul> <p>If no trade unions/works councils exist, all the employees affected must be informed.</p> <p>Once employees learn about the transaction, they may decide to terminate their employment before the closing date of the transaction. In this case, they are no longer required to observe the statutory notice period of at least two months and the notice is effective as of the day before the closing date (even if delivered, for example, a week before this date).</p>
4. Consult	Not applicable.
5. Implement	<p>5.1. The surviving company should grant transferred employees the same working conditions they enjoyed previously. If working conditions change, and the employees give notice within two months after the transfer has taken place as a result, then the employees may seek compensation before a court.</p> <p>5.2. If the transferred employees were subject to a collective bargaining agreement, this remains valid until its expiry, but for no longer than the end of the next year immediately following the transfer. After such a term has expired, a new collective bargaining agreement may be concluded to cover the transferred employees.</p> <p>5.3. The target company must enter into court proceedings with any former and existing employees of the seller who were subject to the transfer.</p>



# France

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a relevant staff representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central works council (CWC);
  - works council (WC);
  - health and safety committee (HSC);
  - employee representatives;
  - collective bargaining agreements (which may stipulate special requirements).
- 1.2. it is a takeover bid or a concentration operation under French law (see *Section C. Merger*);
- 1.3. there has been a change of control or an equity participation only (as French law understands equity participation), and the amount of shares owned by the purchaser before the purchase;
- 1.4. the shares purchased are in the company at which the CWC, WC or HSC has been elected, or in another organisation such as the parent company;
- 1.5. the purchasing company is where the CWC, WC or HSC has been elected.

#### 2. Prepare

the following in draft form:

- 2.1. a written consultation memo, for the attention of the relevant staff representative body to ensure compliance with the notification or consultation process and all relevant information to allow the representative body to give clear advice.

#### 3. Inform/Notify

- 3.1. An EWC or GC may need to be informed or consulted, depending on the scope of the deal and by-laws of the company and the staff representative body.
- 3.2. Information alone is not sufficient if a CWC or a WC has been established. If this is the case, a consultation process has to be implemented (see point 4).



4. Consult

- 4.1. A CWC or WC needs to be informed and consulted, even in case of an equity participation without any change of control. The information and consultation process must take place before any actual decision is made.
- 4.2. Although the transaction is not in itself subject to the consent of the WC (or EWC, GC, CWC, etc.), non-involvement of the employee representatives constitutes a criminal offence punishable by a fine of up to EUR 7,500. The company itself can be subject to an additional fine of up to EUR 37,500. It could also lead to a suspension of operations until the opinion of employee representatives is given.
- 4.3. Depending on the context, the HSC may need to be consulted (depending on whether the transaction has any consequences for health and safety and working conditions).

5. Implement

- 5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.
- 5.2. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.
- 5.3. As far as labour law is concerned, a share deal does not in principle lead to an automatic transfer of the employment contract to the company purchasing the shares, even if the share deal results in a majority controlling interest. A specific analysis is necessary in each case to determine the precise consequences for the employment contract of the employees.

## ***II. Obligations of the target***

1. Check

whether:

- 1.1. a relevant staff representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central works council (CWC);
  - works council (WC);
  - health and safety committee (HSC);
  - employee representatives;
  - collective bargaining agreements (which may stipulate special requirements).

- 1.2. it is a takeover bid or a concentration operation under French law (see *Section C. Merger*);
- 1.3. there has been a change of control or an equity participation only (as French law understands equity participation), and the amount of shares owned by the purchaser before the purchase;
- 1.4. the target is aware of the share deal; if so, it must inform and consult the relevant staff representative body.

2. Prepare

the following in draft form:

- 2.1. a written information memo, for the attention of the relevant staff representative body, to ensure compliance with the notification or consultation process and all relevant information to allow the representative body to give clear advice.

3. Inform/Notify

- 3.1. Information alone is not usually sufficient if a CWC or WC has been established. If this is the case, a consultation process must be implemented (see point 4).
- 3.2. An EWC, GC or employee representative may need to be informed or consulted, depending on the scope of the deal and the by-laws of the company and the staff representative body.
- 3.3. If (I) the target has fewer than 250 employees and (II) the deal concerns more than 50% of the shares, every employee must be properly informed of the contemplated sale and invited to submit an offer to acquire the shares. The obligation to provide information does not amount to a right of pre-emption for the employees, since the seller remains free to accept or refuse the offer made by employees on a discretionary basis.

4. Consult

- 4.1. Other than in certain highly specific cases, and even if the deal concerns as little as 1% of the shares, the WC or CWC needs to be informed and consulted.
- 4.2. Although the transaction is not in itself subject to the consent of the WC (or EWC, GC, CWC, etc.), non-involvement of the employee representatives constitutes a criminal offence punishable by a fine of up to EUR 7,500. The company itself can be subject to an additional fine of up to EUR 37,500. It could also lead to a suspension of operations until the opinion of employee representatives is given.

- 4.3. Depending on the context, the HSC may need to be consulted (depending on whether the transaction has any consequences for health and safety and for working conditions).
5. Implement
- 5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.
- 5.2. As far as labour law is concerned, a share deal does not in principle lead to an automatic transfer of the employment contract to the company purchasing the shares, even if the share deal results in a majority controlling interest. A specific analysis is necessary in each individual case to determine the precise consequences for the employment contract of the employees.
- 5.3. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.

## B. Asset Deal

### 1. Obligations of the seller

whether:

1. Check
- 1.1. a relevant staff representative body exists. This could include a
- European works council (EWC);
  - group council (GC);
  - central works council (CWC);
  - works council (WC);
  - health and safety committee (HSC);
  - employee representatives;
  - collective bargaining agreements (which may stipulate special requirements).
- 1.2. it is a concentration operation under French law (if this is the case, see *Section C. Merger*);
- 1.3. the operation could have any consequences for employees (in the case of a business transfer in the sense of the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, and employee representative bodies could be modified);

- 1.4. an information and consultation process has to be implemented.  
This must take place before an actual decision is made and before an agreement is signed (even with conditions precedent).
2. Prepare
- the following in draft form:
- 2.1. a written consultation memo for the attention of the relevant staff representative body to ensure compliance with the notification or consultation process and all relevant information to allow the representative body to give clear advice.
3. Inform/Notify
- 3.1. An EWC or GC may need to be informed or consulted, depending on the scope of the deal and bylaws of the company and its staff representative body.
  - 3.2. Information alone is not sufficient if a CWC or a WC has been established. If this is the case, a consultation procedure has to be implemented (see point 4).
  - 3.3. If the seller has fewer than 250 employees, every employee must be properly informed of the sale and invited to submit an offer to acquire the business. The obligation to provide information does not amount to a right of pre-emption for the employees, since the seller remains free to accept or refuse the offer made by employees on a discretionary basis.
4. Consult
- 4.1. The WC or CWC must be consulted regarding the financial and social modality and consequences of the deal.
  - 4.2. Although the transaction is not in itself subject to the consent of the WC (or EWC, GC, CWC, etc.), non-involvement of the employee representatives constitutes a criminal offence punishable by a fine of up to EUR 7,500. The company itself can be subject to an additional fine of up to EUR 37,500. It could also lead to a suspension of operations until the opinion of employee representatives has been obtained.
  - 4.3. Depending on the context, the HSC may need to be consulted (depending if the operation has any consequences for health and safety and for working conditions).
5. Implement
- 5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.

- 5.2. In the event of a business transfer in the sense of the EU Directive, we recommend that a notice of information be sent for the attention of transferred employees.
- 5.3. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.



## **II. Obligations of the purchaser**

### 1. Check

whether:

- 1.1. a relevant staff representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central works council (CWC);
  - works council (WC);
  - health and safety committee (HSC);
  - employee representatives;
  - collective bargaining agreements (which may stipulate special requirements).
- 1.2. it is a takeover bid or concentration operation under French law (if this is the case, see *Section C. Merger*);
- 1.3. the operation could have any consequences for employees (in the case of a business transfer in the sense of the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, and employee representative bodies could be modified). Check whether the operation could have any financial consequences, especially due to harmonisation of social status.
- 1.4. the information and consultation process must take place before any actual decision is made.

### 2. Prepare

the following in draft form:

- 2.1. a written consultation memo, for the attention of the relevant staff representative body to ensure compliance with the notification or consultation process and all relevant information to allow the representative body to give clear advice.

### 3. Inform/Notify

- 3.1. An EWC or GC may need to be informed or consulted, depending on the scope of the deal and by-laws of the company and the staff representative body.
- 3.2. Information alone is not sufficient if a CWC or WC has been established. If this is the case, a consultation procedure has to be implemented (see Point 4).

- |              |   |
|--------------|---|
| 4. Consult   | <p>4.1. The WC or CWC must be consulted regarding the financial and social process and consequences of the deal.</p> <p>4.2. Although the transaction is not in itself subject to the consent of the WC (or EWC, GC, CWC, etc.), non-involvement of the employee representatives constitutes a criminal offence punishable by a sentence of up to one year's imprisonment and a EUR 7,500 fine. The company itself can be subject to an additional fine of up to EUR 37,500. It could also lead to a suspension of operations until the opinion of employee representatives has been obtained.</p> <p>4.3. Depending on the context, the HSC may need to be consulted (depending if the operation has any consequences on health and safety and on working conditions).</p> |
| 5. Implement | <p>5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.</p> <p>5.2. In the event of a business transfer in the sense of the EU Directive, we recommend that a notice of information be sent for the attention of transferred employees.</p> <p>5.3. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.</p>   |

## C. Merger (except cross-border merger)

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <p>1.1. a relevant staff representative body exists. This could include a</p> <ul style="list-style-type: none"> <li>— European works council (EWC);</li> <li>— group council (GC);</li> <li>— central works council (CWC);</li> <li>— works council (WC);</li> <li>— health and safety committee (HSC);</li> <li>— employee representatives;</li> <li>— collective bargaining agreements (which may stipulate special requirements).</li> </ul> <p>1.2. it is a takeover bid or concentration operation under French law;</p> |
|----------|--|



- 1.3. there is a need to inform and consult the health and safety committee;
- 1.4. there will be any consequences for employees (in the case of a business transfer in the sense of the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, and employee representative bodies could be modified). Also check if the operation could have financial consequences, especially due to harmonisation of social status.

## 2. Prepare

the following in draft form:

- 2.1. In the event of a merger without a takeover bid or concentration:
  - 2.1.1. information for the attention of the relevant staff representative body to ensure compliance with the notification or consultation process.
  - 2.1.2. the consultation process of the WC or CWC must be implemented prior to the board meeting's decision to go ahead with a merger.
- 2.2. In the event of a takeover bid:
  - 2.2.1. information for the attention of the GC or WC of the target company;
  - 2.2.2. information for the attention of the WC of the raider (by the acquirer).
  - 2.2.3. prepare the acquirer for a possible hearing before the GC or WC of the target company and its technical expert if one exists.
  - 2.2.4. prepare documentation for the attention of an expert, possibly chosen by the GC or WC of the target company.
- 2.3. Concentration operation:
  - 2.3.1. determine the subsidies needed to organise a meeting of the WC;
  - 2.3.2. prepare documentation for the attention of an expert, possibly chosen by the WC of the target company.

## 3. Inform/Notify

- 3.1. Merger without a takeover bid or concentration:
  - 3.1.1. an EWC, GC, or employee representative may need to be informed or consulted, depending on the scope of the deal and by-laws of the company and staff representative body.
  - 3.1.2. the WC or CWC must be consulted prior to a decision to merge being taken.

### 3.2. Takeover bid:

#### 3.2.1. Obligations of acquirer

##### 3.2.1.1. Towards its employees

##### 3.2.1.1.1. If a WC exists

- to meet the WC of the acquirer immediately after the offer is submitted;
- within two days, to provide the WC of the acquirer with information about:
  - the content of the bid; and
  - consequences for employment.

##### 3.2.2.1. If no WC exists

- To inform all employees of the bid.

##### 3.2.1.2. Towards WC of the target

- To provide the CWC, WC or all employees of the target (through CEO of the target) with an information notice for the Financial Market Authority, within three days of it being published.
- In the event of a hearing in front of the CWC or WC of the target, the acquirer must provide information regarding:
  - its industrial and financial policy;
  - its strategic plans for the target company;
  - the possible consequences for employment, employment locations, and locus of decision-making.

#### 3.2.2. Obligations of target

- To meet the CWC or WC immediately after the offer is submitted. The CWC or WC decides whether the acquirer will be heard, and can decide to proclaim the acquisition as friendly or hostile. The CWC or WC also has the right to appoint a technical expert.
- To meet the CWC or WC of the target, with the possibility of the acquirer being heard, within 15 days following the publication of the notice of information being given to the Financial Market Authority, and before the general meeting of the shareholder.

- 3.2.2.1. If neither a CWC nor a WC exists
  - To inform all employees of the bid.
  - To give all employees the notice of information for the Financial Market Authority as given by the acquirer.

- 3.3. Concentration operation
  - Obligations of acquirer and target
    - To meet the WC within three days of the publication of the concentration information by French Administrative Authority or European Commission.
    - A second meeting with the WC is also possible in the event of a technical expert being nominated by the WC.
    - WC can ask to be heard by the French Administrative Authority, and under certain conditions, by the European Commission.

4. Consult

Not applicable.

5. Implement

- 5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.
- 5.2. Although the transaction is not in itself subject to the consent of the WC (or EWC, GC, CWC, etc.). non-involvement of employee representatives constitutes a criminal offence punishable by a fine of up to EUR 7,500. The company itself can subject to an additional fine of up to EUR 37,500. It can also lead to a suspension of operations until the opinion of employee representatives has been obtained.
- 5.3. The date of transfer of employees, if applicable, cannot be retroactive, even if the operation can have retroactive effects for tax and account purposes.
- 5.4. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.

# Germany

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a target or business sector requiring specific handling is involved. In Germany, this is particular true of acquisitions made under the German Securities Acquisition and Takeover Act ('WpÜG');
- 1.2. an European works council (EWC) exists, if the target company is located in another EU member state;
- 1.3. an economic committee (EC, '*Wirtschaftsausschuss*') exists at the purchaser;
- 1.4. merely a share deal is intended, or the deal is to be combined with an operational change to a business unit ('Betrieb') of the purchaser. If the latter is true check additionally whether a (joint) works council (WC, '*Gesamtbetriebsrat*', '*Betriebsrat*') and/or an executive committee ('*Sprecherausschuss*') exists at the purchaser, since such changes may trigger additional information/consultation requirements vis-à-vis such representative bodies.

#### 2. Prepare

the following in draft form:

- 2.1. in the event that acquisition is being made under the WpÜG, information to the WC or, if a WC does not exist, to the employees directly (§ 14, Sec. 4 WpÜG);
- 2.2. information to the EWC if Point 1.2, above, applies;
- 2.3. information to the EC, if Point 1.3 above, applies;
- 2.4. any additional documents if, as described in Point 1.4, above, the share deal is to involve change to a business unit. For details, see *Section B. Asset Deal* 'operational change of a business unit'.

#### 3. Inform/Notify

Forward the information drafted for the attention of the respective addressee 'in good time' (while the feasible proposed solutions are still under development, and prior to implementation of a final purchase agreement).

#### 4. Consult

No consultation requirement.

5. Implement Implementation after information has been provided in good time (providing the respective addressees exist).

## **II. Obligations of the target**

1. Check whether:

- 1.1. the deal implies the acquisition of control over the company;
- 1.2. an economic committee (EC) or, if not, a (joint) works council (WC) has been established at the target;
- 1.3. an executive committee exists at the target;
- 1.4. merely a share deal is intended, or the deal is to be combined with an operational change to a business unit (*'Betrieb'*) of the target.

2. Prepare the following in draft form:

- 2.1. information for the attention of the EC and/or WC, assuming Points 1.1 and 1.2, above, apply. If neither an EC nor a WC exists, it is not necessary to inform employees and/or employee representative bodies.
- 2.2. additional documents if changes are to be made to a business unit as described in Point 1.4, above (for details, see *Section B. Asset Deal*).

3. Inform/Notify Inform the EC/WC/executive committee, subject to its existence and assuming that Points 2.1 and/or 2.2 above apply. The information has to be provided in good time, i.e. prior to a final decision on the acquisition being made.

4. Consult If the deal is linked to an operational change to a business unit, it may be necessary to observe consultation requirements (see comments in Section B., Asset Deal). The transaction itself is not subject to the consent or advice of an EC/WC/executive committee. Further, a failure to inform such bodies can neither delay the transaction nor render it ineffective. Despite this, non-involvement constitutes an administrative offence punishable by a fine up to EUR 10,000.00.

5. Implement In accordance with Points 1.–4., above.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. a relevant
  - economic committee (EC, '*Wirtschaftsausschuss*'); or
  - (joint) works council (WC, '*Gesamtbetriebsrat*', '*Betriebsrat*'); or
  - executive committee ('*Sprecherausschuss*'); or
  - collective bargaining agreements (which may stipulate special requirements)
  - exists;
- 1.2. the assets are significant and may form a business or part thereof in the sense of the relevant EU Directive on the transfer of businesses;
- 1.3. the deal is linked to operational change to a local business unit ('*Betrieb*').

#### 2. Prepare

the following in draft form:

- 2.1. if an entire business is to be transferred:
  - information to the EC, where such body exist;
  - information to the employees working at the business.
- 2.2. if significant parts of a business are to be transferred and/or relevant operational changes are to be made as mentioned in Point 1.3 above:
  - information to the EC /WC /executive committee where such bodies exist;
  - information to employees whose employment shall be transferred too;
  - a reconciliation of interests ('*Interessenausgleich*') and a social plan ('*Sozialplan*').

#### 3. Inform/Notify

- 3.1. In the event that an entire business is to be transferred, inform the EC, where such body exist, and any and all employees working at the business as described under Point 3.4 below. .
- 3.2. In the event that significant parts of a business are to be transferred or relevant operational changes to a local business unit are intended, inform the EC /WC /executive committee where such bodies exist.
- 3.3. Aforementioned information must be provided 'in good time', which means prior to a final decision being taken by the seller.

- 3.4. If a part of business is to be transferred that forms a unit in the sense of the EU Directive, every single employee who is part of the unit to be transferred must be properly informed. By law, information must take place at least prior to the effective date, but, to act in accordance with the employee's right to object within one month after the notification, it is recommended to do this at least one month prior to the effective date.

#### 4. Consult

An obligation exists to consult with WC about a reconciliation of interests (*'Interessenausgleich'*) if the deal is linked to severe operational changes to a local business unit (e.g. the splitting up of a business in units and transfer of a part thereof). According to predominant opinion, there is no need to consult with WC if an entire local business unit (*Betrieb*) is to be transferred. If consultation is deemed necessary, please note that to avoid penalties and/or legal action on the part of the WC, the employer must not announce a 'final' decision to sell the assets until the end of a proper consultation process, whereas the latter may include consultation before a conciliation board (keep in mind when fixing a timeline!). It also has to be taken into consideration that a union which has members in the local unit may demand consultation (although there is no statutory requirement to inform the union in advance or to consult with the union). Further, an obligation to consult the executive committee is possible.

#### 5. Implement

Implementation following proper information/notification, and a consultation process if applicable.

## **II. Obligations of the purchaser**

#### 1. Check

whether:

- 1.1. an economic committee (EC) exists at the purchaser;
- 1.2. the assets are to be formed as an entire local business unit (*'Betrieb'*) and/or a part thereof or be merged with an existing local business unit of the purchaser. If the latter is true, check whether a works council (WC) exists at that unit and whether an executive committee exists at the purchaser;
- 1.3. the assets form a business or part thereof in the sense of the relevant EU Directive on Transfer of Businesses.

2. Prepare

the following in draft form:

- 2.1. information for the attention of the EC (if such a body exists) outlining whether the acquisition may be of substantial relevance to a business unit and/or the present workforce of the purchaser.
- 2.2. information to the attention of the WC/executive committee (where such body exists) if the assets are to become a part of an existing unit represented by an aforementioned body and, on the condition that the assets are significant.
- 2.3. in the case of a transfer as described in Points 1.2 and 1.3, information for the attention of each individual employee working at the unit being transferred (this is a joint obligation on the part of the seller and the purchaser).
- 2.4. a reconciliation of interests (*'Interessenausgleich'*) and a social plan (*'Sozialplan'*) if: (i) the assets are to become a part of an existing unit represented by a WC and (ii) will trigger a substantial change of the organization of such unit.

3. Inform/Notify

- 3.1. Release information for the attention of the EC if such information is required according to Points 1.1 and 2.1
- 3.2. Information for the attention of the WC if assets are to become part of a unit represented by the WC, and to the executive committee if the latter may result in substantial changes for executives.
- 3.3. Any information mentioned above must be provided 'in good time', meaning prior to a final decision being taken by the purchaser to acquire the assets.
- 3.4. Subject to a business transfer in the meaning of the EU Directive, proper information to every single employee who is part of the unit to be transferred. The law states this information must be provided 'prior to' the effective date, but, to act in accordance with employees' right to object within one month after the notification, it is recommended to do so at least one month prior to the effective date.

4. Consult

An obligation to consult the WC exists if substantial assets are to be integrated into the local unit represented by the WC, and such integration could have relevant influence on the current organisation of such unit (see Point 2.4 above). Please note a WC may stop the integration by lodging an interim injunction until the end of a proper consultation process. Such a



process can last, since it may include proper formation of and consultation at a conciliation board. Further, an obligation to consult the executive committee is possible if executives should be negatively affected.

#### 5. Implement

Implementation following proper information/notification, and a consultation process if applicable.

### C. Merger (except cross-border merger)

#### 1. Check

whether:

- 1.1. the following exist:
  - economic committee (EC);
  - works council (WC);
  - executive committee;
  - collective bargaining agreements and/or works agreements (which may stipulate special requirements);
- 1.2. the measure is to be linked with an operational change at one or more local business unit/s (*'Betriebe'*).

the following in draft form:

#### 2. Prepare

- 2.1. information for the attention of the EC, WC and executive committee, where such bodies exist
- 2.2. the employment-related sections of the merger agreement;
- 2.3. information to each individual employee of the companies whose contractual employer is set to change as a result of the merger;
- 2.4. further information for the attention of WC at the affected units plus a reconciliation of interests (*'Interessenausgleich'*) and social plan (*'Sozialplan'*) if an operational change such as that described in Point B. I. 4. is intended.

#### 3. Inform/Notify

- 3.1. Inform the EC and executive committee about the intended merger 'in good time', i.e. prior to a final decision being taken.
- 3.2. Forward the draft merger agreement for the attention of the relevant WC. Please note that, assuming a relevant WC exists, such a draft agreement must be submitted one month prior to the shareholders' meeting due to resolve upon the merger at the latest.

3.3. Notify the EC/WC/executive committee about the final decision of the shareholders.

3.4. Inform each individual employee whose contractual employer is set to change as a result of the merger prior to the effective date of the merger. To act in accordance with employees' right to object within one month after notification, it is recommended to do so at least one month prior to the effective date. The effective date is deemed to be the date when the merger is finally entered in the public register.

4. Consult

Obligation to consult with WC (only) if the merger is to be linked to operational changes to local business units (e.g. merger of operating units of the merging companies). For further information, see *Section B., Asset Deal*.

5. Implement

The merger comes into effect with its entry in the relevant public register.



# Hungary

## A. Share Deal

### ***I. Obligations of the purchaser***

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | 1.1. A European works council (EWC) exists.  |
| 2. Prepare       | 2.1. Not applicable.   |
| 3. Inform/Notify | 3.1. If an EWC exists at the Community-scale undertaking or the Community-scale group of undertakings to which the seller, purchaser or the target belongs, then it should be considered whether the consequences of the share deal in question qualify it as a transnational matter triggering an obligation to notify/consult the EWC over the transfer. |
| 4. Consult       | 4.1. Please see explanation above.   |
| 5. Implement     | 5.1. Not applicable.   |

### ***II. Obligations of the target***

- |                  |  |
|------------------|--|
| 1. Check         | 1.1. As a share deal does not result in the change of the employer in connection with employees of the target, there is no notification or consultation obligation vis-à-vis employees' representative bodies operating at the target under Hungarian corporate or labour rules.                                     |
|                  | 1.2. If any changes or measures are planned relating to or following completion of the transaction which may affect a large number of employees, or new internal regulations are intended to be introduced, this could trigger an obligation to engage in consultation under the general labour law rules.           |
| 2. Prepare       | 2.1. Written notification to employees in the case under point 3.  |
| 3. Inform/Notify | 3.1. If the company name or other significant data of the target employer changes, or certain terms and conditions of employment change (e.g. tasks of the relevant position, person representing the employer etc.), the employer shall notify the employees in writing within 15 days from the day of such change. |

- |              |   |
|--------------|---|
| 4. Consult   | 4.1. If any changes or measures are planned relating to or following completion of the transaction which may affect a large number of employees, or new internal regulations are intended to be introduced, this could trigger an obligation to engage in consultation. |
| 5. Implement | 5.1. Not applicable.  |

## B. Asset Deal

### ***1. Obligations of the seller***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"><li>1.1. a works council operates; or</li><li>1.2. a European works council (EWC) exists; or</li><li>1.3. any non-competition agreement exists; or</li><li>1.4. any study contract exists.</li></ul>  |
| 2. Prepare       | <p>the following in draft form:</p> <ul style="list-style-type: none"><li>2.1. written notification for the attention of the purchaser regarding the employment relationships concerned and any rights and obligations arising out of non-competition agreements and study contracts (if such rights and obligations exist);</li><li>2.2. written notification for the attention of the employees (if applicable; please see Point 3.2, below, for whether this is the case);</li><li>2.3. written notification for the attention of the works council/appointed representative (<i>'üzemi megbízott'</i>) (see Point 3.4).</li></ul> |
| 3. Inform/Notify | <ul style="list-style-type: none"><li>3.1. Inform the purchaser about the employment relationships concerned and any rights and obligations arising out of non-competition agreements and study contracts concluded prior to the date of the transfer.</li><li>3.2. If no works council/appointed representative (<i>'üzemi megbízott'</i>) operates at the seller, and unless otherwise agreed with the purchaser, the seller shall inform the employees involved of the following matters in writing and at least 15 days before the date of transfer:</li></ul>  |

- on the (planned) date of transfer;
  - the reason for the transfer;
  - the legal, economic and social impact of the transfer on the employees;
  - any measures being planned in relation to the employees.
- 3.3. If an EWC exists at the Community-scale undertaking or the Community-scale group of undertakings to which the seller belongs, it should be considered whether the impact of the asset sale in question qualifies as a transnational matter, which triggers an obligation to notify/consult the EWC regarding the transfer.
- 3.4. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser shall inform the body at least 15 days before the date of transfer of the following matters in writing:
- on the (planned) date of transfer;
  - the reason for the transfer;
  - the legal, economic and social impact of the transfer on the employees.
4. Consult
- 4.1. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser shall initiate consultation parallel with providing the notification under Point 3.4 above. Consultation is to cover any measures being planned in relation to the employees.
- 4.2. It should be taken into account that the trade union (if one is in place) is entitled to initiate a consultation concerning work-related matters affecting the employees' economic or social circumstances. If the trade union initiates such a consultation, the employer (whether this is the seller or the purchaser) has an obligation to consult for a period of seven days, during which time the planned transfer may not be implemented.
5. Implement
- 5.1. There is no obligation to reach an agreement with the works council or trade union. If a written agreement is reached, the terms of the agreement must be complied with and implemented.

## **II. Obligations of the purchaser**

1. Check whether:
- 1.1. a works council exists;

- 1.2. there is an agreement between seller and purchaser governing the notification of employees regarding the transfer;
  - 1.3. an EWC exists.
2. Prepare
- the following in draft form:
- 2.1. written notification for the attention of employees prior to the date of the transfer. (Please see Point 3.1, below, for whether this is applicable);
  - 2.2. written notification for the attention of the works council/appointed representative (*'üzemi megbízott'*) (please see Point 3.2);
  - 2.3. written notification for the attention of employees following the transfer. (Please see Point 3.3, below, for whether this is applicable).
3. Inform/Notify
- 3.1. If (i) no works council/appointed representative (*'üzemi megbízott'*) operates at the seller; and (ii) the seller and purchaser agree to do so, then the purchaser rather than seller must notify the employees affected, in writing and at least 15 days prior to the date of transfer, of the following matters:
    - the (planned) date of transfer;
    - the reason for the transfer;
    - the legal, economic and social consequences of the transfer for employees;
    - any measures being planned in relation to the employees.
  - 3.2. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser shall inform the body at least 15 days before the date of transfer on the following matters in writing:
    - on the (planned) date of transfer;
    - the reason for the transfer;
    - the legal, economic and social impact of the transfer on the employees.
  - 3.3. The purchaser shall notify the employees affected regarding the change in employer, data of the new employer, and any changes in their working conditions (i.e. working hours, remuneration and other benefits, duties and competences pertaining to their respective position, holiday entitlements, notice period, whether the employee is subject to any collective agreement, and the person representing the employer). Notification shall be made in writing, and within 15 days following the date of the transfer.

- 3.4. If an EWC exists at the Community-scale undertaking or the Community-scale group of undertakings to which the purchaser belongs, it should be considered whether the impact of the asset sale in question qualifies it as a transnational matter, triggering an obligation to notify/consult the EWC regarding the transfer.
4. Consult
- 4.1. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser shall initiate consultation parallel with providing the notification under Point 3.2 above. Such consultation shall cover any measures being planned in relation to the employees.
- 4.2. It should be taken into account that the trade union (if one such is in place) is entitled to initiate a consultation concerning work-related matters affecting the employees' economic or social circumstances. If the trade union initiates such a consultation, the employer (whether this is the seller or the purchaser) has an obligation to consult for a period of seven days, during which time the planned transfer may not be implemented.
5. Implement
- 5.1. There is no obligation to reach an agreement with the works council or trade union. If a written agreement is reached, the terms of the agreement must be complied with and implemented.

## C. Merger (except cross-border merger)

1. Check
- whether:
- 1.1. employee representative body or works council/appointed representative (*'üzemi megbízott'*) exists at the merging entities.
2. Prepare
- the following in draft form:
- 2.1. a declaration by the executive officers of the merging entities that the employee representative body has been notified of the merger, that no employee representative body operates at the merging entities, or that the merging entities have no employees. This declaration must then be submitted to the Court of Registration;
- 2.2. written notifications for the attention of the works council/appointed representative (*'üzemi megbízott'*) of the merging entities (see Point 3.1);
- 2.3. written notifications to the attention of the employee representative body of the merging entities considering Point 3.2.

Note: since under Hungarian employment law the merger also constitutes a transfer of undertakings the comments above relating to an asset deal shall also be considered.

### 3. Inform/Notify

- 3.1. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser shall inform the body of the merging entities at least 15 days before the date of the merger of the following matters in writing:
  - on the (planned) date of merger;
  - the reason for the merger;
  - the legal, economic and social impact of the merger on the employees.
- 3.2. Notify the employee representative body of the merging entities of the merger within 15 days following the second members' decision on the merger and the execution of the merger agreement. (This second decision relating to the merger may, under certain circumstances, be adopted simultaneously with the first decision.)

Note: since under Hungarian employment law the merger also constitutes succession in the employer the comments above relating to asset deal shall also be considered.

### 4. Consult

- 4.1. Request the operating work council's/appointed representative's (*'üzemi megbízott'*) opinion of the merger at least 15 days prior to the first members'/shareholders' decision on the merger.
- 4.2. If there is a works council/appointed representative (*'üzemi megbízott'*) operating, the seller and the purchaser are to initiate consultation in parallel with providing the notification under Point 3.1 above.

### 5. Implement

- 5.1. The merger is, by default, effective from the date of its registration with the Court of Registration. The merging entities have the option to specify a different (pre-determined) effective date in the second members'/shareholders' resolution on the merger. This date may not be later than 90 days after the filing of the application for registration with the Court of Registration, and not be earlier than the date of registration. If the effective date determined by members'/shareholders' resolution precedes the date of registration, then the effective date of the merger is the date of registration by virtue of law.





# Italy

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. works councils exist (these can be set up at companies with over 15 employees in each production unit);
- 1.2. a collective bargaining agreement has been concluded, and if so whether it contains specific requirements towards trade unions related to a transaction (such requirements, where proven, always refer to the eventual involvement of the trade union once the share deal has been realised);
- 1.3. a European works council has been established.

#### 2. Prepare

In the case of share deals, it is not required to inform or involve the trade union before the decision has been taken in Italy. Since the share deal does not cause any change in the legal person holding the assets, in fact (the company retains its legal status) the completion of the decision-making procedure does not depend upon the involvement of the trade union. Once the decision has been taken and the share deal finalised, the trade union may need to be involved if this is provided for in the applied collective bargaining agreement.

#### 3. Inform/Notify

- 3.1. The works council(s) of both purchaser and target, if laid down in the applied collective bargaining agreement.

#### 4. Consult

- 4.1. The works councils, checking whether the share deal concluded has had any repercussions on the working conditions of staff.
- 4.2. Trade unions, should the initial consultation with the works council show that the share deal has had repercussions on the working conditions of staff.

#### 5. Implement

- 5.1. Once the consultation with the trade union has been terminated, decisions taken in relation to staff may be applied, even if agreement has not yet been reached with the trade union.

## ***II. Obligations of the target***

### 1. Check

whether:

- 1.1. works councils exist (these may be set up at companies with over 15 employees in each production unit);
- 1.2. a collective bargaining agreement has been concluded, and if so whether it contains specific requirements towards trade unions related to a transaction (where proven, such requirements always refer to the eventual involvement of the trade union after the share deal has been realised);
- 1.3. a European works council has been established.

### 2. Prepare

In the case of share deals, it is not required to inform or involve the trade union before the decision has been taken in Italy. Since the share deal does not cause any change in the legal person holding the assets, in fact the company retains its legal status, the completion of the decision-making procedure does not depend upon the involvement of the trade union. Once the decision has been taken and the share deal finalised, the trade union may need to be involved if this is provided for in the applied collective bargaining agreement.

### 3. Inform/Notify

- 3.1. The works council(s) of both purchaser and target, if laid down in the applied collective bargaining agreement.

### 4. Consult

- 4.1. The works councils, checking whether the share deal concluded has had any repercussions on the working conditions of staff.
- 4.2. Trade unions, should the initial consultation with the works council show that the share deal has had repercussions on the working conditions of staff.

### 5. Implement

- 5.1. Once the consultation with the trade union has been terminated, any decisions taken relating to staff may be applied, even if agreement has not yet been reached with the trade union

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. the asset deal qualifies as a transfer of undertakings according to Article 2112, Paragraph 5 of the Italian Civil Code;
- 1.2. works councils exist (these can be set up at companies with over 15 employees in each production unit);
- 1.3. a collective bargaining agreement applies;
- 1.4. trade unions are involved (this is mandatory if the company employs more than 15 employees).

#### 2. Prepare

the following in draft form:

- 2.1. a communication for works councils, including: (I) a fixed or proposed date for the merger; (II) the reasons for the contemplated decision; (III) the legal, economic and social consequences for employees; and (IV) details of any measures being taken to repair these consequences (usually a social plan) at least 25 days before the contract finalisation (with its entry in the Companies' Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered in the Companies' Register);
- 2.2. communication for trade unions, including: (I) a fixed or proposed date for the merger; (II) the reasons for the contemplated decision; (III) the legal, economic and social consequences for employees; and (IV) any measures being taken to repair the consequences (usually a social plan) at least 25 days before the contract finalisation (with its entry in the Companies' Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered in the Companies' Register).

#### 3. Inform/Notify

- 3.1. Works councils – if the company employs more than 15 employees in total, the works councils, if such bodies exist, must be notified of the asset deal decision in written form.

- 3.2. Trade unions – if the company employs more than 15 employees in total, trade unions which have signed the applicable national collective bargaining agreement must be notified of the asset deal decision in written form. If works councils do not exist at the company, the national trade unions with the strongest representation at the company must be notified of the decision.
- 4. Consult
  - 4.1. The works council at least once.
  - 4.2. The trade unions.
- 5. Implement
  - 5.1. The decision to transfer assets. After the transaction, the seller and purchaser remain jointly liable for any obligations of the seller towards the employees which existed prior to the transaction.

## ***II. Obligations of the purchaser***

- 1. Check
  - whether:
    - 1.1. works councils exist (these can be set up at companies with over 15 employees in each production unit);
    - 1.2. a collective bargaining agreement applies;
    - 1.3. trade unions are involved (this is mandatory if the company employs more than 15 employees).
- 2. Prepare
  - the following in draft form:
    - 2.1. a communication for works councils, including: (I) a fixed or proposed date for the merger; (II) the reasons for the contemplated decision; (III) the legal, economic and social consequences for employees; and (IV) details of any measures being taken to repair these consequences (usually a social plan) at least 25 days before the contract finalisation (with its entry in the Companies' Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered in the Companies' Register);



2.2. communication for trade unions, including: (I) a fixed or proposed date for the merger; (II) the reasons for the contemplated decision; (III) the legal, economic and social consequences for employees; and (IV) any measures being taken to repair the consequences (usually a social plan) at least 25 days before the contract finalisation (with its entry in the Companies' Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered in the Companies' Register).

3. Inform/Notify

3.1. Works councils – if the company employs more than 15 employees in total, then works councils, if such bodies exist, must be notified of the asset deal decision in written form.

3.2. Trade unions – if the company employs more than 15 employees in total, then trade unions which have signed the applicable national collective bargaining agreement must be notified of the asset deal decision in written form. If works councils do not exist at the company, then the national trade unions with the strongest representation at the company must be notified of the decision.

4. Consult

4.1. At least once with the works council;

4.2. The trade union.

5. Implement

5.1. The decision to transfer assets. After the transaction, the seller and purchaser remain jointly liable for any obligations of the seller towards employees which existed prior to the transaction.

## C. Merger (except cross-border merger)

Italian labour law equates a merger to a transfer of undertakings. For further details, see *Section B.*, 'Asset Deal'.



# Luxembourg

## A. Share Deal

### ***1. Obligations of the purchaser***

whether:

#### 1. Check

- 1.1. the structure of the transaction is a true share sale (and that it is not combined with an asset sale) to ensure that the requirements for a transfer of undertakings ("*Transfert d'entreprise*") pursuant the Council Directive 2001/23/CE and articles L. 127-1 to L. 127-6 of the Luxembourg Labour Code are not triggered;
- 1.2. generally, the requirements for a transfer of undertakings are not triggered in the event of a share deal, as the change of an enterprise's ownership structure neither constitutes a change of the employer's identity, nor a transfer of undertakings;
- 1.3. the terms of any relevant collective bargaining agreement include any information and consultation obligations in relation to the share deal;
- 1.4. any contract in the share deal includes a change of control provision.

See *Section B.* for important rules relating to asset deals.

#### 3. Inform/Notify

- 3.1 Luxembourg labour law does not contain significant requirements relating to such share deal constellations.
- 3.2 Nevertheless, the business manager has the obligation to regularly communicate information concerning the recent and potential evolutions of the company and its economic situation (article L.414-4. of the Luxembourg Labour Code) depending on the structure of the staff representation as follows:
  - at least three times per year during meetings with the staff delegations;
  - monthly if a Company Joint Committee\* exists in the company.

Please note that neither discussions nor negotiations are foreseen by law concerning this information process.

\* The law of 23 July 2015 reforming the social dialogue which came into force on 1 January 2016 will abolish the Company Joint Committee after the next staff representatives' elections in 2018. The prerogatives of the Company Joint Committee will therefore be transmitted to the staff delegation.



## II. Obligations of the target

### 1. Check

whether:

- 1.1. the structure of the transaction is a true share sale (and that it is not combined with an asset sale) to ensure that the requirements for a transfer of undertakings ("*Transfert d'entreprise*") pursuant the Council Directive 2001/23/CE and articles L. 127-1 to L. 127-6 of the Luxembourg Labour Code are not triggered;
- 1.2. generally, the requirements for a transfer of undertakings are not triggered in the event of a share deal, as the change of an enterprise's ownership structure neither constitutes a change of the employer's identity, nor a transfer of undertakings;
- 1.3. the terms of any relevant collective bargaining agreement include any information and consultation obligations in relation to the share deal;
- 1.4. any contract in the share deal includes a change of control provision.

See *Section B.* for important rules relating to asset deals.

### 3. Inform/Notify

- 3.1. Luxembourg labour law does not contain significant requirements relating to such share deal transactions.
- 3.2. Nevertheless, the business manager has the obligation to regularly communicate information concerning the recent and potential evolutions of the company and its economic situation (article L.414-4. of the Luxembourg Labour Code) depending on the structure of the staff representation as follows:
  - at least three times per year during meetings with the staff delegations;
  - monthly if a Company Joint Committee\* exists in the company.

Please note that neither discussions nor negotiations are foreseen by law concerning this information process.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. the transfer of undertakings ("*Transfert d'entreprise*") pursuant to the Council Directive 2001/23/CE and articles L.127-1. to L.127-6. of the Luxembourg Labour Code applies to the transaction.

*Usually it applies to asset deals and imposes additional obligations on employers, and gives extra protection to employees;*

- 1.2. a relevant staff representative body exists;
- 1.3. a collective bargaining agreement exists which may stipulate special requirements;
- 1.4. an information and consultation process has been implemented with the relevant staff delegation. This must take place before an actual decision is made and before an agreement is signed;
- 1.5. any contract in the asset deal includes a change of control provision.

#### 2. Prepare

- 2.1. Prepare a written consultation memo for the attention of the Company Joint Committee\* or to the relevant staff delegation in order to ensure compliance with the information and consultation process (Article L. 414-4 (4). of the Labour Code).

- 2.2. We recommend preparing the wording of individual letters to be sent to the employees confirming the change of employer (not mandatory).

If the asset deal qualifies as a transfer of undertakings, the following additional requirements apply:

- 2.3. An information memo has to be drafted containing:
  - the fixed or potential date for the transfer;
  - the reason for the transfer;
  - the legal, economic and social consequences of the transfer for the employees;
  - the planned measures in relation to the employees.

2.4. A notification letter has to be sent to the purchaser concerning the rights and obligations that are transferred through the asset deal. A copy of this letter should be sent to the Labour Inspection in Luxembourg ("*Inspection du Travail et des Mines*").

2.5. If measures are planned concerning the employees, a consultation memo on planned measures has to be addressed to the relevant staff representative body.

### 3. Inform/Notify

3.1. In due time and *before* the asset deal, the business manager should provide information concerning the possible important changes that the asset deal could induce, to:

- the relevant staff representative bodies;
- and in case there is no staff representative body, the concerned employees directly (only in case of transfer of undertakings).

3.2. Inform the employees concerning the change of employer (not mandatory but recommended).

In case of a transfer of undertakings:

3.3. The seller should notify, in a timely manner, *the purchaser* of all the rights and obligations transferred, taking into account that these rights and obligations are or should be known by the purchaser at the time of the asset deal.

3.4. If measures concerning the employees are being considered, the seller shall consult the staff representative body of his employees in due time on such measures in order to reach an agreement.

### 4. Consult

4.1. The relevant staff representative body should be consulted by the employer in case of important changes for the structures of the company following an asset deal, in order to reach an agreement.

4.2. If measures concerning the employees are planned with the transfer of undertakings, the purchaser shall consult in due time and before the transfer the relevant staff representative or employees directly, in order to reach a deal.

4.3. However, please note that the employer is not bound by the opinion or advice given by the relevant staff representative body.

5. Implement

- 5.1. The asset deal should be implemented following proper information/ notification and, if applicable, following a consultation process of the relevant representative body relative to the transferred employees.
- 5.2. A coordinated timetable between the seller and the purchaser should be established.

## **II. Obligations of the purchaser**

1. Check

whether:

- 1.1. the transfer of undertakings ("*Transfert d'entreprise*") pursuant the Council Directive 2001/23/CE and articles L.127-1. to L.127-6. of the Luxembourg Labour Code applies to the transaction.

*Usually it applies to asset deals and imposes additional obligations on employers, and gives extra protection to employees;*

- 1.2. a relevant staff representative body exists;
- 1.3. a collective bargaining agreement exists which may stipulate special requirements;
- 1.4. an information and consultation process has been implemented with the relevant staff delegation. This must take place before an actual decision is made and before an agreement is signed;
- 1.5. any contract in the asset deal includes a change of control provision.

2. Prepare

- 2.1. Prepare a written consultation memo for the attention of the Company Joint Committee\* or to the relevant staff delegation in order to ensure compliance with the information and consultation process (Article L. 414-4 (4). of the Labour Code).
- 2.2. We recommend preparing the wording of individual letters to be sent to the employees confirming the change of employer (not mandatory).

If the asset deal qualifies as a transfer of undertakings, the following additional requirements apply:

- 2.3. An information memo has to be drafted containing:
  - the fixed or potential date for the transfer;
  - the reason for the transfer;
  - the legal, economic and social consequences of the transfer for the employees;
  - the planned measures in relation to the employees.
- 2.4. If measures are planned concerning the employees, a consultation memo on planned measures has to be addressed to the relevant staff representative body.

### 3. Inform/Notify

- 3.1. In due time and *before* the asset deal, the business manager should provide information concerning the possible important changes that the asset deal could induce, to:
  - the relevant staff representative bodies;
  - if there is no staff representative body, the concerned employees directly (only in case of transfer of undertakings).
- 3.2. Inform the employees concerning the change of employer (not mandatory but recommended).

In case of a transfer of undertakings:

- 3.3. If measures concerning the employees are being considered, the seller shall consult the staff representative body of his employees in due time on such measures in order to reach an agreement.

### 4. Consult

- 4.1. The relevant staff representative body should be consulted by the employer in case of important changes for the structures of the company following an asset deal, in order to reach an agreement.
- 4.2. If measures concerning the employees are planned with the transfer of undertakings, the purchaser shall consult in due time and before the transfer the relevant staff representative or employees directly, in order to reach a deal.
- 4.3. However, please note that the employer is not bound by the opinion or advice given by the relevant staff representative body.

5. Implement

5.1. The asset deal should be implemented following proper information/ notification and, if applicable, following a consultation process of the relevant representative body relative to the transferred employees.

5.2. A coordinated timetable between the seller and the purchaser should be established.

Please note that the purchaser remains liable for any obligations of the seller which existed before the transaction.

### C. Merger (except cross-border merger)

1. Check

In Luxembourg a merger transaction equals a transfer of undertakings. Therefore please refer to *Section B. Asset Deal* and more specifically to the paragraphs concerning the transfer of undertakings.





# The Netherlands

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a works council has been established at the level of the target. If so, verify whether covenants with this works council have been concluded, and/or whether the target has communicated with the works council regarding the transaction;
- 1.2. a European works council has been established;
- 1.3. a collective bargaining agreement applies and, if so, whether it contains specific requirements towards trade unions relating to a transaction (both regarding timing as content);
- 1.4. the share deal is likely to lead to additional changes which could trigger the advisory (or additional) rights of a works council;
- 1.5. the transaction triggers co-determination rights for the works council of the purchaser;
- 1.6. the transaction is an auction sale, meaning that the shareholder/company does not yet select one possible purchaser, but first arranges a selection procedure, which could trigger the obligation to involve the works council of the target twice.

#### 2. Prepare

- 2.1. A written request for advice for the attention of the works council of the purchaser, if co-determination rights exist. The wording of this should include the reasons for the company entering into the transaction, the consequences for the employees involved, and any measures being planned to alleviate such consequences. The timing of filing this request is of key importance: the works council must be able to influence the decision to enter into the transaction.
- 2.2. Confirmation from the target company that communication with its works council will be aligned with (the works council of) the purchaser and that the purchaser will not communicate with its works council before parties have aligned their communication. Also confirmation from target company that it will ensure that it will not make promises to its works council regarding future commitments for the employees.



- 2.3. Wording for trade unions, and/or verification of the draft wording from the target company to its trade unions. Verify the timing of the notification as set out in the collective bargaining agreement.
3. Inform/Notify
- 3.1. The works council(s), if applicable, of both the purchaser and the target;
  - 3.2. Trade unions;
  - 3.3. Management and/or key staff;
  - 3.4. The Social Economic Council, if the merger qualifies as a merger as defined in the Merger Code, which notification is an obligation from purchaser and seller.
4. Consult
- 4.1. At least once in person with the (complete) works council(s). This is mandatory for the works council(s) to provide advice.
  - 4.2. Trade unions, although their level of involvement will depend on whether the transaction is likely to have consequences for individual employees and whether consultation with the trade unions is obliged according to a Collective Bargaining Agreement ("CBA"). An invitation to consult is mandatory if the Merger Code applies.
5. Implement
- 5.1. After the works council has provided written advice, confirm in written form the manner and timing of the implementation of the decision. Verify whether the response is positive or negative. In case of the latter it is key to inform the works council in writing whether conditions set by the works council will be met and if not, why. Bear in mind that after a negative advice the implementation of the decision should be suspended with one month unless the works council confirms differently.

## ***II. Obligations of the target***

1. Check whether:
- 1.1. the transaction makes it necessary to ask the works council to render advice. This must be done in good time (meaning that a final decision may not be taken, an agreement may not be entered into, and the advice of the works council must have an influence on the transaction). Please note the target may be obliged to involve its works council, even if the decision to enter into the transaction is taken at a (much) higher level;
  - 1.2. the purchaser wishes to be involved in correspondence with the works council of the target in light of its possible future promises towards staff;

- 1.3. a collective bargaining agreement applies, allowing trade unions to become involved and render advice. Verify timing and arrange to coordinate with works council on timing of involvement of trade unions.
2. Prepare
  - the following in draft form:
    - 2.1. a request for advice for the attention of the works council. The wording must contain the reasons for entering into the transaction, the consequences for the employees involved, and any measures being taken to alleviate these consequences;
    - 2.2. a communication to trade unions and, in some cases, if the transaction leads to redundancies or other consequences for employees and employment conditions, a draft social plan. Verify in advance with the works council and trade unions that will be taking part in negotiations over a social plan.
3. Inform/Notify
  - 3.1. Works council.
  - 3.2. Trade unions.
  - 3.3. Social Economic Council (usually at a later stage).
  - 3.4. Staff.
  - 3.5. Other stakeholders (customers, press, etc.)
4. Consult
  - 4.1. During at least one consultation meeting with works council.
  - 4.2. Trade unions (if applicable).
5. Implement
  - 5.1. The decision to enter into the transaction, once the works council has given its advice and the company has confirmed in writing to the works council how and when the transaction is to take place. Please note that if the advice from the works council is negative (which is also the case if the entrepreneur is not willing to meet the conditions set by the works council), a waiting period of one month must be applied starting from the date of the company's written response to that advice.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1 the asset deal leads to a transfer of undertaking as meant in Article 662 and Book 7 of the Dutch Civil Code. This is the case if the identity of the company or the part of the company of which the assets are sold remains unchanged after the transaction;
- 1.2 the transaction triggers an advisory right on the part of the works council;
- 1.3 the collective bargaining agreement includes an obligation to involve trade unions, and if so, then when and how;
- 1.4 certain employment conditions cannot be continued by the new owner (this could be the case if the employer allows its employees to benefit from certain products the company produces, for example);
- 1.5 the new owner has a pension scheme, or is willing and able to continue the pension scheme of the seller. In case seller and purchaser both participate in the same industry wide pension scheme, the seller should notify purchaser of the status of payments of pension premiums.
- 1.6 in case of a transfer of assets of part of the company, which employees are structurally (as a rule of thumb 50% or more of their working hours) involved in the targeted part of the company on a structural basis.

#### 2. Prepare

the following in draft form:

- 2.1. the wording of requests for advice for the attention of the works council (for content and timing, see above);
- 2.2. the wording of communications with trade unions;
- 2.3. the wording of individual letters in which the change of employer is confirmed based on a transfer of undertaking, explaining that all terms and rights of the employee are continued by a new employer. Also inform whether the pension scheme will continue. The employer is also obliged to notify the employee from a privacy point of view that his personnel file will be transferred as well.;
- 2.4. the wording of the pension fund of the pension insurer, in some cases.

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| 3. Inform/Notify | <p>3.1. Works council, trade unions and key staff.</p> <p>3.2. The Social Economic Council.</p>  |
| 4. Consult       | <p>4.1. At least once with the works council.</p> <p>4.2. Trade unions.</p> <p>4.3. Depending on the level of consequences, also consult with all staff and affected individuals in good time. Please note that the timing of this depends on communication with works council and trade unions.</p>   |
| 5. Implement     | <p>5.1 The decision to transfer assets. Please note that the date on which the actual transfer takes place may differ from the commencement date based on asset purchase agreement. The seller and purchaser remain liable for one year after the transaction for obligations of the seller which existed prior to the transaction. Include the date on which the transaction takes place in the individual letters.</p> |

## ***II. Obligations of the purchaser***

- |          |   |
|----------|---|
| 1. Check | <p>whether:</p> <p>1.1. the asset deal leads to a transfer of undertaking as meant in Article 662 and Book 7 of the Dutch Civil Code. This can still be the case if the identity of the company or the part of the company of which the assets are sold remains unchanged after the transaction;</p> <p>1.2. the transaction triggers an advisory right on the part of the works council. If so, arrange for the seller to send all communication (including any requests for advice) for the attention of the purchaser for approval first. Verify whether covenants are in place, and/or whether promises have been made regarding continuation of (certain) employment conditions;</p> <p>1.3. the collective bargaining agreement includes an obligation to involve trade unions and, if so, when and how this is to be done;</p> <p>1.4. certain employment conditions of the seller can be continued after the transaction by the purchaser;</p> <p>1.5. a pension scheme applies for the staff of the seller and, if so, which pension scheme (if any) shall apply after the transaction. In case seller and purchaser participate in the same industry wide pension scheme,</p> |
|----------|---|

purchaser to verify status of payment by seller of pension premiums, which were due prior to transfer. Purchaser can be held liable by the Pension Fund directly for unpaid premiums.

- 1.6 in case of a transfer of assets of part of the company, verify which employees are involved in the targeted part of the company on a structural basis.

## 2. Prepare

the following in draft form:

- 2.1. the wording of requests for advice for the attention of the works council (see above for the content and timing of these requests). In the event of changes of employment conditions or other consequences for individual employees, draft a social plan also. Agree in advance with the works council and trade unions which of these bodies is to be taking part in negotiations over a social plan;
- 2.2 the wording for trade unions;
- 2.3 the wording for individual employees, welcoming them as employee, sometimes also confirmation of employment terms and conditions;
- 2.4 the wording for the Social Economic Council if the transaction qualifies as a merger under the Merger Code.

## 3. Inform/Notify

- 3.1. The works council, trade unions, key staff, parties involved with maintaining pension scheme(s), and the Social Economic Council;
- 3.2. Once advice has been given by the works council, inform individual employees of the consequences of the transaction.

## 4. Consult

- 4.1. With the works council at least once;
- 4.2. The trade unions.

## 5. Implement

- 5.1. The transaction and any consequences of the transaction. See above for the timing of the confirmation to the works council and consequences (a one-month waiting period) if the advice of the works council is negative and the company is unwilling to comply with the conditions set.

## C. Merger (except cross-border merger)

### 1. Check

In the Netherlands, everything that applies in the event of an asset deal also applies in the event of a merger, with the exception of pensions. The pension scheme is transferred to the new owner, which is then in principle obliged to continue the pension scheme of the seller. See as stated before regarding the possible liability for purchaser for pension premiums due prior to transfer in case of participation in the same industry wide pension fund.



# Poland

## A. Share Deal

### ***I. Obligations of the purchaser***

1. Check

whether:

- 1.1. any internal regulations exist at the target company granting individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes etc.);
- 1.2. any employee representative bodies (trade unions, a works council, etc.) exist at the target company, and whether any internal regulations exist at the target company governing the information and/or consultation of employee representatives in relation to the transaction.

2. Prepare

the following in draft form:

- 2.1. Not applicable, unless stated otherwise in internal regulations in force at the target company.

3. Inform/Notify

- 3.1. Not applicable, unless stated otherwise in internal regulations in force at the target company.

4. Consult

- 4.1. Not applicable, unless stated otherwise in internal regulations in force at the target company.

5. Implement

- 5.1. Not applicable, unless stated otherwise in internal regulations in force at the target company.

### ***II. Obligations of the target***

1. Check

whether:

- 1.1. any internal regulations exist granting individual employees additional entitlements as a result of or in connection with the transaction (e.g. information or consultation entitlements) which must be observed by the target company;
- 1.2. any internal regulations exist at the target granting employee representative bodies (trade unions, works councils, if such bodies exist) additional information or consultation entitlements in connection with the transaction which must be observed by the target.

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| 2. Prepare       | 2.1. Not applicable, unless stated otherwise in internal regulations in force at the target company. |
| 3. Inform/Notify | 3.1. Not applicable, unless stated otherwise in internal regulations in force at the target company. |
| 4. Consult       | 4.1. Not applicable, unless stated otherwise in internal regulations in force at the target company. |
| 5. Implement     | 5.1. Not applicable, unless stated otherwise in internal regulations in force at the target company. |

## B. Asset Deal

### ***1. Obligations of the seller***

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the assets constitute a stable commercial venture (ongoing concern).<br/>If this is the case, the transaction will be deemed a transfer of an undertaking within the meaning of the Acquired Rights Directive, and the obligations defined in Points 2 to 6, below, will apply;</li> <li>1.2. any internal regulations exist granting individual employees additional entitlements as a result of the transaction;</li> <li>1.3. any internal regulations exist governing the information and/or consultation of employee representative bodies (trade unions or works councils, if such bodies exist) in relation to the transaction;</li> <li>1.4. any outstanding obligations exist resulting from the employment of the personnel to be taken over. If an organised part of an undertaking is transferred, then the seller will be liable jointly and severally with the purchaser.</li> </ul> |
|----------|--|



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| 2. Prepare       | <p>the following in draft form:</p> <p>2.1. notification letters regarding the planned transfer. The letters must contain information on: (I) the expected date of the transfer; (II) the reason(s) for the transfer; (III) the legal, economic and social consequences of the transfer for the seller's employees; and (IV) any anticipated measures relating to the employment conditions of the seller's employees, concerning work, remuneration and re-qualification conditions in particular.</p>  |
| 3. Inform/Notify | <p>3.1. The works council operating at the seller (if such a body is in place), if the transaction influences: (I) the seller's activity and economic situation; (II) the situation and structure of employment at the seller; or (III) work organisation or basis of employment at the seller if the transaction results in material changes in this respect.</p> <p>3.2. Individual employees or alternatively trade union organisation(s) (if such bodies are in place at the seller) of the transfer at least 30 days before the anticipated transfer date, using the notification letters described in Point 2.</p>   |
| 4. Consult       | <p>4.1. The works council operating at the seller (if such a body is in place) if the transaction influences: (I) the situation or structure of employment at the seller; or (II) the work organisation or basis of employment at the seller if the transaction results in material changes in this respect.</p> <p>4.2. The trade unions operating at the seller (if such bodies are in place) to negotiate with them any changes to conditions of employment planned by the seller in connection with the transaction in order to enter into an agreement in this regard within 30 days of informing the trade unions of these plans.</p> <p>4.3. If trade unions and works councils are not in place, then there is no duty to consult.</p> |
| 5. Implement     | <p>5.1. Not applicable, unless stated otherwise in internal regulations in force at the target company.</p>  |
| 6. Other         | <p>6.1. Transfer the personnel files of the transferred employees to the purchaser.</p> <p>6.2. If a company social benefit fund has been set up at the seller, transfer this to the purchaser (or its proportional part if an organised part of an undertaking is being transferred).</p>   |

- 6.3. De-register the transferred employees at the Social Security Institution within seven days after the transfer.
- 6.4. If the seller no longer employs any employees after the transaction, then it needs to de-register itself as a social security contributions payer at the Social Security Institution, and inform this body of the transfer within 14 days after the transfer.

## ***II. Obligations of the purchaser***

### 1. Check

whether:

- 1.1. the assets constitute a stable commercial venture (ongoing concern).  
If this is the case, then the transaction is deemed to be a transfer of an undertaking within the meaning of the Acquired Rights Directive, and the obligations defined in Points 2 to 6, below, apply;
- 1.2. the seller's employees subject to the transfer are receiving any pay benefits apart from base remuneration. If so, then the purchaser is obliged to observe these after the transfer, until compensation conditions are changed in accordance with a specific alteration procedure. It is necessary to obtain the consent of each individual employee. A lack of such consent may lead to termination of employment. If the benefits are granted in a collective bargaining agreement, the purchaser cannot change them for one year after the transaction. More beneficial pay regulations in force at the purchaser will also apply to transferred employees, however;
- 1.3. any internal regulations exist at the seller or at the purchaser granting individual employees additional entitlements as a result of the transaction which must be observed by the purchaser (e.g. employment guarantees or golden parachutes);
- 1.4. any employees' representative bodies (trade unions, works councils, etc.) exist at the seller, as these may be subject to transfer to the purchaser together with the employees;
- 1.5. any internal regulations exist at the purchaser granting employee representative bodies (trade unions or work councils, if such bodies exist) rights of information and/or consultation in relation to the transaction which must be observed by the purchaser;

- 1.6. any outstanding obligations exist resulting from the seller's employees' employment relationships. If the assets constitute an undertaking (the whole business), then the purchaser will be solely liable for them. If the assets constitute an organised part of the undertaking, then the purchaser will be liable severally with the seller;
- 1.7. the seller is in arrears in paying taxes and social security contributions.

## 2. Prepare

the following in draft form:

- 2.1. notification letters regarding the planned transfer. The letters must contain information outlining: (I) the expected date of the transfer; (II) the reason(s) for the transfer; (III) the legal, economic and social consequences of the transfer for the purchaser's employees; and (IV) any anticipated measures relating to the employment conditions of the purchaser's employees, particularly in regard to work, remuneration and re-qualification conditions. The letters must be finalised at least 30 days before the anticipated transfer date.

## 3. Inform/Notify

- 3.1. The works council operating at the purchaser (if such a body exists), if the transaction influences: (I) the purchaser's activity and economic situation; (II) the situation or structure of employment at the purchaser; or (III) the work organisation or basis of employment at the purchaser, if the transaction results in material changes in this respect.
- 3.2. The individual employees or alternatively trade union organisation(s) (if these exist at the purchaser) of the transfer at least 30 days before the anticipated transfer date, using the notification letters described in point 2, above.

## 4. Consult

- 4.1. The works council operating at the purchaser (if such a body exists), if the transaction influences: (I) the situation or structure of employment at the purchaser; or (II) the work organisation or basis of employment at the purchaser, if the transaction results in material changes in this respect.
- 4.2. The trade unions operating at the purchaser (if such bodies exist) to negotiate with them any changes to the conditions of employment planned by the purchaser in connection with the transaction. An agreement must be reached in this regard within 30 days after the trade unions are informed of these plans.

5. Implement

- 5.1. Work organisation regulations, if the number of employees after the transaction amounts to at least 20, unless such regulations already exist at the purchaser. If trade union bodies exist at the seller, these must be involved in the implementation process.
- 5.2. Regulations on compensation conditions and other work-related benefits, if the number of employees after the transaction amounts to at least 20, unless such regulations already exist at the purchaser. These regulations may provide that a social fund is not set up at the purchaser. If trade union bodies exist at the seller, these must be involved in the implementation process.
- 5.3. Company social fund by-laws regulating social benefits available to the purchaser's employees, if the number of employees after the transaction amounts to at least 20 and the compensation regulations do not provide that a social fund is not established. If trade union bodies exist at the seller, these must be involved in the implementation process.

6. Other

- 6.1. Collect and maintain the personnel files of the transferred employees of the purchaser.
- 6.2. If a company social benefit fund has been set up at the seller, administer the transferred fund (or its proportional part if an organised part of an undertaking is being transferred).
- 6.3. If the purchaser did not employ any employees before the transaction, it should register itself as a social security contributions payer at the Social Security Institution within seven days after the transfer.
- 6.4. Register the transferred employees at the Social Security Institution within seven days after the transfer.
- 6.5. If the total number of the purchaser's employees amounts to at least 50 after the transaction, then it must notify them of their entitlement to establish a works council.
- 6.6. If the headcount reaches or exceeds 100 employees after the transaction, then the purchaser should create an H&S service.

## C. Merger (except cross-border merger)

Mergers always result in a transfer of an undertaking within the meaning of the Acquired Rights Directive. Consequently, the below obligations always apply.

### 1. Check

whether:

- 1.1. employees subject to the transfer are receiving any pay benefits apart from base salary. If so, then these benefits must be observed after the merger by the surviving entity (or new entity) until the compensation conditions are changed in accordance with a specific alteration procedure. The individual consent of each employee is necessary here. A lack of such consent may lead to termination of the employment. If the benefits are being granted in a collective bargaining agreement, they cannot be changed for one year after the transaction. More beneficial pay regulations in force at the surviving entity (or new entity) after the merger, however, will also apply to transferred employees;
- 1.2. any internal regulations exist at either party granting individual employees additional entitlements as a result of the transaction (e.g. employment guarantees or golden parachutes);
- 1.3. any employee representative bodies (trade unions or works councils) exist at either party, as these bodies may be subject to transfer to the surviving entity (or new entity) together with the employees;
- 1.4. any internal regulations exist at either party governing the information/consultation of employee representative bodies (trade unions or works councils, if such bodies exist) in relation to the merger;
- 1.5. any outstanding obligations exist arising out of the employment relationships of either party's employees subject to the transfer. The surviving entity (or new entity) will be solely liable for meeting such obligations;
- 1.6. either party is in arrears in transferring taxes and social security contributions.

2. Prepare
- the following in draft form:
- 2.1. notification letters regarding the planned transfer. These letters must contain information on: (I) the expected date of the transfer; (II) the reason(s) for the transfer; (III) the legal, economic and social consequences of the transfer for the purchaser's employees; and (IV) any anticipated measures concerning the employment conditions of either party's employees, concerning work, remuneration and re-qualification conditions in particular.
3. Inform/Notify
- 3.1. The works council operating at either party (if any such exists), if the transaction influences: (I) their activity and economic situation; (II) the situation or structure of employment at either party; or (III) work organisation or basis of employment at either party if the transaction results in material changes in this respect.
- 3.2. Individual employees or alternatively trade union organisation (if such a body exists at either party) of the transfer at least 30 days before the anticipated transfer date, using the notification letters described in Point 2, above.
4. Consult
- 4.1. Works councils operating at either party (if such bodies exist), if the transaction influences: (I) the situation or structure of employment at either party; or (II) the work organisation or basis of employment at either party if the transaction results in material changes in this respect.
- 4.2. Trade unions operating at either party (if such bodies exist) to negotiate with them any changes to the conditions of employment planned by either party in connection with the transaction. Agreement must be reached regarding such changes within 30 days after the trade unions are informed of these plans.
5. Implement
- 5.1. The work organisation regulations at the surviving entity (or new entity) if the number of employees after the transaction amounts to at least 20, unless such regulations are already in force at the surviving entity. If trade union bodies exist at the surviving entity (or new entity), these must be involved in the implementation process.

- 5.2. The regulations on compensation conditions and other work-related benefits at the surviving entity (or new entity), if the number of employees after the transaction amounts to at least 20, unless such regulations are already in force at the surviving entity. These regulations may provide that a social fund is not set up at the surviving entity (or new entity). If trade union bodies exist at the surviving entity, these must be involved in the implementation process;
  - 5.3. The company social fund by-laws regulating social benefits available to the employees of the surviving entity (or new entity), if the number of employees after the transaction amounts to at least 20 and the compensation regulations do not provide that a social fund is not set up. If trade union bodies exist at the surviving entity (or new entity), these must be involved in the implementation process.
6. Other
- 6.1. The personnel files of employees subject to the transfer must be transferred to the surviving entity (or new entity).
  - 6.2. If a social benefit fund has been set up at either party, this must be transferred to the surviving entity (or new entity).
  - 6.3. Transferred employees must be de-registered at the Social Security Institution within seven days after the transfer by the absorbed entities.
  - 6.4. The absorbed entities must be de-registered as social security contributions payers at the Social Security Institution and this body must be informed of the transfer within 14 days after the transfer.
  - 6.5. The new entity must be registered as a social security contributions payer at the Social Security Institution within seven days after the transfer. The same obligation applies to the surviving entity if it did not employ any employees before the transfer.
  - 6.6. Transferred employees must be registered at the Social Security Institution within seven days after the transfer by the surviving entity (or new entity);
  - 6.7. If the total number of the surviving entity's (or new entity's) employees amounts to at least 50 after the transaction, these employees must be notified of their entitlement to establish a works council.
  - 6.8. If the headcount reaches or exceeds 100 employees after the merger, then an H&S service must be created at the surviving entity (or new entity).







# Portugal

## A. Share Deal

There are no consequences for employment conditions in this case, and no notifications are necessary, as there is no change of employer.

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. an employee representative committee exists;
- 1.2. a share option plan exists;
- 1.3. a pension scheme exists;
- 1.4. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements.

#### 2. Prepare

In the event that a share deal which may be considered a transfer of establishment according to the Portuguese Labour Code is taking place, the seller must inform the employee representatives or, if such a body does not exist, the employees themselves, of the following:

- (I) the date of the transfer;
- (II) the reasons for the transfer;
- (III) the legal, economic and social effects of the transfer for employees;
- (IV) any measures being planned in relation to employees.

#### 3. Inform/Notify

The information referred to above should be provided in writing, in good time, before the transfer (we are of the opinion that 20 days before the transfer should be sufficient), at least ten days prior to the consultation that must be made to the employee representatives – in an attempt to obtain an agreement on the measures that the seller and the purchaser intend to adopt in relation to employees as a result of the transfer, in order, inter alia, to adapt the employees' working conditions.

The employee representatives must be consulted at least ten days before the transfer takes place.

#### 4. Consult

See Point 3., above.

#### 5. Implement

Implementation following proper information/notification.

## ***II. Obligations of the purchaser***

The rules described in *Section B. 'Asset Deal – I. Obligations of the seller'*, above, also apply to the obligations of the purchaser, since under Portuguese Labour Law, both seller and purchaser must combine the information and consultation to be given to the employee representatives or employees involved.

Please note that, in the event of a transfer, by any means or form, of the company's ownership, or of an establishment of part of the company or establishment constituting an economic unit, the seller is joint and severally liable for all obligations that became due up to the date of transfer for a period of one year after the transaction has occurred.

## **C. Merger (except cross-border merger)**

The rules mentioned in *Section B. 'Asset Deal'*, also apply in the event of a merger.

# Romania

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. the individual employment agreements, collective labour agreements or internal regulations at the level of the target company provide for special rights for employees or groups of employees as a result of the share deal. Such rights may refer to golden parachute rights, compensation rights in the event of a share sale, stock option rights etc.;
- 1.2. there are any trade unions or elected employees' representatives at the level of the target company, or there is a European Works Council (EWC) in place, and whether the collective labour agreements and/or internal regulations provide additional rights to such representatives in the event of a share deal;
- 1.3. the share deal would impact, at the level of the target company: (I) the recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organisation of the workforce and employment contractual relations. In such case, additional obligations with respect to employees' information and/or consultation would need to be observed (please see Point 2 below); there are any risks identified in the course of due diligence of the target company, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.;

#### 2. Prepare

the following:

- 2.1. For its own employees – an information notice, under the form stipulated under the collective bargaining agreements or the internal regulations, if required under the applicable collective labour agreements or the internal regulations or if the share deal would impact, at its own level: (I) the recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organisation of the workforce and employment contractual relations.
- 2.2. For the employees of the target company – an information notice, under the form stipulated under the collective labour agreements or the internal regulations, if required under the applicable collective bargaining agreements or the internal regulations of the target company.

3. Inform/Notify
  - 3.1. The trade union and/or the employees' representatives at its own level, in the event that the share deal would trigger amendments to the: (I) recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organisation of the workforce and employment contractual relations. If no situation listed under (I)–(III) occurs, the applicable legislation provides for no obligation in this respect. However, such information/notification obligations may be provided under the collective labour agreements or internal regulations, even if the situations under (I)–(III) do not occur.
  - 3.2. The trade union and/or the employees' representatives at the level of the target company, in case the collective labour agreements and/or employees' representatives at the level of the target company do provide for such obligation.
4. Consult
  - 4.1. The trade union and/or the employees' representatives at its own level, in the event that the share deal would trigger (I) the recent and future economic status of the target company; (II) status, structure and future evolution of the workforce; and (III) the organization of the workforce and employment contractual relations.  
If no situation listed under (I)–(III) occurs, the applicable legislation provides for no obligation in this respect. However, such information/notification obligations may be provided under the collective labour agreements or internal regulations even if the situations under (I)–(III) do not occur.
  - 4.2. The trade union and/or the employees' representatives at the level of the target company, in case the collective labour agreements and/or employees' representatives at the level of the target company do provide for such obligation.
5. Implement
  - 5.1. The implementation of the share deal should occur after the completion of information/consultation formalities, in the event that such information/consultation obligations apply to the respective share deal.
  - 5.2. The law does not prescribe specific time periods to be observed when informing and consulting with employees. However, information needs to be given at such time as is appropriate to enable trade unions and/or employees' representatives to conduct an adequate study and, where necessary, prepare for consultation. Also, consultations need to take place in such a way as to enable employees' representatives to meet with the employer and obtain a response to any opinion they might formulate.

## **II. Obligations of the target**

### 1. Check

whether:

- 1.1. the individual employment agreements, collective labour agreements or internal regulations at the level of the target company, provide for special rights for employees or groups of employees as a result of the share deal. Such rights may refer to golden parachute rights, compensation rights in the event of a share sale, stock option rights etc.;
- 1.2. the mandate of any trade unions or elected employees' representatives at the level of the target company or the European Works Council (EWC) (if any) is valid, and their election duly took place;
- 1.3. the collective labour agreements or internal regulations and/or internal policies in place at its own level provide additional rights towards employees' representatives in the event of a share deal;
- 1.4. the share deal would impact (I) the recent and future economic status of the target company; (II) status, structure and future evolution of the workforce; and (III) the organization of the workforce and employment contractual relations. In such case, additional obligations with respect to employees' information/consultation would be granted by law to the trade unions/employees' representatives.

### 2. Prepare

the following:

- 2.1. an information notice, under the form stipulated under the collective labour agreements or the internal regulations if required under the applicable collective labour agreements or the internal regulations or if the share deal would impact, at its own level: (I) the recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organization of the workforce and employment contractual relations. The applicable legislation does not impose any specific format or content in such case, but leaves it up to the employer and employees to negotiate such format and content under the collective bargaining agreements or internal regulations.

### 3. Inform/Notify

- 3.1. The trade union and/or the employees' representatives, if required under the applicable collective labour agreements or the internal regulations or in the event that the share deal would trigger: (I) the recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organization of the workforce and employment contractual relations.

- |              |  |
|--------------|--|
| 4. Consult   | <p>4.1. The trade union and/or the employees' representatives, if required under the applicable labour agreements or the internal regulations or in the event that the share deal would trigger: (I) the recent and future economic status of the company; (II) status, structure and future evolution of the workforce; and (III) the organization of the workforce and employment contractual relations. If no situation listed under (I)–(III) occurs, the applicable legislation provides for no obligation in this respect.</p> <p>4.2. However, such information/notification obligations may be provided under the collective labour agreements or internal regulations even if the situations under (I)–(III) do not occur.</p>        |
| 5. Implement | <p>5.1. The implementation of the share deal should occur after the completion of the information/consultation formalities, in case such information/consultation obligations apply to the respective share deal.</p> <p>5.2. The law does not prescribe specific time periods to be observed when informing and consulting with employees. However, information needs to be given at such time as is appropriate to enable trade unions and/or employees' representatives to conduct an adequate study, and, where necessary, prepare for consultation. Also, consultations need to take place in such a way as to enable employees' representatives to meet with the employer and obtain a response to any opinion they might formulate.</p> |

## B. Asset Deal

### ***1. Obligations of the seller***

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <p>1.1. the asset deal falls within the definition of a transfer of undertakings, business or units thereof in the meaning of the Acquired Rights Directive (ARD) and of the national legislation implementing ARD, in order to determine whether the provisions under ARD and relevant national law shall apply and if so whether the employees shall be transferred as a result of the asset transfer.</p> <p>1.2. the mandate of any trade unions or elected employees' representatives, or the European Works Council (EWC) is valid and their election duly took place. If no trade union/employees' representatives are elected at the level of the seller, (I) the seller may invite the employees to elect their representative for the purposes of carrying out the consultation/</p> |
|----------|--|

information procedures; and, if no election of representatives shall take place, (II) the seller shall fulfil its consultation/information procedure towards each employee subject to the transfer.

- 1.3. the individual employment agreements, collective bargaining agreements or internal regulations etc, provide for special rights for employees or groups of employees as a result of the asset deal;

## 2. Prepare

the following:

- 2.1. information written notice to the trade union and/or the employees' representatives containing the following:
  - a) transfer date or proposed transfer date;
  - b) the reasons for the transfer;
  - c) legal, economic and social consequences of the transfer;
  - d) the measures envisaged in relation to employees;
  - e) work conditions.
- 2.2. Such written notice shall be given to the trade union and/or the employees' representatives with at least 30 days prior to the transfer date.
- 2.3. If, at the level of the seller, there are no trade unions/elected employees' representatives, and the employees refuse to elect a representative, the seller shall grant to each employee subject to the transfer the information written notice indicated under Point 2.1 above.
- 2.4. An information letter towards the purchaser describing all rights and obligations subject to the transfer. However, failure to notify the purchaser shall not affect the transfer of such rights or obligations to the purchaser, nor the employees' rights.

## 3. Inform/Notify

- 3.1. The seller shall inform/notify the trade union and/or the employees' representatives under the form indicated above in Point 2.1.
- 3.2. The seller shall inform/notify the purchaser on all rights and obligations subject to the transfer.

## 4. Consult

- 4.1. In the event that the seller envisages measures with respect to the employees, the seller shall consult with the employees' representatives for the purposes of reaching an agreement in this respect, within at least 30 days prior to the transfer.

5. Implement

- 5.1. Any relevant agreements and regulations containing information and/or consultation obligations must be complied with.
- 5.2. Employment files of all transferred employees must be handed over to the purchaser.
- 5.3. The registration of the termination of the employment relationships as a result of the transfer in the electronic registry of employees (REVISAL) must be performed.

***II. Obligations of the purchaser***

1. Check

whether:

- 1.1. the asset deal falls within the definition of a transfer of undertakings, business or units thereof in the meaning of the Acquired Rights Directive (ARD) and of the national legislation implementing ARD, in order to determine whether the provisions under ARD and relevant national law shall apply and if so whether the employees shall be transferred as a result of the asset transfer.
- 1.2. there are any trade unions or elected employees' representatives, or there is in place an European Works Council (EWC) at the level of the seller;
- 1.3. there are collective bargaining agreements or internal regulations and/or internal policies remain in force after the asset transfer;
- 1.4. there are any risks identified in the course of a due diligence of the target, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.;
- 1.5. there are any special rights resulting from the individual labour agreements and/or collective bargaining agreements for the seller's employees subject to the transfer.

2. Prepare

the following:

- 2.1. in relation to its own employees, an information written notice to the trade union and/or the employees' representatives containing the following:
  - a) transfer date or proposed transfer date;
  - b) the reasons for the transfer;



- c) legal, economic and social consequences of the transfer;
  - d) the measures envisaged in relation to employees;
  - e) work conditions.
- 2.2. Such written notice shall be given to the trade union and/or the employees' representatives with at least 30 days prior to the transfer date.
- 2.3. If, at the level of the purchaser, there are no trade unions/elected employees' representatives, and the employees refuse to elect a representative, the purchaser shall grant to each of its employees the information written notice indicated under Point 2.1 above.
- 2.4. Any amendments to the existing organization chart, incorporating the new job positions and/or employees transferred to it as a result of the transfer.
- 3. Inform/Notify
  - 3.1. The purchaser shall inform/notify the trade union and/or the employees' representatives under the form indicated above in Point 2.1.
- 4. Consult
  - 4.1. In the event that the purchaser envisages measures with respect to its employees, the purchaser shall consult with the employees' representatives for the purposes of reaching an agreement in this respect, at least 30 days prior to the transfer.
- 5. Implement
  - 5.1. Perform the registration in the electronic registry of employees (REVISAL) of the new employment relationships as a result of the transfer.
  - 5.2. Although not expressly provided under the current labour legislation, it is the common practice for the purchaser to submit to the labour authorities an information notification including: (I) information with respect to the transfer of employees; (II) an excerpt of the business transfer agreement evidencing the transfer of the relevant employees; and (III) a list with all individual employment agreements subject to the transfer.
  - 5.3. Update the internal regulations and organisational chart, where necessary, and ensure that all employees (both existing and transferred) are informed of and acknowledge such updated regulations.
  - 5.4. Maintain the application of the provisions of the collective labour agreement at the seller's level, for the duration of its validity, as they apply to the transferred employees. However, if provisions of the purchaser's collective labour agreement are more favorable, such provisions shall also apply in relation to the transferred employees.

## C. Merger (except cross-border merger)

Note: Under Romanian law, a merger is qualified as a transfer in the meaning of the ARD.

### 1. Check

whether:

- 1.1. there are any trade unions or elected employees' representatives, or there is in place an European Works Council (EWC) at the level of both transferor and transferee companies;
- 1.2. there are collective bargaining agreements or internal regulations and/or internal policies which remain in force after the merger;
- 1.3. there are any risks identified in the course of a due diligence of the transferor company, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.;
- 1.4. there are any outstanding obligations resulting from the individual labour agreements and/or collective bargaining agreements concluded by the transferor company with its employees.
- 1.5. the individual employment agreements, collective bargaining agreements or internal regulations etc at the level of the transferor, provide for special rights for employees or groups of employees as a result of the merger. Such rights may refer to golden parachute rights, compensation rights in the event of a share sale, stock option rights etc.

### 2. Prepare

the following:

- 2.1. an information written notice to the trade union and/or the employees' representatives containing the following:
  - a) transfer date or proposed transfer date;
  - b) the reasons for the transfer;
  - c) legal, economic and social consequences of the transfer;
  - d) measures envisaged in relation to employees;
  - e) work conditions.
- 2.2. Such written notice shall be given towards the employees by each of the merging companies.

- 2.3. Such written notice shall be given to the trade union and/or the employees' representatives with at least 30 days prior to the effective date of the merger.
    - 2.4. If there are no trade unions/elected employees' representatives, and the employees refuse to elect a representative, the companies participating in the merger shall submit to each of their employees the information written notice indicated under Point 2.1 above.
    - 2.5. Any amendments to the existing organisation chart, incorporating the new job positions and/or employees transferred to it as a result of the merger, by the transferee company.
3. Inform/Notify
  - 3.1. The transferor and the transferee companies shall inform/notify the trade union and/or the employees' representatives at their own level, under the form indicated above in Point 2.1.
4. Consult
  - 4.1. In the event that the transferor and the transferee companies envisage measures with respect to their own employees, the companies shall consult with the employees' representatives for the purposes of reaching an agreement in this respect, at least 30 days prior to the transfer.
5. Implement
  - 5.1. The registration of the new employment relationships as a result of the merger in the electronic registry of employees (REVISAL) must be performed.
  - 5.2. Update the internal regulations, where necessary, and ensure that all employees (both existing and transferred) are informed and acknowledge such amendments.
  - 5.3. Although not expressly provided under the current labour legislation, it is the common practice for the purchaser to submit to the labour authorities an information notification including: (I) information with respect to the transfer of employees; (II) an excerpt of the merger document evidencing the transfer of the relevant employees; and (III) a list with all individual employment agreements subject to the transfer.

# Russia

## A. Share Deal

### ***1. Obligations of the purchaser***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. an employee representative body exists, and if so, the form this body takes (employees' conference, works council, trade union, its level, etc.), as well as the documents regulating the relationship between the target company and its employee representative body, and its past history;</li> <li>1.2. a collective bargaining agreement (or industry agreement) exists, and if so, the terms of this agreement;</li> <li>1.3. any special arrangements exist between the target company and its employees (these may be contained in individual employment agreements, collective bargaining agreements or 'industry' agreements, or in the internal regulations/rules of the target company) relating to a 'change of ownership', or 'non-usual' or 'special' employment terms relating to a 'change of ownership';</li> <li>1.4. contacts exist with 'key' members of the target company's employee representative body, to ensure proper communication.</li> </ul> |
| 2. Prepare       | <ul style="list-style-type: none"> <li>2.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).</li> </ul>  |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).</li> </ul>  |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).</li> </ul>  |
| 5. Implement     | <ul style="list-style-type: none"> <li>5.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).</li> </ul>  |

## ***II. Obligations of the target***

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | 1.1. a collective bargaining agreement (or industry agreement in force) provides for any obligations in case of a 'change of ownership'. |
| 2. Prepare       | 2.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).                       |
| 3. Inform/Notify | 3.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).                       |
| 4. Consult       | 4.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).                       |
| 5. Implement     | 5.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).                       |

## **B. Asset Deal**

### ***I. Obligations of the seller***

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | 1.1. an employee representative body exists, and if so in what form (employees' conference, works council, trade union, its level, etc.), as well as a collective bargaining agreement (or 'industry' agreement); and  |
|                  | 1.2. any special provisions are in place (these may be contained in individual employment agreements, collective bargaining agreements or 'industry' agreements, or in the internal regulations/rules of the target company) with respect to an 'assets sale' or 'non-usual' or 'special' employment terms relating to an assets sale. |
| 2. Prepare       | The following in draft form:   |
|                  | 2.1. documents formalizing termination of targeted employees by mutual consent or by the way of their transfer to the purchaser.   |
| 3. Inform/Notify | 3.1. Communicate with the targeted employees on their termination and subsequent transfer to the purchaser. It is important to mention that the targeted employees may only be transferred to the purchaser with their consent.  |

- |              |  |
|--------------|--|
| 4. Consult   | 4.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force). |
| 5. Implement | 5.1. Execute documents on termination of targeted employees from the seller.                                       |

## ***II. Obligations of the purchaser***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. an employee representative body exists, and if so what form this takes (employees' conference, works council, trade union, its level, etc.), as well as whether a collective bargaining agreement (or 'industry' agreement) exists;</li> <li>1.2. any special provisions exist (these may be contained in individual employment agreements, collective bargaining agreements or 'industry' agreements, or internal regulations/rules of the target company) relating to an 'assets sale' or 'non-usual' or 'special' employment terms triggered by an 'assets sale'.</li> </ul> |
| 2. Prepare       | <p>The following in draft form:</p> <ul style="list-style-type: none"> <li>2.1. new employment contracts and the documentation required to establish employment with the purchaser.</li> </ul>  |
| 3. Inform/Notify | 3.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force).  |
| 4. Consult       | 4.1. Communicate with the targeted employees on the terms of their new employment with the purchaser.   |
| 5. Implement     | 5.1. Execute new employment contracts and other documentation required to establish employment with the purchaser.  |

## C. Merger (except cross-border merger)

whether:

1. Check
  - 1.1. an employee representative body is in place at either company, and if so what form this takes (employees' conference, works council, trade union, its level, etc.), and its governing documents;
  - 1.2. a collective bargaining agreement (or industry agreement) exists at each of the companies involved, and the terms of this agreement;
  - 1.3. any special labour arrangements exist between either of the companies involved and their employees (these may be contained in individual employment agreements, collective bargaining agreements or 'industry' agreements, or the internal regulations/rules of both companies) with respect to a 'change of ownership' or 'non-usual' or 'special' employment terms when a 'change of ownership' takes place.
2. Prepare
 

the following in draft form:

  - 2.1. Notifications to employees of the forthcoming reorganisation in the form of merger;
  - 2.2. addenda to employment contracts with employees regarding changes in the data related to the employer;
  - 2.3. amendments to other HR documentation related to the data on the employer;
  - 2.4. documents on termination of employees who have refused to continue their employment due to the merger.
3. Inform/Notify
  - 3.1. Notify employees of the merger in writing.
4. Consult
  - 4.1. Not applicable unless stated otherwise in a collective bargaining agreement (or industry agreement in force). However, it is also advisable to communicate with employee representative bodies (if such bodies exist).
5. Implement
  - 5.1. Execute the documents mentioned in Point 2 above.





# Serbia

## A. Merger (except cross-border merger)

1. Check	whether:
	1.1. a representative trade union exists at the target company.
2. Prepare	the following in draft form:
	2.1. information for the attention of employees regarding the transfer of employment agreements;
	2.2. information for the attention of the representative trade union/ employees regarding: <ul style="list-style-type: none"> <li>— the date or proposed date of the change of employer;</li> <li>— the reasons for the change of employer;</li> <li>— the legal, economic and social consequences of the change of employer for the position of employees, and any measures being planned to alleviate such consequences.</li> </ul>
3. Inform/Notify	<p>The present employer must inform the future employer of any rights and obligations arising out of internal employment byelaw and employment agreements that are being transferred.</p> <p>The present employer must inform the employees of the transfer of employment agreements.</p> <p>The present and future employer must notify the representative trade union/ employees of the following: <ul style="list-style-type: none"> <li>— the date or proposed date of the change of employer;</li> <li>— the reasons for the change of employer;</li> <li>— the legal, economic and social consequences of the change of employer for the position of employees, and any measures being planned to alleviate such consequences.</li> </ul> </p>
4. Consult	No consultation requirement.
5. Implement	<p>The present and future employer must implement measures to alleviate the social and economic consequences for the position of employees, in cooperation with the representative trade union, at least 15 days before the change of employer, i.e. the transfer of shares. The future employer is obliged to implement the internal employment by-law of the present employer for at least one year from the day the employer is changed, unless the following occurs before this period expires: <ul style="list-style-type: none"> <li>— the term for which the collective agreement has been concluded, expires;</li> <li>— a new collective agreement is concluded.</li> </ul> </p>

## ***II. Obligations of the seller/target***

1. Check  
Not applicable.
2. Prepare  
the following in draft form:  
  
Information for the attention of employees regarding the transfer of employment agreements, i.e. the change of shareholder.
3. Inform/Notify  
Inform the employees about the transfer of employment agreements, i.e. the change of shareholder.  
  
The present employer (seller/target) must inform the future employer (purchaser) about any rights and obligations arising out of internal employment by-law, and any employment agreements that have been transferred.
4. Consult  
Not applicable.
5. Implement  
Implement Points 2. and 3.  
  
The seller, purchaser and target are to implement measures to alleviate the social and economic consequences for the position of the employees at least 15 days before the change of employer, i.e. the transfer of shares.  
  
The purchaser, i.e. target, is obliged to implement the internal employment by-law of the target company for at least one year from the day of the change of employer, i.e. shareholder, unless the following takes place before this period expires:
  - the term for which the collective agreement has been concluded expires;
  - a new collective agreement is concluded.

## **B. Asset Deal**

### ***I. Obligations of the seller***

Not applicable.

### ***II. Obligations of the purchaser***

Not applicable.

# Slovakia

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. any internal regulations or collective bargaining agreement exist granting individual employees additional entitlements as a result of the transaction;
- 1.2. any employment agreements exist which contain provisions granting employees special entitlements as a result of the share deal transaction;
- 1.3. the terms of any relevant collective agreements or internal regulations include any information or consultation obligations relating to the transaction.

#### 2. Prepare

a draft of the following:

- 2.1. an announcement of the planned transfer in accordance with Point 3.1. (Because there are no statutory requirements regarding this announcement, it does not have to be made in written form or contain any specific details).

#### 3. Inform/Notify

- 3.1. According to the general principles of Slovak Labour Law, employees or employee representative bodies have the right to receive information regarding the economic and financial situation of the employer and any potential developments of its activities. Consequently, the employer must provide its employees with this information (there is no sanction in the event that this obligation is breached).

#### 4. Consult

- 4.1. There is no legal obligation to consult employees over this kind of transaction, unless stated otherwise in a collective bargaining agreement or internal regulations.

#### 5. Implement

- 5.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations.

## ***II. Obligations of the target***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. any internal regulations or collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;</li> <li>1.2. any employment agreements exist which contain provisions granting employees special entitlements as a result of the share deal transaction;</li> <li>1.3. the terms of any relevant collective agreements or internal regulations include any information or consultation obligations in relation to the transaction.</li> </ul> |
| 2. Prepare       | <p>a draft of the following:</p> <ul style="list-style-type: none"> <li>2.1. an announcement of the planned transfer in accordance with Section 3.1. (No statutory requirements exist regarding this announcement, so it does not have to be made in writing or contain any specific details.)</li> </ul>   |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. According to the general principles of Slovak Labour Law, employees or employee representative bodies have the right to receive information on the economic and financial situation of the employer and any potential developments of its activities; the employer must therefore provide employees with such information (no sanction exists in the event that this obligation is breached).</li> </ul>  |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. No legal obligation to consult employees over this kind of transaction exists, unless stated otherwise in a collective bargaining agreement or internal regulations.</li> </ul>   |
| 5. Implement     | <ul style="list-style-type: none"> <li>5.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations.</li> </ul>   |

## B. Asset Deal

### ***1. Obligations of the seller***

#### 1. Check

whether:

- 1.1. sections 27–31 of the Slovak Labour code apply to the transaction. (The Acquired Rights Directive is implemented in these provisions.) These sections apply to transactions in which the assets being transferred constitute an economic unit of the employer or part of the employer. (If this is the case, then the obligations stipulated in Sections 2–4 must be observed.)
- 1.2. any internal regulations or collective bargaining agreements exist granting individual employees additional entitlements as a result of the intended transaction;
- 1.3. any employment agreements exist which contain provisions granting employees special entitlements as a result of the intended asset deal transaction;
- 1.4. any internal regulations or collective bargaining agreements exist specifying statutory obligations to inform and/or consult employee representative bodies (trade unions, work councils) over the intended transaction.

#### 2. Prepare

a draft of the following:

- 2.1. the notification letter regarding the asset deal transaction. According to the statutory provisions, the letter must contain information on:
  - a) the expected date of the transfer;
  - b) the reasons for the transfer;
  - c) legal, economic and social effects of the transfer for the seller's employees;
  - d) any intended actions concerning the employment conditions of the seller's employees.

#### 3. Inform/Notify

- 3.1. employee representatives or employees directly (if no trade union body exists) of the asset deal transaction at least one month prior to the anticipated date of transfer, using the notification letters described in Point 2.1, above.

- |              |   |
|--------------|---|
| 4. Consult   | <p>4.1. and negotiate with employee representatives (unions, works council, works trustees) over the intended actions concerning employment conditions, in order to reach an agreement no later than one month prior to the intended actions being taken. (No such obligation exists if employee representatives do not operate);</p> <p>4.2. employee representatives over the relevant issues (if applicable according to Point 1.4).</p> |
| 5. Implement | <p>5.1. Not applicable.</p>   |

## ***II. Obligations of the purchaser***

- |          |   |
|----------|---|
| 1. Check | <p>whether:</p> <p>1.1. sections 27–31 of the Slovak Labour code apply to the transaction. (The Acquired Rights Directive is implemented in these provisions.) These sections apply to transactions in which the assets being transferred constitute an economic unit of the employer or part of the employer. (If this is the case, the obligations stipulated in Sections 2–6 must be observed);</p> <p>1.2. any internal regulations or collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;</p> <p>1.3. any employment agreements exist which contain provisions granting employees special entitlements as a result of the asset deal transaction;</p> <p>1.4. any internal regulations or collective bargaining agreements exist specifying statutory obligations to inform and/or consult employee representative bodies (trade unions, works councils) over the transaction;</p> <p>1.5. any other provisions in collective bargaining agreements must be observed (as a new employer, the purchaser must adhere to the provisions of the collective bargaining agreement concluded by and between the original employer and a trade union until the end of its effectiveness);</p> |
|----------|---|

- 1.6. any employee representative bodies exist; unless agreed otherwise between the purchaser and the representative bodies, the bodies' legal position and function must be preserved until the end of their term of office.
2. Prepare
- a draft of the following:
- 2.1. the notification letter regarding the asset deal transaction. According to statutory provisions, the letter must contain information on:
    - a) the expected date of the transfer;
    - b) the reasons for the transfer;
    - c) the legal, economic and social effects of the transfer for the current purchaser's employees;
    - d) any intended actions concerning the employment conditions of the purchaser's employees.
3. Inform/Notify
- 3.1. employee representatives or employees directly (if no trade union body exists) of the asset deal transaction at least one month prior to the anticipated date of transfer, using the notification letters described in Point 2.1, above.
4. Consult
- 4.1. and negotiate with employee representatives (unions, works council, works trustees) over the intended actions concerning employment conditions, in order to reach an agreement no later than one month prior to the intended actions being taken. (No such obligation exists if employee representatives do not operate);
  - 4.2. employee representatives over the issues of retaining the legal position and function of employee representative bodies after the transaction (if applicable according to Point 1.6);
  - 4.3. employee representatives over the relevant issues (if applicable according to Point 1.4).
5. Implement
- 5.1. As a new employer, the purchaser must adhere to the provisions of collective bargaining agreements concluded by and between the original employer and a trade union until the end of its effectiveness.

6. Other

- 6.1. If the number of employees of the purchaser after the transaction exceeds 20, the new employer is obliged to either:
- employ a certain number of disabled employees (3.2% of all employees); or
  - award a contract to a sheltered workshop; or
  - make payments to the Authority of Labour, Social Affairs and Family.

## C. Merger (except cross-border merger)

1. Check

whether:

- 1.1. any internal regulations or collective bargaining agreements exist at the merging parties granting individual employees additional entitlements as a result of the transaction;
- 1.2. any employment agreements with any of the merging parties exist which contain provisions granting individual employees special entitlements as a result of the merger transaction;
- 1.3. any internal regulations or collective bargaining agreements exist at any of the merging parties specifying statutory obligations to inform and/or consult employee representative bodies (trade unions, work councils) over the transaction;
- 1.4. any other provisions in collective bargaining agreements must be observed (the new employer must adhere to the provisions of collective bargaining agreements concluded by and between the original employer and a trade union until the end of their effectiveness);
- 1.5. any employee representative bodies exist at any of the merging parties; unless agreed otherwise between the new employer and representative bodies, these bodies' legal position and function as employee representatives must be preserved until the end of their term of office.



- |                  |   |
|------------------|---|
| 2. Prepare       | <p>a draft of the following:</p> <p>2.1. The notification letter regarding the upcoming merger. According to the statutory provisions, the letter must contain information on:</p> <ul style="list-style-type: none"> <li>a) the expected date of the merger;</li> <li>b) the reasons for the merger;</li> <li>c) the legal, economic and social effects of the merger on the employees of the merging parties;</li> <li>d) any intended actions concerning the employment conditions of the employees of the merging parties.</li> </ul>   |
| 3. Inform/Notify | <p>3.1. employee representatives or employees directly (if no trade union body exists) of the merger transaction at least one month prior to the anticipated date of merger, using the notification letters described in Point 2.1, above.</p>  |
| 4. Consult       | <p>4.1. and negotiate with employee representatives (unions, works council, works trustees) over the intended actions concerning employment conditions, in order to reach an agreement no later than one month prior to the intended actions being taken. (No such obligation exists if employee representatives do not operate);</p> <p>4.2. employee representatives over the issue of retaining the legal position and function of employee representative bodies after the transaction (if applicable according to Point 1.5);</p> <p>4.3. employee representatives over the relevant issues (if applicable according to Point 1.3)</p> |
| 5. Implement     | <p>5.1. The new employer (legal successor) must adhere to the provisions of collective bargaining agreements concluded by and between the original employer and a trade union until the end of its effectiveness.</p>   |
| 6. Other         | <p>6.1. If the number of employees of the new employer (legal successor) after the transaction exceeds 20, the new employer is obliged to either:</p> <ul style="list-style-type: none"> <li>— employ a certain number of disabled employees (3.2% of all employees); or</li> <li>— award a contract to a sheltered workshop; or</li> <li>— make payments to the Authority of Labour, Social Affairs and Family.</li> </ul>   |

# Slovenia

## A. Share Deal

### ***1. Obligations of the purchaser***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the Takeovers Act applies (any obligation under the Takeovers Act has to be performed only post-closing);</li> <li>1.2. a collective agreement has been concluded (if yes, a collective agreement applying to the target shall continue to apply for at least a year, unless the collective agreement expires prior to one year or if a new collective agreement is concluded prior to one year);</li> <li>1.3. a works council exists (if so, members preserve their status if the conditions for their appointment continue to exist with the new employer).</li> </ul> |
| 2. Prepare       | <ul style="list-style-type: none"> <li>2.1. If the Takeovers Act applies, the prospectus (takeover bid together with the offer document) shall contain plans for maintenance of jobs of employees and management, including any modification of recruitment requirements and strategic plans for both companies.</li> <li>2.2. Draft of notifications according to Point 3.</li> </ul>  |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. If the Takeovers Act applies, notify the employee representatives immediately – or, in their absence, the employees themselves – of the intention to take over (joint responsibility with the target). They shall also be provided with the prospectus immediately, free of charge .</li> <li>3.2. Notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer (joint responsibility with the target under Slovenian Employment Relationship Act (ERA-1)).</li> </ul>   |
| 4. Consult       | <p>Following Point 3.2., consultation with the trade union at least 15 days prior to the transfer regarding legal, economic and social consequences. If there is no trade union, notification of the employees shall suffice – no consultations.</p>  |
| 5. Implement     | <p>In accordance with Points 1.–4., above.</p>  |

## ***II. Obligations of the target***

- |                  |  |
|------------------|--|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the Takeovers Act applies;</li> <li>1.2. a collective agreement exists;</li> <li>1.3. a works council exists.</li> </ul>   |
| 2. Prepare       | <ul style="list-style-type: none"> <li>2.1. if the Takeovers Act applies, publication of the employee's representatives' opinion on the effects of the takeover bid on employment;</li> <li>2.2. draft of notifications according to Point 3.</li> </ul>   |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. If the Takeovers Act applies, notify the employee representatives immediately, or in their absence, the employees themselves, of the intention to takeover (joint responsibility with the purchaser). They shall also be provided with the prospectus immediately, free of charge .</li> <li>3.2. if the Takeovers Act applies, notify the employee representatives, or in their absence, the employees themselves about its opinion on the takeover bid within 10 days of publication of the takeover bid.</li> <li>3.3. Notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer.</li> <li>3.4. Notify the works council (if existing) at least 30 days before making the decision, if a substantial part of the company is being sold/substantial change of ownership will occur.</li> </ul> |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. Following Point 3.3., consultation with the trade union at least 15 days prior to the transfer regarding legal, economic and social consequences. If there is no trade union, notification of the employees shall suffice – no consultations.</li> <li>4.2. Following Point 3.4., consult with the works council at least 15 days before making the decision, if a substantial part of the company is being sold/substantial change of ownership will occur. If the changes will result in massive layoffs, consent of the works council is required (within eight days of receiving the employer's proposal). The works council may decline to give consent only if the reasons for massive layoffs are unjustified or the proposal does not include a programme for mass redundancies according to the law.</li> </ul>                         |

5. Implement In accordance with Points 1.–4., above.

## B. Asset Deal

### ***1. Obligations of the seller***

- |                  |   |
|------------------|---|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the assets are significant and may represent an undertaking in accordance with the Transfer of Undertakings Directive 2001/23/EC and ERA-1;</li> <li>1.2. a collective agreement has been concluded;</li> <li>1.3. a works council exists.</li> </ul>   |
| 2. Prepare       | Draft of notifications according to point 3.  |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. Subject to 1.1, notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer.</li> <li>3.2. In the event that an entire undertaking or a significant part is being transferred, inform the works council (if existing) at least 30 days prior to making the decision.</li> </ul> |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. Following 3.1., consult with trade union at least 15 days prior to transfer regarding the legal, economic and social consequences. Consultations with employees are not required.</li> <li>4.2. Following Point 4.1., consult with the works council at least 15 days prior to making the decision.</li> </ul>                |
| 5. Implement     | In accordance with Points 1.–4., above.   |

## 1. Check

**II. Obligations of the purchaser**

whether:

- 1.1. the assets are significant and may represent an undertaking in sense of Transfer of Undertakings Directive 2001/23/EC and ERA-1;
- 1.2. a collective agreement has been concluded (subject to 1.1, a collective agreement applying to the seller shall continue to apply for at least a year, unless the collective agreement expires prior to one year or if a new collective agreement is concluded prior to one year);
- 1.3. a works council exists (subject to Point 1.1., members preserve their status if the conditions for their appointment continue to exist with the new employer).

## 2. Prepare

- 2.1. Draft of notifications according to Point 3.

## 3. Inform/Notify

- 3.3. Subject to Point 1.1., notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer.

## 4. Consult

Following Point 3.1, consult with trade union at least 15 days prior to transfer regarding the legal, economic and social consequences. Consultations with employees are not required.

## 5. Implement

In accordance with Points 1.–4., above.

**C. Merger (except cross-border merger)**

The same regulations apply to share deals and mergers. A merger becomes effective when entered into the relevant public register.



# Spain

## A. Share Deal

### ***I. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. a European works council (EWC) exists, if the target is located in a different EU Member State;
- 1.2. a works council/employees' delegate exists, the date of elections and the trade union to which they belong;
- 1.3. a share option plan exists;
- 1.4. a pension scheme exists;
- 1.5. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements;
- 1.6. the company applies the conditions established in works agreements or arrangements, or any other internal applicable rule, or not;
- 1.7. merely a share deal is intended, or whether the deal is to be combined with an operational change to a business unit of the purchaser. The latter may trigger additional information/consultation requirements.

#### 2. Prepare

- 2.1. If the share deal involves restructuring of the company's staff, then the workers' representatives (works council or employees' delegates) are entitled to issue a report prior to such a deal coming into effect. This report must be written within a period of 15 days. However, the deal is not subject to the consent or advice of the workers' representatives. Failure to comply with the above obligation constitutes an administrative offence punishable by a fine of between EUR 626 and EUR 6,250.
- 2.2. Information for the attention of the EWC if Point 1.1. applies.
- 2.3. Additional documents if, as described in Point 1.7., the share deal is to be combined with a change to a business unit. For details, see paragraph 2.1., subsections *I. Obligations of the seller* and *II. Obligations of the purchaser, Section B. Asset Deal*.

#### 3. Inform/Notify

- 3.1. Forward the information drafted to the respective addressees 'in good time' (15 days at least before the transfer, if one exists, comes into effect), if Points 1.1., 1.7. and 2.1., above, apply.

4. Consult

4.1. No consultation requirement.

5. Implement

5.1. Implementation following information “in good time”.

**II. Obligations of the target**

1. Check

whether:

- 1.1. a European works council (EWC) exists, if the target is located in a different EU Member State;
- 1.2. a works council/employees’ delegate exists, the date of elections and the trade union to which they belong;
- 1.3. a share option plan exists;
- 1.4. a pension scheme exists;
- 1.5. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements;
- 1.6. the company applies the conditions established in works agreements or arrangements, or any other internal applicable rule, or not;
- 1.7. merely a share deal is intended, or whether the deal is to be combined with an operational change to a business unit of the purchaser. The latter may trigger additional information/consultation requirements.

2. Prepare

- 2.1. If the share deal involves restructuring of the company’s staff, then the workers’ representatives (works council or employees’ delegates) are entitled to issue a report prior to such a deal coming into effect. This report must be written within a period of 15 days. However, the deal is not subject to the consent or advice of the workers’ representatives. Failure to comply with the above obligation constitutes an administrative offence punishable by a fine of between EUR 626 and EUR 6,250;
- 2.2. Information for the attention of the EWC if Point 1.1. applies.
- 2.3. Additional documents if, as described in Point 1.7., the share deal is to be combined with a change to a business unit. For details, see paragraph 2.1., subsections *I. Obligations of the seller* and *II. Obligations of the purchaser, Section B. Asset Deal*.



- |                  |  |
|------------------|--|
| 3. Inform/Notify | 3.1. Forward any information to the respective addressees 'in good time' (15 days at most before the transfer, if one exists, comes into effect), if Points 1.1., 1.7. and 2.1., above, apply. |
| 4. Consult       | No consultation requirement.   |
| 5. Implement     | Implementation shall follow information "in good time".  |

## B. Asset Deal

### ***1. Obligations of the seller***

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the asset deal leads to a transfer of undertaking as defined in Article 44 of the Spanish Workers' Statute and the Council Directive 2001/23/EC. This would still be the case even if the company whose assets are object of the transaction continues its activity;</li> <li>1.2. a European Works Council (EWC) exists if the target is located in a different EU Member State;</li> <li>1.3. a works council/employees' delegate exists, the dates of elections, and the trade union to which these bodies belong;</li> <li>1.4. a share option plan exists;</li> <li>1.5. a pension or any other social benefit scheme exists;</li> <li>1.6. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements;</li> <li>1.7. the company applies the conditions established in works agreements, or any other internal applicable rule, or not;</li> <li>1.8. the assets are significant, and may form a business or part of a business in the sense of a relevant EU Directive on the transfer of businesses;</li> <li>1.9. any measure affecting the employees – such as dismissals, salaries reductions, or any other substantial modification which may have a negative impact regarding employment conditions of the employees – is intended once the transaction is implemented.</li> </ul> |
|----------|--|

- |                  |   |
|------------------|---|
| 2. Prepare       | the following in draft form:  |
| 3. Inform/Notify | <p>2.1. if an operational change, as defined in Point 1.7., is to take place, then the seller shall inform workers' representatives or the employees affected (if there is not any workers' representative) in good time and in detail about the following aspects:</p> <ul style="list-style-type: none"> <li>(I) the date of the transfer;</li> <li>(II) the reasons for the transfer;</li> <li>(III) the legal, economic and social implications/consequences of the transfer for the employees;</li> <li>(IV) any measures being planned in relation to the employees.</li> </ul> <p>3.1. The works council/employees' delegate or the affected employees (if no workers' representatives exist).</p> <p>3.2. This information shall be provided "in good time", meaning 15 days prior to the date of the transfer.</p> |
| 4. Consult       | With workers representatives if Point 1.8., above, applies.   |
| 5. Implement     | Implementation following proper information/notification.   |

## ***II. Obligations of the purchaser***

- |          |  |
|----------|--|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. the asset deal leads to a transfer of undertaking as defined in Article 44 of the Spanish Workers' Statute and the Council Directive 2001/23/EC. This would still be the case even if the company whose assets are object of the transaction continues its activity;</li> <li>1.2. a European Works Council (EWC) exists if the target is located in a different EU Member State;</li> <li>1.3. a works council/employees' delegate exists, the dates of elections, and the trade union to which they belong;</li> <li>1.4. a share option plan exists;</li> <li>1.5. a pension or any other social benefit scheme exists;</li> <li>1.6. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements;</li> </ul> |
|----------|--|

- 1.7. the company applies the conditions established in works agreements, or any other internal applicable rule, or not;
  - 1.8. the assets are significant, and may form a business or part of a business in the sense of a relevant EU Directive on the transfer of businesses;
  - 1.9. any measure affecting the employees – such as dismissals, salaries reductions, or any other substantial modification which may have a negative impact regarding employment conditions of the employees – is intended once the transaction is implemented.
2. Prepare
- the following in draft form:
- 2.1. in the event of an operational change, as mentioned under point 1.7., above, the seller must inform the workers' representatives or employees affected (if there are no workers' representatives) in good time and in detail about the following aspects:
    - (I) the date of the transfer;
    - (II) the reasons for the transfer;
    - (III) the legal, economic and social implications/consequences of the transfer for the employees;
    - (IV) any measures being planned in relation to the employees.
3. Inform/Notify
- 3.1. The works council/employees' delegate or employees affected (if no workers' representatives exist).
  - 3.2. Information must be "in good time", meaning 15 days prior to the date of the transfer.
4. Consult
- 4.1. With the workers' representatives if point 1.8. above applies.
5. Implement
- 5.1. Implementation following proper information/notification.

## C. Merger (except cross-border merger)

### 1. Check

whether:

- 1.1. the deal triggers a requirement of a transfer of undertakings pursuant to Article 44 of the Spanish Workers' Statute and the Council Directive 2001/23/EC, as may be the event when an economic entity is transferred to another company keeping its own identity.
- 1.2. a European Works Council (EWC) exists if the target is located in a different EU Member State;
- 1.3. a works council/employees' delegate exists, the dates of elections, and the trade union to which they belong;
- 1.4. a share option plan exists;
- 1.5. a pension or any other social benefit scheme exists;
- 1.6. collective bargaining agreements and/or works agreements apply, and the specific conditions laid down in these agreements;
- 1.7. the company applies the conditions established in works agreements, or any other internal applicable rule, or not;
- 1.8. a modification of labour conditions is intended.

### 2. Prepare

the following in draft form:

- 2.1. the companies must inform in good time and in detail, the workers' representatives or affected employees (if no workers' representative exist), regarding the following aspects:
  - (I) the date of the merger;
  - (II) the reasons for the merger;
  - (III) the legal, economic and social implications/consequences of the transfer for the employees;
  - (IV) any measures being planned in relation to the employees.

- 2.2. When the shareholders' meeting is published, the companies may deliver the following documentation to the employees' representatives:
- (I) the draft of the merger agreement;
  - (II) the merger reports of the administrators;
  - (III) reports from independent experts;
  - (IV) the annual accounts of the company and management reports for the past three years;
  - (V) the merger balance sheet;
  - (VI) the company's by-laws;
  - (VII) the project of constitution deed of the new company or statutes of the acquiring company;
  - (VIII) the identification of the administrators.
- 2.3. If the merger, absorption or modification of the legal status of the company affects the size of the workforce, the employees' representatives may issue a report. This report must be written within a period of 15 days. However, the deal is not subject to the consent or the advice of the workers representatives. Failure to comply with the obligation above constitutes an administrative offence punishable by a fine of between EUR 626 and EUR 6,250.
3. Inform/Notify
- 3.1. Inform the EC and executive committee of the intended merger "in good time", i.e. prior to a final decision being taken.
- 3.2. In any case, the ceding and benefiting employer are obliged to provide the information upon the publication of the call to the general meetings to adopt the pertinent resolutions.
- 3.3. Forward the draft merger agreement to the relevant works council; please note that, where a relevant works council exists, such a draft agreements shall be submitted at least one month prior to the shareholders' meeting due to reach a resolution on the merger.
4. Consult
- Workers' representatives if Point 1.7. applies.
5. Implement
- The merger shall come into effect when registered in the relevant public register.

# Switzerland

## A. Share Deal

### ***I. Obligations of the purchaser***

- |                  |  |
|------------------|--|
| 1. Check         | <p>1.1. In general: no consequences for employment conditions, and no notifications necessary as there is no change of employer.</p> <p>1.2. But check whether any special arrangements or employment terms exist between the involved companies and its employees relating to a 'change of ownership'. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</p> |
| 2. Prepare       | <p>2.1. Not applicable unless any special arrangements or employment terms exist.</p>  |
| 3. Inform/Notify | <p>3.1. Not applicable unless any special arrangements or employment terms exist.</p>  |
| 4. Consult       | <p>4.1. Not applicable unless any special arrangements or employment terms exist.</p>  |
| 5. Implement     | <p>5.1. Not applicable unless any special arrangements or employment terms exist.</p>  |

### ***II. Obligations of the target***

- |                  |  |
|------------------|--|
| 1. Check         | <p>1.1. In general: no consequences for employment conditions, and no notifications necessary as there is no change of employer.</p> <p>1.2. But check whether any special arrangements or employment terms exist between the involved companies and its employees relating to a 'change of ownership'. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</p> |
| 2. Prepare       | <p>2.1. Not applicable unless any special arrangements or employment terms exist.</p>  |
| 3. Inform/Notify | <p>3.1. Not applicable unless any special arrangements or employment terms exist.</p>  |

- |              |  |
|--------------|--|
| 4. Consult   | 4.1. Not applicable unless any special arrangements or employment terms exist. |
| 5. Implement | 5.1. Not applicable unless any special arrangements or employment terms exist. |

## B. Asset Deal

### 1. *Obligations of the seller*

- |            |   |
|------------|---|
| 1. Check   | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. a works council (employees' representative body) exists;</li> <li>1.2. any measures affecting employees (such as dismissal, reduction of salaries, relocation, change of job description, or other measures with a substantial negative impact on the terms of employment) are planned as a result of the transfer. If this is the case, then the works council, or where such a body does not exist, employees themselves, must not only be <i>informed</i>, but also <i>consulted</i> in good time prior to a decision over such measures being taken;</li> <li>1.3. a merger of pension funds will take place. If accession agreements exist, clarify which of these is to continue, and which is to be dissolved (notice period);</li> <li>1.4. any special arrangements or employment terms exist between the involved companies and its employees relating to such transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</li> </ul> |
| 2. Prepare | <p>the following in draft form:</p> <ul style="list-style-type: none"> <li>2.1. the wording of <i>information</i> for the attention of the works council or, if no such body exists, employees themselves regarding the reasons for the transfer and the legal, economic and social consequences of the transfer for employees. The information must be given in good time prior to the transfer;</li> </ul>  |

- 2.2. the wording of *consultation* for the attention of the works council or, if no such body exists, employees themselves regarding the respective consequences if any measures affecting employees (such as dismissal, reduction of salaries, relocation, changes of job description, or other measures with a substantial negative impact on the terms of the employment) are planned as a result of the transfer. Consultation must be in good time prior to a decision on such measures being taken (guideline: approx. two weeks);
- 2.3. dissolution of the pension fund if a merger of the pension funds is to take place.
- 3. Inform/Notify
  - 3.1. The works council or, if no such body exists, employees themselves regarding the reasons for the transfer and the legal, economic and social consequences of the transfer for employees. The law stipulates that employees must be informed in good time prior to the transfer. If the duty is merely to inform, such information need not be given before the decision over the transfer is taken.
  - 3.2. The pension fund, if a merger of the pension funds is to take place.
- 4. Consult
  - 4.1. The works council or, if no such body exists, employees themselves regarding the respective consequences if any measures affecting employees (such as dismissal, reduction of salaries, relocation, changes of job description, or other measures with a substantial negative impact on the terms of employment) are being planned as a result of the transfer.
  - 4.2. Consultation regarding measures affecting employees must be in good time prior to a decision on such measures being taken (guideline: approx. two weeks).
  - 4.3. The works council/employees may propose changes to the measures planned. The employer is only under an obligation to duly consider the proposed changes.
- 5. Implement
  - 5.1. The transaction, and (if applicable) the merger of the pension funds.
  - 5.2. Under Swiss law, if an enterprise (or part thereof) is transferred to a third party, the employment relationships are transferred to the acquiring party, including all rights and obligations as of the date of transfer, unless the employee declines the transfer.



However, if an enterprise or part thereof is transferred in the course of a composition moratorium or bankruptcy proceedings, or under a composition agreement with assignment of assets, the employment relationships are transferred to the acquirer only if this has been agreed with the purchaser and the employee does not object to the transfer.

- 5.3. The seller and purchaser are jointly and severally liable for any claims by the employees of the seller which: (I) became due prior to the transfer; or (II) become due between the date of the transfer and the date on which the employment relationship could normally be terminated or is terminated (if the employee declines the transfer).
- 5.4. If the employers do not comply with the above mentioned information/consultation provisions, a works council body can file a request with the court to prohibit entry of the asset transfer in the Commercial Registry (Art. 77 of the Swiss Merger Act).

## ***II. Obligations of the purchaser***

### 1. Check

whether:

- 1.1. the seller is complying with the information and/or consultation obligations mentioned above. According to the law, the information or consultation must be performed by the employer transferring the enterprise.

If the employer does not comply with the above mentioned information/consultation provisions, a works council can file a request with the court to prohibit entry of the asset transfer in the Commercial Registry (Art. 77 of the Swiss Merger Act);

- 1.2. a merger of the pension funds is to take place. If accession agreements exist, clarify which of these is to continue, and which is to be dissolved (notice period);
- 1.3. any special arrangements or employment terms exist between the involved companies and its employees relating to such transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.

2. Prepare	the following in draft form:
	2.1. The dissolution of the pension fund, if a merger of pension funds is to take place.
3. Inform/Notify	3.1. The pension fund, if a merger of the pension funds is to take place.
4. Consult	Not applicable.
5. Implement	<p>5.1. the transaction, and (if applicable) the merger of pensions funds.</p> <p>5.2. Under Swiss law, in the event that an enterprise (or part thereof) is transferred to a third party, the employment relationships are transferred to the acquiring party, including all rights and obligations as of the date of transfer, unless the employee declines the transfer. However, if an enterprise or part thereof is transferred in the course of a composition moratorium or bankruptcy proceedings, or under a composition agreement with assignment of assets, the employment relationships are transferred to the acquirer only if this has been agreed with the purchaser and the employee does not object to the transfer.</p> <p>5.3. The seller and purchaser are jointly and severally liable for any claims by employees of the seller which: (I) became due prior to the transfer; or (II) become due between the date of the transfer and the date on which the employment relationship could normally be terminated or is terminated (if the employee declines the transfer).</p> <p>5.4. If the employers do not comply with the above mentioned information/consultation provisions, a works council body can file a request with the court to prohibit entry of the asset transfer in the Commercial Registry (Art. 77 of the Swiss Merger Act).</p>

## C. Merger (except cross-border merger)

The rules mentioned in *Section B. 'Asset Deal'* apply in case of a merger also.



# Turkey

## A. Share Deal

### 1. Check

#### ***I. Obligations of the purchaser***

- 1.1. In general – no consequences for employment conditions, and no notifications necessary as there is no change of employer.
- 1.2. But check whether any special arrangements or employment terms exist between the involved companies and its employees relating to a 'change of ownership'. Provisions may be contained in individual employment agreements (e.g. golden parachutes) or in internal regulations/rules of the company.

### 2. Prepare

- 2.1. Not applicable unless any special arrangements or employment terms exist.

### 3. Inform/Notify

- 3.1. Not applicable unless any special arrangements or employment terms exist.

### 4. Consult

- 4.1. Not applicable unless any special arrangements or employment terms exist.

### 5. Implement

- 5.1. Not applicable unless any special arrangements or employment terms exist.

#### ***II. Obligations of the target***

### 1. Check

- 1.1. In general – no consequences for employment conditions, and no notifications necessary as there is no change of employer.
- 1.2. But check whether any special arrangements or employment terms exist between the involved companies and its employees relating to a "change of ownership". Provisions may be contained in individual employment agreements (e.g. golden parachutes) or in internal regulations/rules of the company.

- |                  |  |
|------------------|--|
| 2. Prepare       | 2.1. Not applicable unless any special arrangements or employment terms exist. |
| 3. Inform/Notify | 3.1. Not applicable unless any special arrangements or employment terms exist. |
| 4. Consult       | 4.1. Not applicable unless any special arrangements or employment terms exist. |
| 5. Implement     | 5.1. Not applicable unless any special arrangements or employment terms exist. |

## B. Asset Deal

### ***1. Obligations of the seller***

- |                  |  |
|------------------|--|
| 1. Check         | <p>1.1. In general – no consequences for employment conditions, and no notifications necessary as there is no change of employer.</p> <p>1.2. But check if any special arrangements or employment terms exist between the involved companies and its employees relating to such transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</p>  |
| 3. Inform/Notify | 3.1. Not applicable unless any special arrangements or employment terms exist.   |
| 4. Consult       | 4.1. Not applicable unless any special arrangements or employment terms exist.   |
| 5. Implement     | <p>5.1. Under Turkish law, if an enterprise (or part thereof) is transferred to a third party, the employment relationships are transferred to the acquiring party, including all rights and obligations as of the date of transfer.</p> <p>5.2. The seller and purchaser are jointly and severally liable for any claims by the employees of the seller which: (I) became due prior to the transfer; or (II) become due between the date of the transfer and the date on which the employment relationship could normally be terminated or is terminated (if the employee declines the transfer).</p> |

## ***II. Obligations of the target***

- |                  |   |
|------------------|---|
| 1. Check         | <p>1.1. In general – no consequences for employment conditions, and no notifications necessary as there is no change of employer.</p> <p>1.2. But check if any special arrangements or employment terms exist between the involved companies and its employees relating to such transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</p>   |
| 2. Prepare       | 2.1. Not applicable unless any special arrangements or employment terms exist.  |
| 3. Inform/Notify | 3.1. Not applicable unless any special arrangements or employment terms exist.  |
| 4. Consult       | 4.1. Not applicable unless any special arrangements or employment terms exist.  |
| 5. Implement     | <p>5.1. The transaction.</p> <p>5.2. Under Turkish law, in the event that an enterprise (or part thereof) is transferred to a third party, the employment relationships are transferred to the acquiring party, including all rights and obligations as of the date of transfer, unless the employee declines the transfer.</p> <p>5.3. The seller and purchaser are jointly and severally liable for any claims by employees of the seller which: (I) became due prior to the transfer; or (II) become due between the date of the transfer and the date on which the employment relationship could normally be terminated or is terminated (if the employee declines the transfer).</p> <p>5.4. Apply to the relevant social security directorate in order to register the employees which have been transferred under the asset purchase agreement and transfer them into the employment of the buyer.</p> |

## C. Merger (except cross-border merger)

- |                  |   |
|------------------|---|
| 1. Check         | whether:  |
|                  | <ul style="list-style-type: none"> <li>1.1. any special arrangements or employment terms exist between the involved companies and its employees relating to such transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in internal regulations/rules of the company.</li> </ul> |
| 2. Prepare       | the following in draft form:  |
|                  | <ul style="list-style-type: none"> <li>2.1. a notice directed at each employee indicating that:               <ul style="list-style-type: none"> <li>(I) a merger will take place;</li> <li>(II) the date the merger will be effected.</li> </ul> </li> </ul>   |
| 3. Inform/Notify | 3.1. Inform each employee by providing them with the written notice.  |
| 4. Consult       | 4.1 Not applicable.   |
| 5. Implement     | 5.1 Under Turkish law, the employees have the right to terminate the employment agreement with valid reason by refusing to accept the merger.   |

# Ukraine

## A. Share Deal

### ***I. Obligations of the purchaser***

- |                  |  |
|------------------|--|
| 1. Check         | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. any individual employment agreements (contracts), an effective collective bargaining agreement, or internal regulations exist at the target company granting individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes etc.);</li> <li>1.2. any employee representative bodies (trade unions) exist at the target company, and whether any provisions of the collective bargaining agreement or internal regulations at the target company exist governing the information and/or consultation of employee representative bodies in relation to the transaction.</li> </ul> |
| 2. Prepare       | <ul style="list-style-type: none"> <li>2.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.</li> </ul>   |
| 3. Inform/Notify | <ul style="list-style-type: none"> <li>3.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.</li> </ul>   |
| 4. Consult       | <ul style="list-style-type: none"> <li>4.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.</li> </ul>   |
| 5. Implement     | <ul style="list-style-type: none"> <li>5.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.</li> </ul>   |

### ***II. Obligations of the target***

- |          |   |
|----------|---|
| 1. Check | <p>whether:</p> <ul style="list-style-type: none"> <li>1.1. any individual employment agreements (contracts), collective bargaining agreements or internal regulations exist governing the granting of additional entitlements to individual employees either as a result of or in connection with the transaction (e.g. information or consultation entitlements) which must be observed by the target;</li> </ul> |
|----------|---|



- |                  |   |
|------------------|---|
|                  | 1.2. any provisions of a collective bargaining agreement or internal regulations exist at the target company granting employee representative bodies (trade unions, if such bodies exist) additional information or consultation entitlements relating to the transaction which must be observed by the target. |
| 2. Prepare       | 2.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.  |
| 3. Inform/Notify | 3.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.  |
| 4. Consult       | 4.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.  |
| 5. Implement     | 5.1. Not applicable unless stated otherwise in a collective bargaining agreement or internal regulations in force at the target company.  |

## B. Asset Deal

N.B.: Ukrainian law does not provide for an automatic transfer of employees in cases where assets are transferred (even when such assets comprise a separate business).

### ***1. Obligations of the seller***

- |            |   |
|------------|---|
| 1. Check   | <p>1.1. Not applicable, unless the seller intends to transfer/make redundant/change the material terms of employment of its employees in connection with the sale of the assets. In the latter case, general requirements set out by law for each such procedure apply (see below).</p> <p>1.2. If the redundancy option is being considered, check whether any of the employees to be affected by redundancy: (I) qualify as so-called 'protected employees' (i.e. those that cannot be made redundant); and (II) are members of a company-level trade union operating within the seller's organisation (if applicable).</p> |
| 2. Prepare | <p>the following in draft form:</p> <p>2.1. Not applicable, unless the seller intends to transfer/make redundant/change the material terms of employment of its employees in connection with the sale of the assets.</p>  |

2.2. In case of a transfer:

- an order to dismiss the relevant employees in connection with their transfer to the purchaser (if they have consented to such a transfer).

2.3. In case of redundancy:

- a decision on the forthcoming redundancy, specifying reasons for it, the number and categories of employees to be affected, and a timeframe for its implementation;
- notifications to the employees and company trade union operating at the seller (if applicable), as described in Section 3., below;
- an order to terminate employment in connection with the redundancy (to be executed either on the last day of the employment of the affected employees, or in advance).

2.4. If a change of the material terms of employment is to be implemented (e.g. a change of salary, bonuses/other benefits systems, the working time regime, etc):

- an order to change the material conditions of employment specifying any relevant changes;
- notification for the attention of any employees whose working conditions are to be changed (see Section 3., below, for more details);
- a statement acknowledging the employee's consent to remain employed under the changed conditions (one such statement for each employee affected).

3. Inform/Notify

3.1. Not applicable, unless the seller intends to transfer/make redundant/change the material terms of employment of its employees in connection with the sale of the assets.

3.2. In the event of a transfer:

- each employee affected by the transfer must be approached and given the option to transfer his employment to the purchaser. The purchaser and seller can make this offer jointly. The transfer will only be possible if the relevant employee consents to it. The law does not lay down a procedure for approaching/notifying employees regarding a transfer to another entity. Notice of the transfer must be provided at least two months prior to the intended transfer date;
- a specific transfer procedure must be agreed with the purchaser and the employees affected by the transfer (for further details of possible transfer options, see Section B. II, below).

## 3.3. In the event of redundancy:

- inform the company-level trade union (if such a body exists at the seller company) of the redundancy being considered. Notice must be provided within three months after the date on which the decision on the redundancy is adopted, but no later than three months before the date being considered for the redundancy to take place. Considering the aforementioned time requirements, it is advisable that the trade union be notified promptly after a decision has been taken by the seller on the redundancy;
- give two months' advance notice to employees affected by the redundancy;
- if the redundancy qualifies as a 'mass lay-off'<sup>1</sup> give two months' advance notice of the redundancy being contemplated to the State Employment Centre (the 'Agency').

## 3.4. If a change is to be made to the material terms of employment:

- notify a company-level trade union operating at the seller (if applicable) of the contemplated changes, but only if such changes (I) produce a deterioration in working conditions; and (II) are caused by the liquidation, reorganisation, change of property form, or partial stoppage of production of/by the seller. The law does not lay down a specific timeframe for such notice to be provided, but, in light of the duty of notification in cases of redundancy, it should be provided at least three months prior to implementation of the changes being considered;
- notify each employee whose terms of employment are to be changed at least two months prior to the date when the change is to be implemented.

## 4. Consult

- 4.1. Not applicable, unless the seller intends to transfer/make redundant/change the material terms of employment of its employees in connection with the sale of the assets.

<sup>1</sup> Under the new Law of Ukraine on Employment, which came into effect as of 1 January 2013, a 'mass lay-off' is defined as a one-time dismissal or series of dismissals by the decision of the employer made within

A. one month, if

- 10 or more employees of a company employing 20 to 100 individuals are being dismissed; or
- 10% or more of the workforce of a company employing 101 to 300 employees are being dismissed;

B. three months, if

- 20% or more of the workforce of a company (irrespective of the total number of staff) are being dismissed.

## 4.2. In the event of redundancy:

- consult with the company-level trade union (if such a body exists at the seller). According to the law, the employing company must consider any suggestions submitted by the trade union regarding the redundancy process. Consultation must take place within three months after a decision on the redundancy is taken, but no later than three months before its implementation;
- request consent from the company-level trade union (if such a body exists) to dismiss its members. This consent, if granted, is valid for one month as of the date of its receipt by the employer. In light of the fact that the trade union has 18 days to consider the employer's request, the seller is recommended to submit such a request one month prior to the redundancy date being considered.

## 4.3. If a change to the material terms of employment is to be implemented:

- consult a company-level trade union (if such a body exists) regarding the contemplated changes, but only if such changes: (I) produce a deterioration in working conditions; and (II) are caused by the liquidation, reorganisation, change of property form, or partial stoppage of production of/by the seller. The law does not lay down a specific timeframe for such notice to be provided, but, in light of the duty of notification in cases of redundancy, it should be provided at least three months prior to implementation of the changes being considered.

## 5. Implement

Not applicable.

**II. Obligations of the purchaser**

## 1. Check

1.1. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with acquisition of the assets, i.e. an employee transfer is being considered by the parties.

## 1.2. If an employee transfer is being considered:

- check the material terms under which the employees subject to transfer are to be employed by the seller. For this purpose, it is advisable to check their individual employment agreements (contracts) and collective bargaining agreements with the seller, the internal regulations and policies of the seller providing additional benefits, and/or guarantees for the employees in question. Although the applicable law does not require the seller (as the transferee) to offer the same or better conditions of employment to the employees being transferred, from a practical

standpoint, the employees will not consent to their transfer unless this is the case.

## 2. Prepare

the following in draft form:

- 2.1. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with the acquisition of the assets. In the latter case, there are two options under Ukrainian law for an employee transfer from the purchaser (transferor) to the seller (transferee):
  - dismissal of the employees by the transferor, with their simultaneous employment by the transferee ('Option 1'); or
  - transfer of the employees from the transferor to the transferee pursuant to a specific transfer procedure ('Option 2').
- 2.2. If an employee transfer is being considered:
  - an employment agreement must be entered into between employees affected by the transfer and the purchaser (this document is not mandatory under Ukrainian law);
  - if the transfer is implemented pursuant to Option 2, a written request to the seller regarding the purchaser's intention to offer an employment agreement to the employees affected by the transfer, and requesting the seller to terminate employment relations with these employees by a specific date.

## 3. Inform/Notify

- 3.1. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with acquisition of the assets.
- 3.2. If an employee transfer is being considered:
  - each employee affected by the transfer must be approached and offered the option of transferring his employment to the purchaser. The purchaser and seller can make this offer jointly. The transfer will only be possible if the employee in question consents to it. The law does not lay down a procedure for approaching/notifying employees regarding the transfer to another entity. Notice on the transfer must be provided at least two months prior to the intended transfer date.

## 4. Consult

- 4.1. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with its acquisition of the assets.
- 4.2. If an employee transfer is being considered:
  - a specific transfer procedure must be agreed with the purchaser, seller and employees affected (i.e. whether the transfer is to be made using Option 1 or Option 2).

5. Implement

Not applicable.

### C. Merger (except cross-border merger)

In the event of a merger, the surviving company automatically becomes the employer of any employees previously employed by the 'absorbed' entity. Individual employment (agreements) and collective bargaining agreements applicable to the employees of the 'absorbed' entity remain unaffected following the merger. The surviving company becomes the full legal successor of the 'absorbed' company. Amongst other things, this means it takes on all the labour-related obligations of the 'absorbed' company.

1. Check

- 1.1. The surviving company must check:
- the material conditions of employment (salary, benefits, bonuses, etc.) of staff employed by the entity which ceases to exist following the merger. Such conditions may be determined by factors including the individual employment agreements (contracts) entered into between the employees affected and the company to be absorbed, the latter's collective bargaining agreement (if one has been concluded), internal regulations and policies, and orders.

2. Prepare

the following in draft form:

- 2.1. notification for the attention of employees of the company being absorbed of their transfer to the surviving company in connection with the merger.
- 2.2. a statement to be signed by each employee affected by the transfer of his consent to be transferred to the surviving entity as a result of the merger, and to remain employed under changed conditions (transfer).

3. Inform/Notify

- 3.1. the employees affected by the transfer of the following:
- the merger being contemplated;
  - the transfer of their employment to the surviving company in connection with the merger.
  - Notification can either be made by the company being 'absorbed' alone or jointly by the former and the surviving company jointly.

4. Consult

- 4.1. Both parties must seek the consent of employees regarding their transfer to the surviving company in connection with the merger.

5. Implement

Not applicable.



# United Kingdom

## A. Share Deal

### ***1. Obligations of the purchaser***

#### 1. Check

whether:

- 1.1. the structure of the transaction is a true share sale (and that it is not combined with an asset sale) to ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and therefore additional information and consultation requirements) are not triggered;
- 1.2. relevant staff councils or staff forums exist (often set up under an information and consultation agreement pursuant to the Information and Consultation of Employees Regulations 2004) which impose information and consultation obligations on a share deal (depending on the terms of the specific agreement);
- 1.3. the terms of any relevant collective agreement include any information and consultation obligations in relation to the share deal (only applicable if the UK employer recognises a trade union);
- 1.4. a relevant European works council (EWC) exists if the target is located in a different EU Member State.

#### 2. Prepare

the following in draft form:

- 2.1. appropriate information pursuant to any agreements with staff councils/ staff forums or any relevant collective agreement (if applicable);
- 2.2. appropriate information for the EWC, if relevant.
- 2.3. There is no change in the identity of the employer on a share deal, and all current contractual rights and liabilities remain in place. The general principles of employment law apply to the transaction, but there are no additional 'share deal' employment law requirements.

#### 3. Inform/Notify

- 3.1. Although there is no general legal obligation to inform employees of a share deal, in practice employees are usually informed of the share deal.
- 3.2. There may be relevant agreements which contain information obligations.



- |              |  |
|--------------|--|
| 4. Consult   | <p>4.1. Although there is no general legal obligation to inform or consult employees on a share deal, in practice employees are usually informed of the share deal, and consulted in accordance with normal UK employment law principles on any changes or measures which may affect them.</p> <p>4.2. There may be relevant agreements containing consultation obligations. Special consultation provisions exist under UK law for collective redundancies.</p> |
| 5. Implement | <p>5.1. Comply appropriately with any relevant agreements containing information and/or consultation obligations.</p>  |

## ***II. Obligations of the target***

- |            |  |
|------------|--|
| 1. Check   | <p>whether:</p> <p>1.1. the structure of the transaction is a true share sale (and that it is not combined with an asset sale) to ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and therefore additional information and consultation requirements) are not triggered;</p> <p>1.2. relevant staff councils or staff forums exist (often set up under an information and consultation agreement pursuant to the Information and Consultation of Employees Regulations 2004) which impose information and consultation obligations on a share deal (depending on the terms of the specific agreement);</p> <p>1.3. the terms of any relevant collective agreement include any information and consultation obligations in relation to the share deal (only applicable if the UK employer recognises a trade union);</p> <p>1.4. a relevant European works council (EWC) exists if the purchaser is located in a different EU Member State.</p> |
| 2. Prepare | <p>the following in draft form:</p> <p>2.1. appropriate information pursuant to any agreements with staff councils/ staff forums or any relevant collective agreement (if applicable);</p> <p>2.2. appropriate information for the EWC, if relevant.</p>   |

- 2.3. There is no change in the identity of the employer on a share deal, and all current contractual rights and liabilities remain in place. The general principles of employment law apply to the transaction, but there are no additional 'share deal' employment law requirements.
- 2.4. Employees are usually unaffected by the mere fact of a share deal, as the change in ownership of shares does not change the employer. As a result, all their terms and conditions of employment remain the same.
- 3. Inform/Notify
  - 3.1. Although there is no general legal obligation to inform employees of a share deal, in practice employees are usually informed of the share deal.
  - 3.2. There may be relevant agreements which contain information obligations.
- 4. Consult
  - 4.1. Although there is no general legal obligation to inform or consult employees on a share deal, in practice employees are usually informed of the share deal, and consulted in accordance with normal UK employment law principles on any changes or measures which may affect them.
  - 4.2. There may be relevant agreements containing consultation obligations. Special consultation provisions exist under UK law for collective redundancies.
- 5. Implement
  - 5.1. Comply appropriately with any relevant agreements containing information and/or consultation obligations.

## B. Asset Deal

### ***1. Obligations of the seller***

- 1. Check
  - whether:
  - 1.1. the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the transaction. TUPE usually applies to asset deals. It imposes additional obligations on employers, and gives extra protection to employees in addition to normal UK employment laws.

- 1.2. relevant staff councils or staff forums exist (often established under an information and consultation agreement pursuant to the Information and Consultation of Employees Regulations 2004) imposing additional information and consultation obligations on an asset deal (depending on the terms of the specific agreement);
- 1.3. the terms of any relevant collective agreement include any information and consultation obligations in relation to the asset deal (only applicable if the UK employer recognises a trade union);
- 1.4. a relevant European works council (EWC) exists, if the purchaser is located in a different EU Member State.

## 2. Prepare

the following in draft form:

- 2.1. appropriate information to comply with TUPE information obligations;
- 2.2. appropriate information pursuant to any agreements with staff councils/ staff forums or any relevant collective agreement (if applicable);
- 2.3. appropriate information for the EWC if relevant.

## 3. Inform/Notify

- 3.1. Information (and possibly consultation) obligations will exist if TUPE applies. There will also be information (and consultation) obligations if collective redundancies are necessary. In both cases, information and consultation must involve the appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if there are none, elected employee representatives. Appropriate representatives may need to be elected and, if so, the seller should allow sufficient time to arrange and hold an election.

Information must be provided about the fact, date and reasons for the transfer, along with the legal, economic and social implications of the transfer, and whether any 'measures' in relation to the transfer which are envisaged will be taken either by the seller (transferor) or purchaser (transferee). A 'measure' includes any action, step, or arrangement relating to the affected employees.

- 3.2. If it is envisaged that 'measures' are to be taken, a duty to consult is triggered;

- 3.3. if other information obligations exist, ensure the appropriate information is sent to the relevant people (e.g. individual employees and/or representatives).
- 4. Consult
  - 4.1. There will be information, and possibly consultation, obligations if TUPE applies. There will also be information and consultation obligations if collective redundancies are necessary. In both cases, information and consultation must involve the appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if none exist, elected employee representatives. Appropriate representatives may need to be elected and, if so, the seller should allow sufficient time to arrange and hold the election.
  - 4.2. If it is envisaged that measures will be taken in relation to the transfer, then a duty to consult is triggered. Consultation must take place with a view to seeking agreement with the appropriate representatives.
  - 4.3. If other consultation obligations exist, ensure these are carried out with the appropriate people (e.g. the individual employees and/or their representatives). Special consultation provisions exist for collective redundancies under UK law.
- 5. Implement
  - 5.1. Although there is no set time limit specified by UK law, information and consultation under TUPE must take place sufficiently long before the transfer to allow for proper and effective consultation. The maximum penalty for failure to inform and consult is 13 weeks' actual pay per affected employee (which is a wider group of employees than just the employees being transferred). There is a 'special circumstances' defence if the employer can show that special circumstances existed which meant it was not reasonably practicable for it to comply with its duty, and that it took all such steps towards performing the duty as were reasonably practicable in the circumstances. In practice, however, it is hard to rely on this defence, since 'special circumstances' are usually exceptional and unforeseen.
  - 5.2. Comply appropriately with any relevant agreements containing information and/or consultation obligations.

## ***II. Obligations of the purchaser***

### 1. Check

whether:

- 1.1. the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the transaction. TUPE usually applies to asset deals. It imposes additional obligations on employers, and gives extra protection to employees in addition to normal UK employment laws.
- 1.2. relevant staff councils or staff forums exist (often established under an information and consultation agreement pursuant to the Information and Consultation of Employees Regulations 2004) imposing additional information and consultation obligations on an asset deal (depending on the terms of the specific agreement);
- 1.3. the terms of any relevant collective agreement include any information and consultation obligations in relation to the asset deal (only applicable if the UK employer recognises a trade union);
- 1.4. a relevant European works council (EWC) exists, if the seller is located in a different EU Member State.

### 2. Prepare

the following in draft form:

- 2.1. appropriate information to comply with TUPE information obligations;
- 2.2. appropriate information pursuant to any agreements with staff councils/ staff forums or any relevant collective agreement (if applicable);
- 2.3. appropriate information for the EWC if relevant.

### 3. Inform/Notify

- 3.1. Information (and possibly consultation) obligations will exist if TUPE applies. There will also be information (and consultation) obligations if collective redundancies are necessary. In both cases, information and consultation must involve the appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if there are none, elected employee representatives. Appropriate representatives may need to be elected and, if so, the purchaser should allow sufficient time to arrange and hold an election.

Information must be provided about the fact, date and reasons for the transfer, along with the legal, economic and social implications of the transfer, and any 'measures' in relation to the transfer which are envisaged will be taken either by the seller (transferor) or purchaser

(transferee). A 'measure' may include any action, step, or arrangement relating to the affected employees.

- 3.2. If it is envisaged that 'measures' are to be taken, a duty to consult is triggered.

#### 4. Consult

- 4.1. There will be information, and possibly consultation, obligations if TUPE applies. There will also be information and consultation obligations if collective redundancies are necessary. In both cases, information and consultation must involve the appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if none exist, elected employee representatives. Appropriate representatives may need to be elected and, if so, the purchaser should allow sufficient time to arrange and hold the election.
- 4.2. If it is envisaged for measures to be taken in relation to the transfer, then a duty to consult is triggered. Consultation must take place with a view to seeking agreement with the appropriate representatives.
- 4.3. If other consultation obligations exist, ensure these are being carried out with the appropriate people (e.g. the individual employees and/or their representatives). Special consultation provisions exist under UK law for collective redundancies.

#### 5. Implement

- 5.1. Although there is no set time limit specified by UK law, information and consultation under TUPE must take place sufficiently long before the transfer to allow for proper and effective consultation. The maximum penalty for failure to inform and consult is 13 weeks' actual pay per affected employee (which is a wider group of employees than just the employees being transferred). There is a 'special circumstances' defence if the employer can show that special circumstances existed which meant it was not reasonably practicable for it to comply with its duty, and that it took all such steps towards performing the duty as were reasonably practicable in the circumstances. In practice, however, it is hard to rely on this defence, since 'special circumstances' are usually exceptional and unforeseen.
- 5.2. Comply appropriately with any relevant agreements containing information and/or consultation obligations.

## C. Merger (except cross-border merger)

### 1. Check

whether:

- 1.1. the structure of the merger triggers the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE imposes additional obligations on employers and gives extra protection to employees in addition to normal UK employment laws;
- 1.2. relevant staff councils or staff forums exist (these are often set up under an information and consultation agreement pursuant to the Information and Consultation of Employees Regulations 2004) imposing information and consultation obligations relevant to the merger (depending on the terms of the specific agreement);
- 1.3. the terms of any relevant collective agreement include any information and consultation obligations relating to the merger (only applicable if the UK employer recognises a trade union);
- 1.4. the Takeover Code applies to the proposed merger, as the Code sets out rules and general principles regulating the conduct of some takeovers.

### 2. Prepare

the following in draft form:

- 2.1. the appropriate information to comply with TUPE information obligations (if TUPE applies);
- 2.2. the appropriate information pursuant to any agreements with staff councils/staff forums or any relevant collective agreement (if applicable).

### 3. Inform/Notify

- 3.1. There will be information (and possibly consultation) obligations if TUPE applies. There will also be information (and consultation) obligations if collective redundancies are necessary. In both cases, information and consultation must involve appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if none exist, elected employee representatives. Appropriate representatives may need to be elected and, if this is the case, the parties should allow sufficient time to arrange and hold any elections.

Under TUPE, information must be provided about the fact, date and reasons for the transfer, along with the legal, economic and social implications of the transfer and whether any 'measures' in relation to the transfer which are envisaged will be taken either by the seller

(transferor) or the purchaser (transferee). A 'measure' may include any action, step, or arrangement relating to the affected employees.

3.2. If it is envisaged that 'measures' will be taken, a duty to consult will then be triggered.

3.3. If there are other information obligations, ensure the appropriate information is sent to the relevant people (e.g. individual employees and/or representatives).

#### 4. Consult

4.1. There will be information, and possibly consultation, obligations if TUPE applies. There will also be information and consultation obligations if collective redundancies are necessary. In both cases, information and consultation must involve the appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if none exist, elected employee representatives. Appropriate representatives may need to be elected and, if so, the parties should allow sufficient time to arrange and hold the election.

4.2. If it is envisaged for measures to be taken in relation to the transfer, then a duty to consult is triggered. Consultation must take place with a view to seeking agreement with the appropriate representatives.

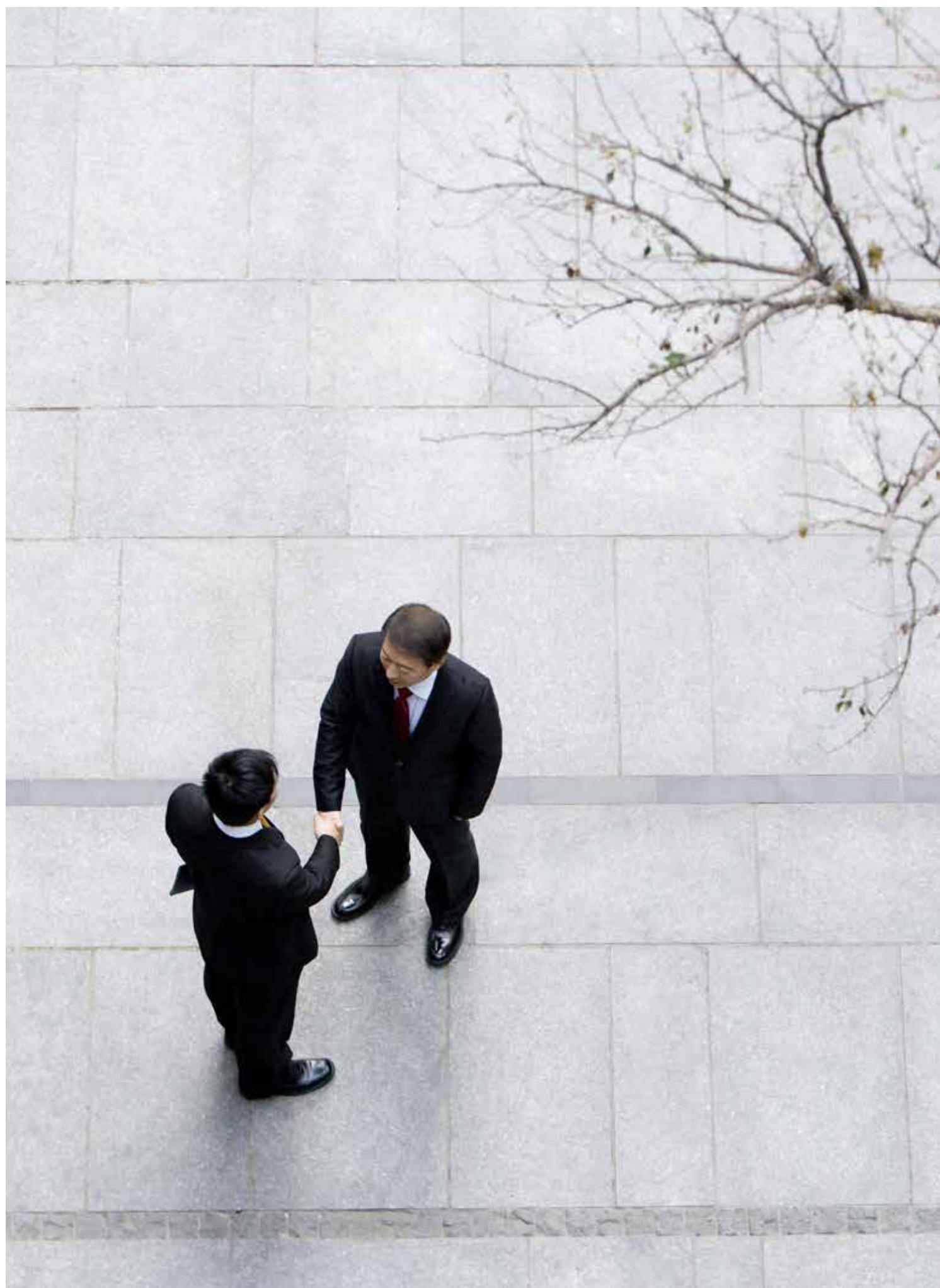
4.3. If other consultation obligations exist, ensure these are being carried out with the appropriate people (e.g. the individual employees and/or their representatives). Special consultation provisions exist under UK law for collective redundancies.



## 5. Implement

- 5.1. Although there is no set time limit specified by UK law, information and consultation under TUPE must take place sufficiently long before the transfer to allow for proper and effective consultation. The maximum penalty for failure to inform and consult is 13 weeks' actual pay per affected employee (which is a wider group of employees than just the employees being transferred). There is a 'special circumstances' defence if the employer can show that special circumstances existed which meant it was not reasonably practicable for it to comply with its duty, and that it took all such steps towards performing the duty as were reasonably practicable in the circumstances. In practice, however, it is hard to rely on this defence, since 'special circumstances' are usually exceptional and unforeseen.
- 5.2. Comply appropriately with any relevant agreements containing information and/or consultation obligations.





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