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# CMS Guide to Employment Issues in M&A Transactions

2019



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# Introduction

While mergers and acquisitions (M&A) tend to be led by corporate or tax lawyers, dealing effectively with the employment law issues can significantly improve the chances of a successful transfer. The importance of employment law and the types of difficulties that arise depend on the nature of the individual transaction, but a failure to adequately examine the existing rights and obligations between the target company and its staff can result in expensive employment claims, administrative fines and other liabilities.

The employment lawyers on the team must carry out due diligence to identify any potential problems with collective bargaining agreements, misclassification of employees (e.g. as freelance), pension schemes, employee benefits, accrued and as-yet unpaid time off, existing legal claims and potential legal claims. They can also help design layoff and retention strategies, ensure regulatory compliance, harmonise employment practices in the new combined entity and deal with cross-border clashes in employment culture.

This CMS Guide to Employment Issues in M&A Transactions provides a comprehensive overview of the employment law requirements to be taken into account when dealing with an M&A transaction in any one of 31 jurisdictions. This guide offers a valuable resource to help with the planning necessary to manage risk and avoid major problems during every stage of the integration process. Should you need more detailed advice, please contact any of the CMS employment law specialists in your country, who can offer you efficient and effective support to achieve your business goals.



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## CMS Employment Group

The CMS Employment Group advises national and international organisations on the employment law issues which affect businesses operating across Europe, Asia and Latin America. 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 400 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, privatisation
- Enforcement of restrictive covenants and confidentiality provisions
- Drafting employment contracts, company policies and collective agreements
- Works councils at company, national and international levels
- Collective bargaining
- Court litigation in employment matters
- Compliance with occupational health and safety regulations
- New forms of employment
- GDPR

# Albania



## A. Share deal

### I. 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 process carried out on 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, employees' 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 employees' representatives regarding:
  - the contemplated restructure and the date on which this restructuring will be carried out;
  - the reasons for the restructuring;
  - the potential 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 the filing with the companies 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

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, internal regulation of the target, etc. Such rights may include additional entitlements in the event of a share sale, etc.;
- 1.3. any special rights to information and/or consultation exist other than those provided for in the Albanian Labour Code.

2. Prepare

the following in draft form:

- 2.1. appropriate information in written form to the employees' representatives and/or employees at least 30 days before the transaction takes place, setting out:
  - 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 measures to mitigate such consequences.

3. Inform/Notify	<p>3.1. trade union representatives and/or employees' representatives of the transfer regarding:</p> <ul style="list-style-type: none"> <li>— the contemplated restructure and the date on which this restructuring will be carried out;</li> <li>— the reasons for the restructuring;</li> <li>— the potential 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 planned restructuring takes place. Trade union representatives and employees' representatives must in turn 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>	2. Prepare	<p>the following in draft form:</p> <p>2.1. notification letters to the employees' representatives, or the union representatives, informing of:</p> <ul style="list-style-type: none"> <li>— the possible changes to the employer's structure and the respective dates on which these changes are planned to be implemented;</li> <li>— the reasons for the above-mentioned changes;</li> <li>— the possible legal, economic and social implications of the changes to the employees.</li> </ul> <p>2.2. the information listed in section 2.1. above, to be presented to the employees' representatives at least 30 days before the transaction takes place;</p> <p>2.3. amendments to the existing staff schedule reflecting the changes in the workforce of the seller as a result of the transaction;</p> <p>2.4. the relevant information pursuant to any individual or collective bargaining agreement, or internal regulations of the seller (if applicable).</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-day of notification period.</p>	3. Inform/Notify	<p>3.1. trade union representatives and employees' representatives of the seller regarding:</p> <ul style="list-style-type: none"> <li>— the proposed new structure and the date on which this restructuring will be carried out;</li> <li>— the reasons for the restructuring;</li> <li>— the potential legal, economic and social impact of the restructuring for employees.</li> </ul>
5. Implement	<p>5.1. Closing formalities with regard to the filing with the commercial register of a share transfer agreement signed between the parties, approvals of the competition authority (if applicable), etc.</p>		<p>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.</p> <p>3.3. In cases where trade union organisations' representatives or employees' representatives do not exist, the employer must make such information available, publishing it in every workplace.</p>
	<p><b>B. Asset deal</b></p>		
	<p><b><i>I. Obligations of the seller</i></b></p>		
1. Check	<p>whether:</p> <p>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;</p> <p>1.2. one or more employees will be transferred to the purchaser of the assets as a result of the contemplated transfer;</p> <p>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.</p>	4. Consult	<p>4.1. Where measures are being planned, the employer is obliged to consult the trade union organisations' representatives and/or employees' representatives, and to strive to reach an agreement with such organisations.</p>

5. Implement	<p>5.1. Any relevant agreements and regulations containing information and/or consultation obligations must be fulfilled by the employer.</p> <p>5.2. The file and data on every transferred employee must be handed over to the purchaser.</p>	<p>2.2. the information listed in section 2.1. above to be presented to employees' representatives at least 30 days before the transaction takes place;</p> <p>2.3. any amendments to the existing staff schedule, incorporating new job positions and/or any transferred employees as a result of the transaction.</p>
1. Check	<p><b>II. Obligations of the purchaser</b></p> <p>whether:</p> <p>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;</p> <p>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;</p> <p>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.</p>	<p>3. Inform/Notify</p> <p>3.1. trade union representatives and employees' representatives of the purchaser regarding:</p> <ul style="list-style-type: none"> <li>— the proposed new structure and the date on which this restructuring will be carried out;</li> <li>— the reasons for the restructuring;</li> <li>— the potential 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 seller must be notified at least 30 days before the restructuring takes place.</p> <p>3.3. In cases where trade union organisations' representatives or employees' representatives do not exist, the employer must make such information available, publishing it in every workplace.</p> <p>3.4. The terms for informing and consulting employees' representatives must be prepared in writing.</p>
2. Prepare	<p>the following in draft form:</p> <p>2.1. in case of an operational change, the seller has to send notification letters to the employees' representatives or the union representatives informing of:</p> <ul style="list-style-type: none"> <li>— the possible changes to the employer's structure and the respective dates on which these changes are planned to be implemented;</li> <li>— the reasons for the above-mentioned changes;</li> <li>— the potential legal, economic and social implications of the changes for the employees;</li> <li>— the measures to be implemented to fulfil the existing obligations of the employer towards its employees.</li> </ul>	<p>4. Consult</p> <p>4.1. The purchaser is not subject to any consultation process. The consultation with the trade union organisations' representatives and/or employees' representatives is an obligation imposed on the seller only;</p> <p>5. Implement</p> <p>5.1. The purchaser must provide the transferred employees of the target company with the same working conditions they enjoyed previously.</p> <p>5.2. If the transferred employees of the target company were subject to a collective agreement, the latter remains valid until its expiry.</p> <p>5.3. Provide each of the transferred employees with a copy of all HR policies, rules and regulations used by the purchaser, if applicable.</p> <p>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.</p>

### 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 where 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 entity) 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'). Generally speaking this will not 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 employment law in such share deal arrangements. See Section B. Asset deal for important rules relating to asset deals.

### II. Obligations of the 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'). Generally speaking this will not 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 employment law in such share deal arrangements. See Section B. Asset deal for important rules relating to asset deals.

## B. Asset deal

### I. Obligations of the 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 not entitled to the pertinent benefits. Claims raised in this regard may entail the obligation to provide additional social security contributions, taxes, bonuses, annual leave 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 permanent 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 affected employees must be provided with certain written information in advance (if a works council has been set up, 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 planned measures 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. In this instance, the recommendation would be to consult with the purchaser and reach an agreement in this regard.

5. Implement

- 5.1. Subject to consideration of the above.

1. Check	<p><b>II. Obligations of the purchaser</b></p> <p>whether:</p> <p>1.1. the circumstances of the deal do, in fact, trigger a requirement for a transfer of undertakings (<i>‘Betriebsübergang’</i>) pursuant to Council Directive 2001/23/EC and its Austrian counterpart, the Austrian Act on the Amendment of Employment Contracts (<i>‘AVRAG’</i>). 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;</p> <p>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);</p> <p>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, 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);</p> <p>1.4. any employees enjoy special termination protection. This applies to employees’ representatives, persons registered disabled, persons on parental leave, and persons performing military or community service. Such employees may only be dismissed with the prior consent of a competent court or authority;</p> <p>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, <i>‘ArbVG’</i>);</p> <p>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.</p>	<p>2. Prepare</p> <p>3. Inform/Notify</p> <p>4. Consult</p> <p>5. Implement</p> <p>1. Check</p>	<p>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.</p> <p>3.1. Every individual employee must be notified by the seller of any change to their working conditions as a result of the deal (§ 3, AVRAG).</p> <p>4.1. Employees who notice any deterioration in their working conditions as a result of the deal and on the back of a change to the applicable collective bargaining agreement or works agreements may terminate their employment while still being entitled to all the benefits that would usually only apply in the event of an unfair dismissal by the employer (§ 3 (5) AVRAG). It is therefore recommended to consult any such employees to avoid the potentially costly consequences of employer termination without just cause.</p> <p>5.1. Subject to consideration of the above.</p> <p><b>C. Merger (except cross-border merger)</b></p> <p>whether:</p> <p>1.1. the identity of the employer changes for the employees (this will always be the case for all employees in the event of a merger under which a newco is created); or</p> <p>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);</p> <p>1.3. in the event of a merger pursuant to section 1.1., all pre-merger companies are subject to the obligations of the seller in an asset deal (see section B. I.), whereas the post-merger company is subject to the obligations of the purchaser in an asset deal (see section B. II, above);</p> <p>1.4. in the event of a merger pursuant to section 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 section 1.3.</p>
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# Belgium

## A. Share deal

### I. Obligations of the purchaser

1. Check

whether:

- 1.1. there is a representative body, be it a works council, a trade union delegation or a health and safety committee. In principle, the works council has the authority to be informed and consulted. In the absence of a works council, the trade union delegation is considered competent. In the absence of either of these representative 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. in case of takeover bid, a notification for the attention of the works council regarding the launch of the takeover bid; the works council (or the employees if there is no representative body) 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 about the takeover bid as soon as it is made public. If there is no representative body, the employees must be informed about the bid.

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.

1. Check

### II. Obligations of the target

whether:

- 1.1. there is a representative body, be it a works council, a trade union delegation or a health and safety committee. In principle, the works council has the authority to be informed and consulted. In the absence of a works council, the trade union delegation is considered 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. in case of takeover bid, a notification for the attention of the works council regarding the launch of the takeover bid; the works council (or the employees if there is no representative body) must also be provided with a copy of the prospectus.

3. Inform/Notify

- 3.1. the works council about the share deal "in a timely manner and prior to any public release";
- 3.2. the works council about the takeover bid as soon as it is made public. If there is no representative body, the employees must be informed.

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 working 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

### I. Obligations of the seller

1. Check

whether:

- 1.1. there is a representative body, be it a works council, a trade union delegation or a health and safety committee. In principle, the works council has the authority to be informed and consulted. In the absence of a works council, the trade union delegation is considered competent. In the absence of either of these representative 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. working conditions deriving from individual and/or collective bargaining agreements (including pension schemes) are applicable to the employees 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 even though this is not mandatory (once the consultation with the works council is over, a more general notification is usually issued to all staff first).
- 3.1. the works council about the transfer, "in a timely manner and prior to any public release".
- 3.2. in case of a transfer of undertakings, if there is no representative body, prior to the transfer, the involved employees about:
  - the transfer date;
  - the reason for the transfer;
  - the legal, economic and social consequences of the transfer on employees;
  - the contemplated measures towards employees.

3. Inform/Notify

4. Consult

5. Implement

1. Check

2. Prepare

- 4.1. the works council about the consequences (if any) of the asset deal for the workforce, employment policy or labour conditions.
- 5.1. the decision to transfer assets. In principle, all collective and individual working and salary conditions are maintained after the transfer. The transfer in itself may not lead to dismissal or a (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. These are included in the individual letters, depending on the date the transaction takes place.

### II. Obligations of the purchaser

whether:

- 1.1. there is a representative body, be it a works council, a trade union delegation or a health and safety committee. In principle, the works council has the authority to be informed and consulted. In the absence of a works council, the trade union delegation is considered 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. working conditions deriving from individual and/or collective labour agreements (including pension schemes) are applicable to the employees being taken over.

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 even though this is not mandatory (once the advice of the works council has been obtained, a more general notification is usually issued to all staff first).

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 collective and individual working and salary conditions are maintained after the transfer. The transfer in itself may not lead to employment termination or a (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. These are included in the individual letters, depending on the date the transaction takes place.

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

Belgian employment law equates a merger with a transfer of undertakings: see Section B. Asset deal.





## A. Share deal

### I. 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. a European Works Council 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. written information to the trade union representatives and/or employees' representatives where provided for in an internal regulation of the purchaser or collective bargaining agreement.

3. Inform/Notify

- 3.1. trade union representatives and employees' representatives, if the purchaser is contemplating a 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 employees' representatives must be consulted if the purchaser is contemplating a major restructuring related to the workforce of the acquired target, e.g. mass layoffs, after the share transfer. If this is the case, the employer is obliged to carry out consultations with its employees, although this is not a direct obligation of the purchaser relating to the share deal.

5. Implement

- 5.1. the formalities related to the execution of a share deal, such as mandatory registrations in companies registers, approvals of competition protection authorities, etc. These would not normally trigger direct obligations related to employees.

1. Check

### II. Obligations of the target

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 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. a European Works Council 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 European Works Council if relevant;
- 2.2. written information to the trade union representatives and/or employees' representatives where provided for in an internal regulation of the purchaser or a 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 mandatory registrations in companies registers, approvals of competition protection authorities, etc. These would not normally trigger direct obligations related to employees, however. In the transfer of shares in a limited liability company, the manager of the target and the seller have to declare that there are no outstanding liabilities relating to employee salaries, compensation and mandatory social security contributions, including with respect to employees whose employment relationship with the target has been terminated during the three years prior to the share deal.

## B. Asset deal

### I. Obligations of the purchaser

1. Check

whether:

- 1.1. any employees' representatives exist who have been elected by the general assembly of all employees at the company;
- 1.2. there is any trade union present in the target;
- 1.3. a European Works Council exists if the target is located in a different EU Member State;
- 1.4. the deal would trigger a transfer of undertakings, i.e. whether the asset deal also involves the transfer of business activity;
- 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, the 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 employees' representatives as described in section 1.1. above, or the union representatives described in section 1.2. above, relating to:
  - the planned changes to the employer's structure and the respective dates on which these changes are to take place;
  - the reasons for the above-mentioned changes;
  - the possible legal, economic and social implications of the changes for the employees;
  - the measures envisaged in relation to employees, including such measures being planned to fulfil the existing obligations of the employer towards employees.

3. Inform/Notify

4. Consult

5. Implement

- 2.2. the information described in section 2.1. above, to be presented to the employees' representatives at least two months prior to the change being made, if the asset deal triggers a transfer of undertakings;
- 2.3. information to the European Works Council if section 1.3. 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).
- 3.1. trade union representatives and employees' representatives of the seller regarding each item under section 2.1. Employees of the seller must be notified at least two months before the planned restructuring takes place. Trade union representatives and employees' 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 employees' representatives as described in sections 1.1. and 1.2. above do not exist, the employer must provide the relevant employees with the respective information.
- 3.3. There are no requirements regarding the form in which the information has to be provided. It may therefore be either oral or in writing.
- 4.1. In the event that measures are being planned as described in section 2.1. d) above, the employer is obliged to consult the trade union organisations' representatives and employees' representatives, and to strive to reach an agreement with those organisations.
- 5.1. Any relevant agreements and regulations containing information and/or consultation obligations must be complied with accordingly.
- 5.2. The file of every transferred employee must be handed over to the purchaser.

1. Check	<p><b>II. Obligations of the purchaser</b></p> <p>whether:</p> <ol style="list-style-type: none"> <li>1.1. any employees' representatives exist who have been elected by the general assembly of all employees at the company;</li> <li>1.2. there is any trade union present in the target;</li> <li>1.3. a European Works Council exists if the target is located in a different EU Member State;</li> <li>1.4. the deal would trigger a transfer of undertakings, i.e. whether the asset deal also involves the transfer of business activity;</li> <li>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, the 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 which payment scheme applies 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;</li> <li>1.6. any collective bargaining agreements exist which will remain in force for the purchaser as an employer of the transferred employees;</li> <li>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.</li> </ol>	2. Prepare	<p>the following in draft form:</p> <ol style="list-style-type: none"> <li>2.1. notification letters to the employees' representatives as described in section 1.1. above or trade union representatives described in section 1.2. above relating to: <ul style="list-style-type: none"> <li>— the planned changes to the employer's structure and the respective dates on which these changes are to take place;</li> <li>— the reasons for the above-mentioned changes;</li> <li>— the possible legal, economic and social implications of the changes for the employees;</li> <li>— the measures envisaged in relation to employees, including such planned measures to fulfil the existing obligations of the employer towards its employees.</li> </ul> </li> <li>2.2. the information described in section 2.1. above to be presented to employees' representatives in good time, but no later than two months before the employees are directly affected by the changes;</li> <li>2.3. this information for the European Works Council if section 1.2. above applies;</li> <li>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.</li> </ol> <ol style="list-style-type: none"> <li>3.1. trade union representatives and employees' representatives of the seller regarding each item under section 2.1. Employees of the purchaser must be notified at least two months before the planned restructuring takes place. Trade union representatives and employees' 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.</li> <li>3.2. In cases where trade union organisations' representatives or factory and office employees' representatives as described in sections 1.1. and 1.2. above do not exist, the employer must provide the relevant employees with the respective information.</li> <li>3.3. The terms for informing and consulting employees' representatives must be regulated in a settlement between them and the employer, although 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.</li> <li>3.4. the National Revenue Agency after the restructuring takes place, registering the purchaser as a new employer.</li> </ol>
		3. Inform/Notify	

4. Consult
- 4.1. trade union representatives and employees' 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 records 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 the policies to indicate they have read and understood them.
- 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 them.

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

1. Check
- whether:
- 1.1. any employees' representatives exist who have been elected by the general assembly of all employees at the company;
- 1.2. there is any trade union present in the target;
- 1.3. a European Works Council exists if the target is located in a different EU Member State;
- 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;

#### 2. Prepare

#### 3. Inform/Notify

- 1.6. any collective bargaining agreements exist which will remain in force for the purchaser as the employer of the transferred employees.

the following in draft form:

- 2.1. notification letters to the employees' representatives as described in section 1.1., or trade union representatives described in section 1.2., relating to:
- the planned changes to the employer's structure and the respective dates on which these changes are to take place;
  - the reasons for the above-mentioned changes;
  - the possible legal, economic and social implications of the changes for the employees;
  - the measures envisaged in relation to employees, including such planned measures to fulfil the existing obligations of the employer towards employees.
- 2.2. the information described in section 2.1. above to be presented to employees' representatives in good time, but no later than two months before the employees are directly affected by the changes;
- 2.3. this information for the European Works Council if section 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.
- 3.1. Trade union representatives and employees' representatives of the disappearing and surviving entities must be informed by both the transferring and acquiring employers of: (I) the planned restructuring, 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 planned measures 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 employees' representatives shall be regulated in a settlement between them and the employer, although in general there are no requirements regarding the exact form. It may therefore be in either oral or written form.

3.4. In cases where trade union organisations' representatives or factory and office employees' representatives as described in sections 1.1. and 1.3. do not exist, the employer must provide the relevant employees with the respective information.

3.5. 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 employees' 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 records 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 policies.

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 them.



# 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 stipulate 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 which govern 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 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 which govern 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 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 the 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

- 3.1. The target company is required by statutory law to seek the thoughts 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 state-owned assets which may lead to mass redundancies or the dismissal of employees, the target company 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 the collective bargaining agreement or internal regulations in force at the target company.
- 4.2. If the transaction is related to the transfer of state-owned assets which may lead to mass redundancies or the dismissal of employees, an employee settlement plan shall be approved by the employees' representative congress of the target company.

5. Implement

- 5.1. Not applicable, unless stated otherwise in the 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.

## B. Asset deal

### I. Obligations of the seller

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations grant individual employees or group employees 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 which govern 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 the assets of a state-owned company, a local company or a foreign-invested company.

1. Check

## 2. Prepare

the following in draft form:

- 2.1. No documents need to be prepared unless stated otherwise in the 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 thoughts 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 which might cause the transfer of the employees, 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 the 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 which might cause the transfer of the employees, an employee settlement plan shall be approved by the employees' representative congress of the seller.

## 5. Implement

- 5.1. If the seller and 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. Implementation becomes effective on the date as agreed by the seller, the purchaser and the transferred employee.

## 1. Check

## 2. Prepare

## 3. Inform/Notify

## 4. Consult

## 5. Implement

**II. Obligations of the purchaser**

whether:

- 1.1. any individual employment agreements, collective bargaining agreements or internal regulations of the seller exist which may stipulate 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 which govern 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.
  - 2.1. Not applicable
  - 3.1. Not applicable
  - 4.1. Not applicable
  - 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 agreed otherwise. The rights and obligations of the transferred employees with the purchaser are subject to the new employment contract.
  - 5.2. Implementation becomes 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 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 which govern the information and/or consultation of the trade union in connection with the transaction;
- 1.3. the company(ies) involved in the merger is/are state-owned.

#### 2. Prepare

- 2.1. No documents need to be prepared unless stated otherwise in the 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/are state-owned, an employee settlement plan shall be prepared.

#### 3. Inform/Notify

- 3.1. The company(ies) involved in the merger is/are required by statutory law to seek the thoughts 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, where 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

- 4.1. Not applicable, unless stated otherwise in the collective bargaining agreement or internal regulations in force at the company(ies) involved in the merger.
- 4.3. If a state-owned company is engaged in the merger, where 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.

#### 5. Implement

- 5.1. The employment contracts between the employees and the company(ies) involved in the merger shall remain 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.
- 5.2. Implementation becomes effective on the date when the amended business licence of the surviving entity (in the case of merger by absorption) or a new business licence for the new entity (in case of merger by the creation of a newco) is issued.

# Colombia

## A. Share deal

### I. Obligations of the purchaser

#### 1. Check

1.1. In general, no consequences for working conditions and no notifications are necessary as there is no change of employer.

But check whether:

1.2. any individual employee or groups of employees enjoy special rights as a result of the share deal (e.g. golden parachute rights, compensation rights in the event of a share deal, stock option rights, among others) which may be set out in an individual employment contract, collective agreement, internal regulation of the target, etc. Please note this remains rare in Colombia;

1.3. a mere 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;

1.4. any risks are identified during the due diligence process carried out on the target company, e.g. any pending employment-related litigation, inspections by labour control authorities, etc.

#### 2. Prepare

2.1. Not applicable, unless stated otherwise in the individual employment agreement, collective bargaining agreement or internal regulations in force at the target company.

#### 3. Inform/ Notify

3.1. Not applicable, unless stated otherwise in an individual employment agreement, collective bargaining agreement or internal regulations in force at the target company.

#### 4. Consult

4.1. The purchaser is not obliged to consult with the employees of the target company.

#### 5. Implement

5.1. Closing formalities regarding the execution of a share deal, such as filing the registration of the operation carried out between the parties in the shareholder register book, issuance of the share certificates, approvals of the competition authority (if applicable), etc. However, these would not normally trigger direct obligations related to employees.

#### 1. Check

1.1. In general, no consequences for working conditions and no notifications are necessary as there is no change of employer.

But check whether:

1.2. any individual employee or groups of employees enjoy special rights as a result of the share deal (e.g. golden parachute rights, compensation rights in the event of a share deal, stock option rights, among others) which may be set out in an individual employment contract, internal regulation of the target, etc. Please note this remains rare in Colombia;

1.3. a mere 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. No documents need to be prepared unless stated otherwise in the individual employment agreement, collective bargaining agreement or internal regulations in force at the target company.

#### 3. Inform/ Notify

3.1. Not applicable, unless stated otherwise in the individual employment agreement, collective bargaining agreement or internal regulations in force at the target company.

#### 4. Consult

4.1. Not applicable, unless stated otherwise in the individual employment agreement, collective bargaining agreement or internal regulations in force at the target company.

#### 5. Implement

5.1. Closing formalities regarding the execution of a share deal, such as filing the registration of the operation carried out between the parties in the shareholder register book, issuance of the share certificates, approvals of the competition authority (if applicable), etc. However, these would not normally trigger direct obligations related to employees.

## B. Asset deal

### I. Obligations of the seller

1. Check

whether:

- 1.1. sufficient reserves have been accrued to cover all theoretical fringe benefits and company pension entitlements at the time of the deal;
- 1.2. one or more employees will be transferred to the purchaser of the assets as a result of the contemplated transfer;
- 1.3. the working conditions deriving from individual and/or collective bargaining agreements (including pension schemes) are applicable to employees affected by the transfer;
- 1.4. the relevant employment files and information in connection with the transferred employees are complete and up to date;
- 1.5. 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;
- 1.6. any measures affecting the employees – such as dismissals, salary reductions or any other substantial modification that may have a negative impact regarding the working conditions of the employees – is intended once the transaction is implemented. If this is the case, the employees must not only be *informed* but also *consulted* in good time prior to a decision over such measures being taken.
- 1.7. 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.

2. Prepare

- 2.1. Since all affected employment relationships are transferred from the seller to the purchaser *ipso jure*, no contractual agreement is mandatory in this regard. Nevertheless, it is recommended to prepare the following documents:
  - a Transfer Agreement between the seller and purchaser pursuant to Articles 67 *et seq* of the Colombian Labour Code. Further representations and indemnities are usually included in the pointed agreement on behalf of the purchaser;
  - notification letters to the employees providing for:
    - the change related to the new employer (i.e. the purchaser) and the respective date on which this change is planned to be implemented;
    - the possible legal implications derived from the transfer.
- 2.2. the relevant information pursuant to any individual or collective bargaining agreement, or internal regulations of the seller (if applicable) subject to be transferred.

3. Inform/ Notify

- 3.1. All affected employees must be provided with certain written information in advance. Such information must include the name of the new employer (i.e. the purchaser), the date of the transfer and the legal consequences thereof.
- 3.2. the Colombian Pensions, Health and Occupational Risk Insurance organisations about the transfer of the employees to a new employer (i.e. the purchaser). This notice must be provided to the respective addressees 'in good time' (i.e. upon execution of the transfer).
- 3.3. the Colombian National Service of Apprentices (SENA) about the transfer of the employees to a new employer (i.e. the purchaser) and the decrease in the number of employees.
- 3.4. the trade union representatives and employees' representatives if stated in the collective bargaining agreement.

4. Consult

- 4.1. The seller is not subject to any consultation or approval in advance from the transferred employees or trade union representatives.

## 5. Implement

- 5.1. In principle, all working and salary conditions are maintained after the transfer, although it is possible to harmonise differences in these conditions through an amendment of the employment agreement. The transfer may not in itself lead to an employment termination or (unilateral) change of working conditions. After the transaction, the seller and purchaser remain jointly and severally liable for the seller's obligations which existed prior to the transaction.
- 5.2. The file and information of every transferred employee must be handed over to the purchaser (e.g. payroll files, information regarding the Social Security entities where the transferred employees are enrolled, annual leave records, benefits and additional allowances, outstanding loans and promissory notes, among others).

**II. Obligations of the purchaser**

## 1. Check

whether:

- 1.1. 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, vacation entitlements, etc;
- 1.2. any employees enjoy special termination protection. This applies to disabled persons, persons on parental leave, persons on medical leave and trade union representatives. Such employees may only be terminated with the prior consent of a competent court or authority;
- 1.3. any current authorisation to work overtime was issued by the Colombian Ministry of Labour to the seller;
- 1.4. a works council or trade union has been set up, or pertinent agreements are in place (if so, the above-mentioned bodies shall continue their activities);
- 1.5. any trade union exists at the seller, and whether any provision of the collective bargaining agreement at the seller mandates the information and/or consultation of the trade union in connection with the transaction;
- 1.6. a collective bargaining agreement has been concluded (if so, a collective bargaining agreement which applied to employees before the change of employer continues to apply until a new collective bargaining agreement is concluded);

## 2. Prepare

- 1.7. 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;
- 1.8. the seller has fulfilled all of its obligations towards former employees, such as outstanding salaries, fringe benefits, social security contributions, reinstatement guarantees, etc. This is because both the former and the new employer will be jointly and severally liable for any such outstanding liabilities as a result of the asset deal;
- 1.9. the asset deal would impact: (I) the recent and future economic status of the company; (II) the status, structure and future evolution of the workforce; and (III) the organisation of the workforce and employment contractual and collective relationships;
- 1.10. any measure affecting the employees – such as employment terminations, salary reductions or any other substantial modification which may have a negative impact regarding the employment conditions of the employees – is intended once the transaction is implemented. If this is the case, the employees themselves must not only be *informed*, but also *consulted* in good time prior to a decision over such measures being taken.
- 2.1. Since all affected employment relationships are transferred from the seller to the purchaser *ipso jure*, no contractual agreement is necessary in this regard. Nevertheless, it is recommended to prepare the following document:  
— a Transfer Agreement between the seller and purchaser pursuant to Articles 67 *et seq* of the Colombian Labour Code. Further representations and indemnities are usually included in the pointed agreement on behalf of the purchaser.

Also, the purchaser shall prepare the following in draft form:

- 2.2. information for the Colombian Pension, Health and Occupational Risk Insurance organisations about the transfer of the employees. An additional report must be carried out through the online platform for paying social security contributions (PILA) informing of the transfer and the new employee in charge of the payment;
- 2.3. information for the Colombian National Service of Apprentices (SENA) about the transfer of the employees for the purpose of regulating the apprenticeship quota, if applicable;
- 2.4. information for the Colombian Ministry of Labour aimed at the issuance or transfer of the overtime authorisation;

## 3. Inform/ Notify

2.5. information for the Colombian Ministry of Labour informing of the transfer of employees for the relevant effects on the trade union relationships or the collective bargaining agreements in force.

3.1. the Colombian Pension, Health and Occupational Risk Insurance organisations about the transfer of the employees. This notice must be provided to the respective addressees 'in good time' (e.g. to the Occupational Risk Insurance within 24 hours before the transfer/ initiation of the activities).

3.2. An additional report must be carried out through the online platform for paying social security contributions (PILA) informing of the transfer and the new employee in charge of the payment.

3.3. the Colombian National Service of Apprentices (SENA) about the transfer of the employees for the purpose of regulating of the apprenticeship quota, if applicable.

3.4. the Colombian Ministry of Labour regarding the information indicated in sections 2.4. and 2.5. above, if applicable.

## 4. Consult

4.1. Consultation regarding measures affecting employees on the back of the transaction must be carried out in good time prior to a decision on such measures being taken.

## 5. Implement

5.1. The purchaser must provide the transferred employees of the target company with the same working conditions they enjoyed previously.

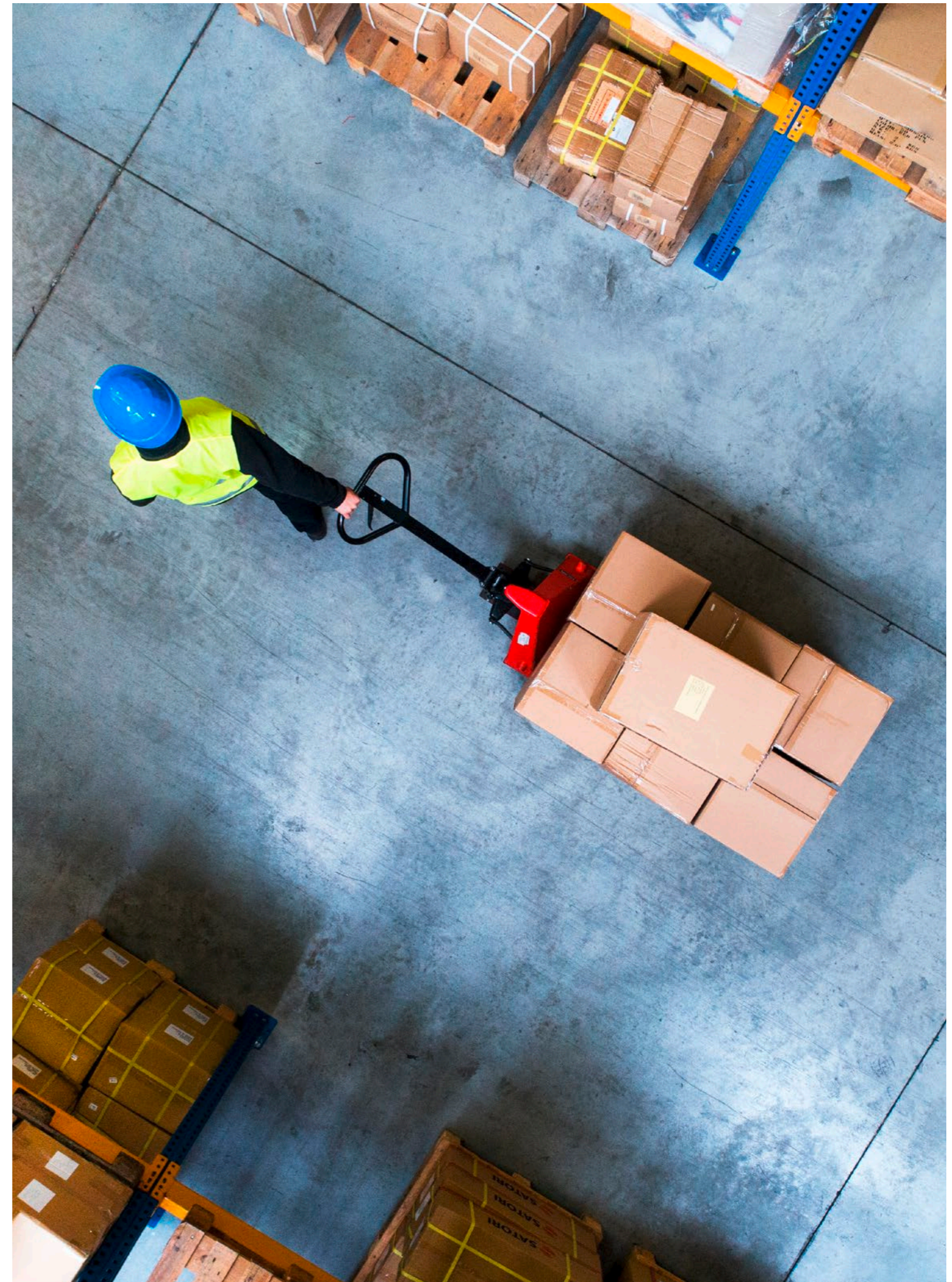
5.2. If the transferred employees of the target company were subject to a collective agreement, the latter remains valid until its expiry.

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 them.

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

The steps, rules, and regulations applicable to a merger transaction are similar to Section B. Asset deal above.



# Croatia



## A. Share deal

### I. 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 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);
- 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 hold 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, 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 employment law status of employees of the offeree company and offeror company).

2. Prepare

the following in draft form:

- 2.1. information for the Croatian Pension Insurance Institute about the beginning of the obligation;
- 2.2. information for 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 sections 1.–4.

### II. Obligations of the target

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.

the following in draft form:

- 2.1. comprehensive 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 affected employees (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 for the Croatian Pension Insurance Institute regarding the end of the obligation;
- 2.4. information for the Croatian Institute for Health Insurance regarding the end of the obligation;
- 2.5. in cases such as those described in section 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;

3. Inform/Notify	<p>2.6. in cases such as those described in section 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.</p> <p>3.1. Forward the information drafted for the attention of the respective addressee 'in good time' (in cases such as those described in section 2.2., this means before the date of the transfer; in cases such as those described in section 2.3., within 24 hours of the obligation having been terminated; in cases such as those prescribed in section 2.4., within eight days of the obligation having been terminated; in cases such as those described in section 2.5., it should be done immediately; and in cases such as those described in section 2.6., above, within five days after the day on which the takeover bid is announced).</p>	2. Prepare	<p>the following in draft form:</p> <p>2.1. comprehensive and accurate information in written form for the attention of the new employer regarding the rights of employees whose employment contracts are being transferred;</p> <p>2.2. information regarding the transfer in written form for the attention of the works council and any affected employees (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);</p> <p>2.3. information for the Croatian Pension Insurance Institute regarding the end of the obligation;</p> <p>2.4. information for the Croatian Institute for Health Insurance regarding the end of the obligation.</p>
4. Consult	<p>4.1. The employer must consult the works council regarding the transaction under consideration and provide the works council with key information to understand its impact on the employees' position. 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).</p>	3. Inform/Notify	<p>3.1. Forward the information drafted for the attention of the respective addressees 'in good time' (in cases such as those described in section 2.2., above, before the date of the transfer; in cases such as those described in section 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).</p>
5. Implement	<p>5.1. In accordance with sections 1.–4.</p>	4. Consult	<p>4.1. The employer must consult the works council regarding the transaction under consideration and provide the works council with key information to understand 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).</p>
1. Check	<p><b>B. Asset deal</b></p> <p><b><i>I. Obligations of the seller</i></b></p> <p>whether:</p> <p>1.1. a collective agreement exists;</p> <p>1.2. a works council exists;</p> <p>1.3. a shop steward has been nominated (if a works council does not exist).</p>	5. Implement	<p>5.1. In accordance with sections 1.–4.</p>

## II. 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, a collective agreement concluded, or an agreement between the works council and the employer);
- 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);
- 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 hold joint and several liability together with the previous employer regarding those obligations towards employees which arose before the date of transfer).

### 2. Prepare

the following in draft form:

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

### 3. Inform/Notify

### 4. Consult

- 4.1. No consultation requirement.

### 5. Implement

- 5.1. In accordance with sections 1.–4., above.

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

The regulations 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

### I. Obligations of the seller<sup>1</sup>

- 1. Check
  - whether:
  - 1.1. any internal regulations exist at the companies involved which grant individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes, etc.). Please note that this remains rare in the Czech Republic;
  - 1.2. the share deal will trigger any implications and measures for the employees (such as a change of working conditions) as set out in Articles 279 and 280 of Act 262/2006, Coll., Labour Code, as amended (the "Labour Code");
  - 1.3. any employees' 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.
- 2. Prepare
  - 2.1. Not applicable, unless stated otherwise in a collective bargaining agreement or the internal regulations in force.
- 3. Inform/Notify
  - 3.1. the employees' representatives. In the absence of such bodies, all employees set to be affected should be informed about the change of the employer's ownership structure and other implications and measures (and changes thereof) specified in Article 279 of the Labour Code, if triggered due to the share deal.
  - 3.2. Collective bargaining agreements or internal regulations may state further obligations.
- 4. Consult
  - 4.1. The affected employees or their representative bodies must be consulted by the employer regarding the implications and measures (and changes thereof) specified in Article 280 of the Labour Code, if triggered due to the share deal.
  - 4.2. Collective bargaining agreements or internal regulations may state further obligations.
- 5. Implement
  - 5.1. Not applicable unless stated otherwise by the internal regulations in force.

<sup>1</sup> Please note that the subject obliged to comply with the obligations set out in sections 3 and 4 is the legal employer of the affected employees.

### II. Obligations of the purchaser<sup>2</sup>

- 1. Check
  - whether:
  - 1.1. any internal regulations exist at the companies involved which grant individual employees additional entitlements as a result of the transaction (e.g. employment guarantees, golden parachutes, etc.).  
  
Please note that this remains rare in the Czech Republic;
  - 1.2. the share deal will trigger any implications and measures for the employees (such as a change of working conditions) as set out in Articles 279 and 280 of the Labour Code;
  - 1.3. any employees' 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.
- 2. Prepare
  - 2.1. Not applicable, unless stated otherwise in a collective bargaining agreement or the internal regulations in force.
- 3. Inform/Notify
  - 3.1. the employees' representatives. In the absence of such bodies, all employees set to be affected should be informed about the change of the employer's ownership structure and other implications and measures (and changes thereof) specified in Article 279 of the Labour Code, if triggered due to the share deal.
  - 3.2. Collective bargaining agreements or internal regulations may state further obligations.
- 4. Consult
  - 4.1. The affected employees or their representative bodies must be consulted by the employer regarding the implications and measures (and changes thereof) specified in Article 280 of the Labour Code, if triggered due to the share deal.
  - 4.2. Collective bargaining agreements or internal regulations may state further obligations.
- 5. Implement
  - 5.1. Not applicable, unless stated otherwise in the internal regulations in force.

<sup>2</sup> Please note that the subject obliged to comply with the obligations set out in sections 3 and 4 is the legal employer of the affected employees.

## B. Asset deal

### I. Obligations of the seller<sup>3</sup>

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 which grant individual employees additional entitlements as a result of the transaction;
- 1.3. any internal regulations exist regulating the information and/or consultation of employees' 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;
- 1.5. any employees' 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;

If a termination notice is given by the employee before the effective date of the transfer, a statutory two months' notice period applies, unless agreed otherwise. However, if the transfer takes place before the end of the notice period, the employment relationship shall terminate on the last day before the transfer takes place.

2. Prepare

- 2.1. Not applicable, unless stated otherwise in a collective bargaining agreement or the internal regulations in force.

<sup>3</sup> Please note that the subject obliged to comply with the obligations set out in sections 3 and 4 is the legal employer of the affected employees.

3. Inform/Notify/Consult

- 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 consult with them on the following:
  - an established or proposed date for the transfer;
  - the reasons for the transfer;
  - the legal, economic and social effects of the transfer for employees;
  - any planned measures relating to employees.

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

4. Consult

- 4.1. Not applicable.

### II. Obligations of the target<sup>4</sup>

whether

- 1.1. the transfer of assets will result in the transfer of employees and, if so, which employees;
- 1.2. any internal regulations/collective bargaining agreements exist which grant individual employees additional entitlements as a result of the transaction;
- 1.3. any internal regulations exist regulating the information and/or consultation of employees' 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;
- 1.5. any employees' 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.

- 2.1. Not applicable, unless stated otherwise in a collective bargaining agreement or the internal regulations in force.

<sup>4</sup> Please note that the subject obliged to comply with the obligations set out in sections 3 and 4 is the legal employer of the affected employees.

2. Prepare

## 3. Inform/Notify/Consult

- 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 consult with them on the following:
- an established or proposed date for the transfer;
  - the reasons for the transfer;
  - the legal, economic and social effects of the transfer for employees;
  - any planned measures relating to employees.

If no trade unions/works councils exist, all the affected employees must be informed directly, but not consulted.

## 4. Consult

- 4.1. The terms and conditions contained in an employment or other contract may only be amended with the explicit consent of the employee. From a Czech law perspective, however, nothing prevents the new employer from agreeing changes to the employment contracts with the transferred employees (typically an amendment of the current employment contract which requires the consent of both the employer and the employee). On the other hand, the terms and conditions of employment which were laid down by the former employer (seller) unilaterally (e.g. in an internal regulation) may be changed or cancelled unilaterally by the new employer provided that the transferee complies with at least the minimum statutory requirements (e.g. minimum wage limit, maximum overtime work limit, minimum rest periods, etc.).
- 4.2. After the effective date of the transfer, an employee is entitled to serve a termination notice. If an employee's notice was given within two months from the effective date of the transfer, or if the employee's employment relationship was terminated by agreement within the same period, the employee may seek a court ruling which declares that the employment relationship was terminated on the grounds of considerable impairment of working conditions in connection with the transfer. If the court holds in favour of the employee, the employee shall be entitled to a severance payment in compliance with the Labour Code (the amount differs depending on the employee's length of service). and would thus be entitled to severance.
- 4.3. 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 calendar year immediately following the transfer. After such a term has expired, a new collective bargaining agreement may be concluded to cover the transferred employees.

## 1. Check

## 2. Prepare

## 3. Inform/Notify

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

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 which grant individual employees additional entitlements as a result of the transaction;
  - 1.3. any internal regulations exist regulating the information and/or consultation of employees' 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;
  - 1.5. any employees' 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.
- 2.1. Not applicable unless stated otherwise in a collective bargaining agreement or the internal regulations in force.
- 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 consult with them on the following:
- an established or proposed date for the transfer;
  - the reasons for the transfer;
  - the legal, economic and social implications of the transfer for employees;
  - any planned measures relating to employees.

If no trade unions/works councils exist, all the affected employees must be informed directly, but not consulted.

If a termination notice is given by the employee before the effective date of the transfer, a statutory two months' notice period applies, unless agreed otherwise. However, if the transfer takes place before the end of the notice period, the employment relationship shall terminate on the last day before the transfer takes place.

## 4. Consult

- 4.1. The terms and conditions contained in an employment or other contract may only be amended with the explicit consent of the employee. From a Czech law perspective, however, nothing prevents the new employer from agreeing changes to the employment contracts with the transferred employees (typically an amendment of the current employment contract which requires consent of both the employer and the employee). On the other hand, the terms and conditions of employment which were laid down by the former employer (seller) unilaterally (e.g. in an internal regulation) may be changed or cancelled unilaterally by the new employer provided that the transferee complies with at least the minimum statutory requirements (e.g. minimum wage limit, maximum overtime work limit, minimum rest periods, etc.).
- 4.2. After the effective date of the transfer, an employee is entitled to serve a termination notice. If an employee's notice was given within two months from the effective date of the transfer, or if the employee's employment relationship was terminated by agreement within the same period, the employee may seek a court ruling which declares that the employment relationship was terminated on the grounds of considerable impairment of working conditions in connection with the transfer. If the court holds in favour of the employee, the employee shall be entitled to a severance payment in compliance with the Labour Code (the amount differs depending on the employee's length of service) and would thus be entitled to severance.
- 4.3. 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 calendar year immediately following the transfer. After such a term has expired, a new collective bargaining agreement may be concluded to cover the transferred employees.



# France



## A. Share deal

### I. Obligations of the purchaser

#### 1. Check

whether:

- 1.1. a relevant employees' representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central social and economic committee (CSEC);
  - social and economic committee (SEC);
  - collective bargaining agreements (which may stipulate special requirements).

The SEC is a new employees' representative body that merges the Works council, the Health and Safety Committee and the employees' representatives. The SEC is elected at the term of the current office or, at the latest, on 31 December 2019.

- 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 number of shares owned by the purchaser before the purchase;
- 1.4. the shares purchased are in the company at which the CSEC, SEC has been elected, or in another organisation such as the parent company;
- 1.5. the purchasing company is where the CSEC, SEC has been elected.

#### 2. Prepare

the following in draft form:

- 2.1. a written consultation memo for the attention of the relevant employees' 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 the employees' representative body.
- 3.2. Information alone is not sufficient if a CSEC or a SEC has been established. If this is the case, a consultation process has to be implemented (see section 4).

#### 4. Consult

- 4.1. A CSEC or SEC needs to be informed and consulted, even in the 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 SEC (or EWC, GC, CSEC, etc.), non-involvement of the employees' 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 employees' representatives' opinion is given.

- 4.3. Depending on the context, the SEC may need to be consulted on the consequences of the transaction 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 employment 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 contracts of the employees.

### II. Obligations of the target

whether:

- 1.1. a relevant employees' representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central social and economic committee (CSEC);
  - social and economic committee (SEC);
  - collective bargaining agreements (which may stipulate special requirements).

The SEC is a new employees' representative body that merges the Works council, the Health and Safety Committee and the employees' representatives. The SEC is elected at the term of the current office or, at the latest, on 31 December 2019.

2. Prepare
- 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 number 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 employees' representative body.
- the following in draft form:
- 2.1. a written information memo for the attention of the relevant employees' 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 CSEC or SEC has been established. If this is the case, a consultation process must be implemented (see section 4).
  - 3.2. An EWC or GC may need to be informed or consulted, depending on the scope of the deal and the by-laws of the company and the employees' 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 pre-emptive right 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 SEC or CSEC needs to be informed and consulted.
  - 4.2. Although the transaction is not in itself subject to the consent of the SEC (or EWC, GC, CSEC, etc.), non-involvement of the employees' 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 employees' representatives' opinion is given.

5. Implement

1. Check

- 4.3. Depending on the context, the SEC may need to be consulted on the consequences of the transaction for health and safety and for working conditions.
- 5.1. Implementation should take place following proper information/notification and, if applicable, a consultation process.
- 5.2. As far as employment 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

### I. Obligations of the seller

whether:

- 1.1. a relevant employees' representative body exists. This could include a:
  - European works council (EWC);
  - group council (GC);
  - central social and economic committee (CSEC);
  - social and economic committee (SEC);
  - collective bargaining agreements (which may stipulate special requirements).

The SEC is a new employees' representative body that merges the Works council, the Health and Safety Committee and the employees' representatives. The SEC is elected at the term of the current office or, at the latest, on 31 December 2019

- 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 consequences for the employees (in the case of a business transfer as understood in the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, employees' representative bodies could be modified);

2. Prepare	<p>1.4. an information and consultation process must be implemented. This must take place before an actual decision is made and before any agreement is signed (even with conditions precedent).</p>	5. Implement	<p>5.1. Implementation should take place following proper information/ notification and, if applicable, a consultation process.</p>
	the following in draft form:		<p>5.2. In the event of a business transfer under the meaning of the EU Directive, we recommend that a notice of information be sent for the attention of the transferred employees.</p>
	<p>2.1. a written consultation memo for the attention of the relevant employees' representative body to ensure compliance with the notification or consultation process and all relevant information to allow the representative body to give clear advice.</p>		<p>5.3. It is important that the purchaser and target coordinate their timetable/ schedule for information or consultation.</p>
3. Inform/Notify	<p>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 employees' representative body.</p> <p>3.2. Information alone is not sufficient if a CSEC or a SEC has been established. If this is the case, a consultation procedure has to be implemented (see section 4).</p> <p>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 pre-emptive right for the employees since the seller remains free to accept or refuse the offer made by employees on a discretionary basis.</p>	1. Check	<p><b>II. Obligations of the purchaser</b></p> <p>whether:</p> <p>1.1. a relevant employees' 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 social and economic committee (CSEC);</li> <li>— social and economic committee (SEC);</li> <li>— collective bargaining agreements (which may stipulate special requirements).</li> </ul>
4. Consult	<p>4.1. The SEC or CSEC must be consulted regarding the financial and social terms and consequences of the deal.</p> <p>4.2. Although the transaction is not in itself subject to the consent of the SEC (or EWC, GC, CSEC, etc.), non-involvement of the employees' 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 employees' representatives' opinion has been obtained.</p> <p>4.3. Depending on the context, the SEC may need to be consulted on the consequences of the transaction for health and safety and for working conditions.</p>		<p>The SEC is a new employees' representative body that merges the Works council, the Health and Safety Committee and the employees' representatives. The SEC is elected at the term of the current office or, at the latest, on 31 December 2019</p> <p>1.2. it is a takeover bid or concentration operation under French law (if this is the case, see Section C. Merger);</p> <p>1.3. the operation could have consequences for employees (in the case of a business transfer as understood in the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, and employees' representative bodies could be modified). Check whether the operation could have any financial consequences, especially due to the harmonisation of social status.</p> <p>1.4. the information and consultation process must take place before any actual decision is made.</p>

## 2. Prepare

the following in draft form:

2.1. a written consultation memo for the attention of the relevant employees' 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 employees' 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 section 4).

## 4. Consult

4.1. The SEC or CSEC must be consulted regarding the financial and social terms and consequences of the deal.

4.2. Although the transaction is not in itself subject to the consent of the SEC (or EWC, GC, CSEC, etc.), non-involvement of the employees' 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 employees' representatives' opinion has been obtained.

4.3. Depending on the context, the SEC may need to be consulted on the consequences of the transaction 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 under the meaning of the EU Directive, we recommend that a notice of information be sent for the attention of the transferred employees.

5.3. It is important that the purchaser and target coordinate their timetable/schedule for information or consultation.

## 1. Check

## 2. Prepare

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

whether:

- 1.1. a relevant employees' representative body exists. This could include a:
- European works council (EWC);
  - group council (GC);
  - central social and economic committee (CSEC);
  - social and economic committee (SEC);
  - collective bargaining agreements (which may stipulate special requirements).

The SEC is a new employees' representative body that merges the Works council, the Health and Safety Committee and the employees' representatives. The SEC is elected at the term of the current office or, at the latest, on 31 December 2019.

1.2. it is a takeover bid or concentration operation under French law;

1.3. there is a need to inform and consult the health and safety committee;

1.4. there will be consequences for the employees (in the case of a business transfer as understood in the EU Directive, employment contracts will be transferred, company-level collective bargaining agreements – including benefits – will be subject to changes, and employees' representative bodies could be modified). Also check if the operation could have financial consequences, especially due to the harmonisation of social status.

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 employees' representative body to ensure compliance with the notification or consultation process.
- 2.1.2. the consultation process of the SEC or CSEC 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 SEC of the target company.
  - 2.2.2. information for the attention of the SEC of the raider (by the acquirer).
  - 2.2.3. prepare the acquirer for a possible hearing before the GC or SEC 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 SEC of the target company.
- 2.3. Concentration operation:
- 2.3.1. determine the subsidies needed to organise a meeting of the SEC.
  - 2.3.2. prepare documentation for the attention of an expert, possibly chosen by the SEC of the target company.
3. Inform/Notify
- 3.1. Merger without a takeover bid or concentration:
- 3.1.1. an EWC, GC, or employees' representative may need to be informed or consulted depending on the scope of the deal and bylaws of the company and employees' representative body.
  - 3.1.2. the SEC or CSEC must be consulted prior to a decision to merge being taken.
- 3.2. Takeover bid:
- 3.2.1. Obligations of the acquirer
    - 3.2.1.1. Towards its employees
      - 3.2.1.1.1. If a SEC exists
        - to meet the SEC of the acquirer immediately after the offer is submitted.
        - within two days, to provide the SEC of the acquirer with information about:
          - the content of the bid; and
          - consequences for employment.
      - 3.2.1.1.2. If no SEC exists
        - To inform all employees of the bid.

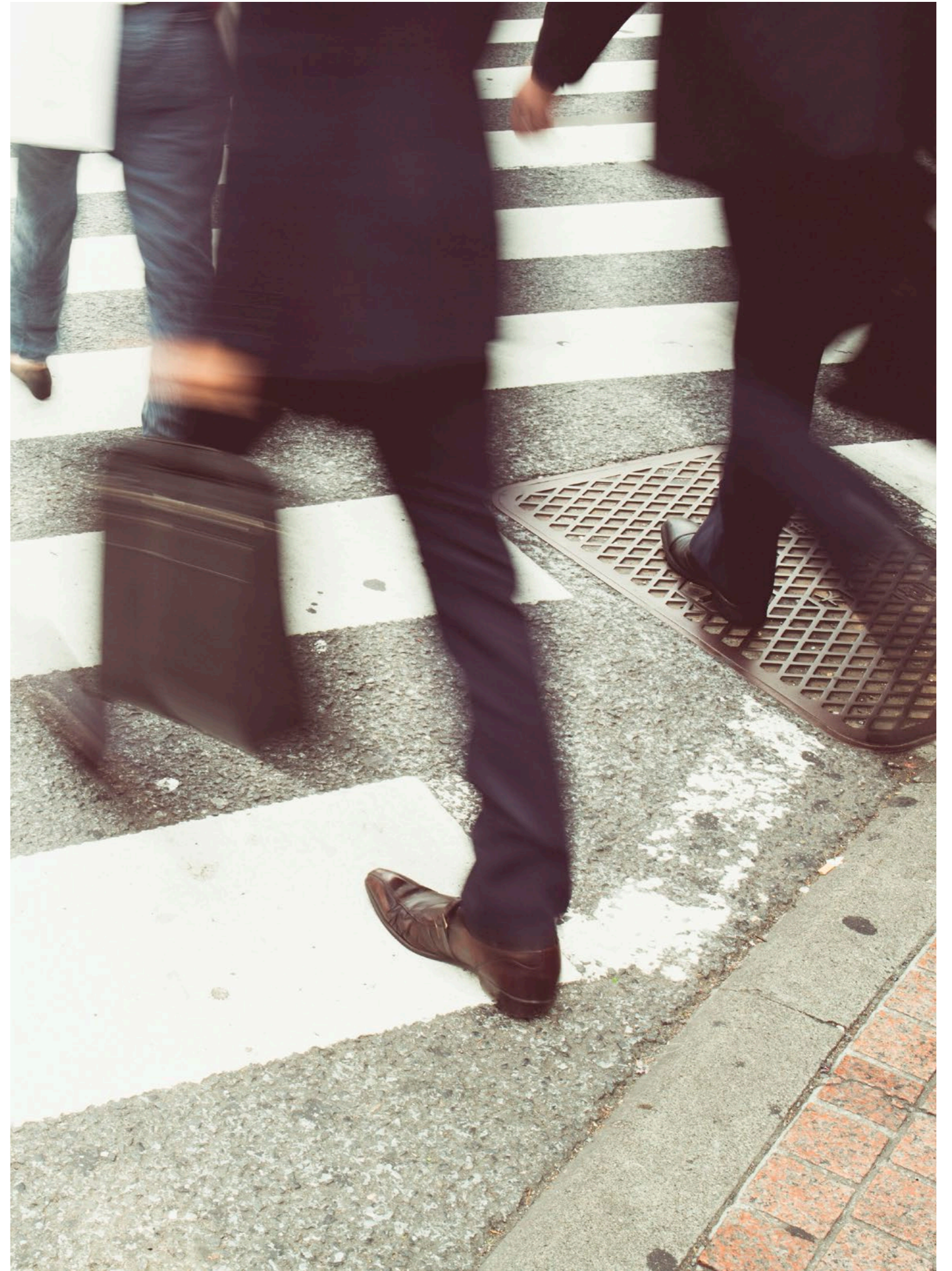
- 3.2.1.3. Towards SEC of the target
    - To provide the CSEC, SEC or all employees of the target (through CEO of the target) with a notice of information for the Financial Market Authority within three days of it being published.
    - In the event of a hearing in front of the CSEC or SEC of the target, 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 decision-making centre.
- 3.2.2. Obligations of the target
- To meet the CSEC or SEC immediately after the offer is submitted. The CSEC or SEC decides whether the acquirer will be heard and can decide to proclaim the acquisition as friendly or hostile. The CSEC or SEC also has the right to appoint a technical expert.
  - To meet the CSEC or SEC 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 shareholders' meeting.
- 3.2.2.1. If neither a CSEC nor a SEC exists
- To inform all employees of the bid.
  - To give all employees the notice of information for the Financial Market Authority as provided by the acquirer.
- 3.3. Concentration operation
- Obligations of the acquirer and the target
    - To meet the SEC within three days of the publication of the concentration information by French Administrative Authority or European Commission.
    - A second meeting with the SEC is also possible in the event of a technical expert being nominated by the SEC.
    - SEC 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 SEC (or EWC, GC, CSEC, etc.), non-involvement of employees' 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 can also lead to a suspension of operations until the employees' representatives' opinion 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

### I. Obligations of the purchaser

1. Check

whether:

- 1.1. a target or business sector requiring specific handling is involved. In Germany, this is particularly true of acquisitions made under the German Securities Acquisition and Takeover Act ('WpÜG');
- 1.2. a 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. a mere 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 (company) works council (WC, 'Gesamtbetriebsrat', 'Betriebsrat') and/or an executives' representation 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 the acquisition is being made under the WpÜG, information for the WC or, if a WC does not exist, for the employees directly (§ 14, Sec. 4 WpÜG);
- 2.2. information for the EWC if section 1.2 above applies;
- 2.3. information for the EC if section 1.3 above applies;
- 2.4. any additional documents if, as described in section 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 the implementation of a final purchase agreement).

4. Consult

No consultation requirement.

5. Implement

After conclusion of consultations and in accordance with sections 1-4 above.

### II. Obligations of the target

whether:

- 1.1. the deal implies the acquisition of control over the company;
- 1.2. an economic committee (EC) or, if not, a (company) works council (WC) has been established at the target;
- 1.3. an executives' representation committee exists at the target;
- 1.4. a mere 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 sections 1.1. and 1.2. above apply. If neither an EC nor a WC exists, it is not necessary to inform the employees and/or employees' representative bodies.
- 2.2. additional documents if changes are to be made to a business unit as described in section 1.4. above (for details, see Section B. Asset deal).

3. Inform/Notify

the EC/ WC/ executives' representation committee, subject to its existence and assuming that sections 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/executives' representation committee. Furthermore, 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

After conclusion of consultations and in accordance with sections 1-4 above.

## B. Asset deal

### I. Obligations of the seller

1. Check

whether:

- 1.1. a relevant
  - economic committee (EC, 'Wirtschaftsausschuss'); or
  - (company) 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 ('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 section 1.3. above:
  - information to the EC/WC/executives' representation committee where such bodies exist;
  - information to employees whose employment shall also be transferred;
  - a balance of interests ('Interessenausgleich') and a social plan ('Sozialplan').

3. Inform/Notify

- 3.1. in the event that an entire business is to be transferred, the EC, where such body exists, and any and all employees working at the business as described under section 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, the EC / WC / executives' representation committee, where such bodies exist.

4. Consult

3.3. The aforementioned information must be provided 'in good time'.

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. It is recommended to inform at least one month prior to the effective date to act in accordance with the employee's right to object to their individual transfer.

An obligation exists to consult the WC about a balance of interests ('Interessenausgleich') if the deal is linked to operational changes to a local business unit (e.g. merging or the splitting up of a business in units and transfer of a part thereof). There is no need to consult the WC if an entire local business unit ('Betrieb') is to be transferred.

A union present in the local unit may demand additional consultation (although there is no statutory requirement to inform the union in advance or to consult with the union). Furthermore, an obligation to consult the executives' representation committee may be required.

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

### II. Obligations of the purchaser

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 executives' representation 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.

5. Implement

1. Check

2. Prepare	<p>the following in draft form:</p> <p>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.</p> <p>2.2. information for the attention of the WC/executives' representation 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.</p> <p>2.3. in the case of a transfer as described in sections 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).</p> <p>2.4. a balance of interests ('<i>Interessenausgleich</i>') and a social plan ('<i>Sozialplan</i>') if: (I) the assets are to become a part of an existing unit represented by a WC and (II) it will trigger a substantial change of the organisation of such unit.</p>	5. Implement
3. Inform/Notify	<p>3.1. Release information for the attention of the EC if such information is required according to sections 1.1. and 2.1.</p> <p>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 executives' representation committee if the latter may result in substantial changes for executives.</p> <p>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.</p> <p>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. It is recommended to inform at least one month prior to the effective date to act in accordance with the employee's right to object to their individual transfer.</p>	1. Check
4. Consult	<p>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 section 2.4. above). Please note that a WC may stop the integration by lodging an interim injunction until the end of a proper consultation process. Such a process can take a significant amount of time, since it may include</p>	2. Prepare
		3. Inform/Notify

the formation of and consultation with a conciliation board. Furthermore, an obligation to consult the executives' representation committee may be required if executives should be negatively affected.

after the conclusion of consultations and in accordance with sections 1-4 above.

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

whether:

- 1.1. the following exist:
  - economic committee (EC);
  - works council (WC);
  - executives' representation 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 units ('*Betrieb/e*').

the following in draft form:

- 2.1. information for the attention of the EC, WC and executives' representation 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 balance of interests ('*Interessenausgleich*') and social plan ('*Sozialplan*') if an operational change such as that described in Section B. (1.4.) is intended
- 3.1. Inform the EC and executives' representation committee about the intended merger 'in good time'.
- 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.



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.	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: <ul style="list-style-type: none"> <li>— the (planned) date of transfer;</li> <li>— the reason for the transfer;</li> <li>— the legal, economic and social impact of the transfer on the employees;</li> <li>— any measures being planned in relation to the employees.</li> </ul>
5. Implement	5.1. Not applicable.	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.
<b>B. Asset deal</b>		
<b><i>I. Obligations of the seller</i></b>		
1. Check	whether: <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>	3.4. If there is a works council/appointed representative ( <i>'üzemi megbízott'</i> ) 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: <ul style="list-style-type: none"> <li>— the (planned) date of transfer;</li> <li>— the reason for the transfer;</li> <li>— the legal, economic and social impact of the transfer on the employees.</li> </ul>
2. Prepare	the following in draft form: <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 section 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 section 3.4.).</li> </ul>	4. Consult
3. Inform/Notify	3.1. 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.	4.1. If there is a works council/appointed representative ( <i>'üzemi megbízott'</i> ) operating, the seller and the purchaser shall initiate consultation parallel with providing the notification under section 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.

1. Check	<p><b>II. Obligations of the purchaser</b></p> <p>whether:</p> <p>1.1. a works council exists;</p> <p>1.2. there is an agreement between the seller and purchaser governing the notification of employees regarding the transfer;</p> <p>1.3. an EWC exists.</p>	<p>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.</p>
2. Prepare	<p>the following in draft form:</p> <p>2.1. written notification for the attention of employees prior to the date of the transfer. (Please see section 3.1., below, for whether this is applicable);</p> <p>2.2. written notification for the attention of the works council/appointed representative (<i>‘üzemi megbízott’</i>) (please see section 3.2.);</p> <p>2.3. written notification for the attention of employees following the transfer. (Please see section 3.3., below, for whether this is applicable).</p>	<p>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.</p>
3. Inform/Notify	<p>3.1. If (I) no works council/appointed representative (<i>‘üzemi megbízott’</i>) 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:</p> <ul style="list-style-type: none"> <li>— the (planned) date of transfer;</li> <li>— the reason for the transfer;</li> <li>— the legal, economic and social consequences of the transfer for employees;</li> <li>— any measures being planned in relation to the employees.</li> </ul> <p>3.2. If there is a works council/appointed representative (<i>‘üzemi megbízott’</i>) 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:</p> <ul style="list-style-type: none"> <li>— the (planned) date of transfer;</li> <li>— the reason for the transfer;</li> <li>— the legal, economic and social impact of the transfer on the employees.</li> </ul>	<p>4. Consult</p> <p>4.1. If there is a works council/appointed representative (<i>‘üzemi megbízott’</i>) operating, the seller and the purchaser shall initiate consultation parallel with providing the notification under section 3.2. above. Such consultation shall cover any measures being planned in relation to the employees.</p> <p>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.</p> <p>5. Implement</p> <p>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.</p>

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

1. Check

whether:

- 1.1. an employees' 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 employees' representative body has been notified of the merger, that no employees' 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 section 3.1.);
- 2.3. written notifications for the attention of the employees' representative body of the merging entities considering section 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:
  - 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 employees' 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 section 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.



## A. Share deal

### I. Obligations of the purchaser

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | <ul style="list-style-type: none"> <li>1.1. works councils exist (these can be set up at companies with over 15 employees in each production unit);</li> <li>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);</li> <li>1.3. a European works council has been established.</li> </ul>                  |
| 2. Prepare       | In the case of share deals, there is requirement 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 (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       | <ul style="list-style-type: none"> <li>4.1. the works councils, checking whether the share deal concluded has had any repercussions on the working conditions of staff.</li> <li>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.</li> </ul>   |
| 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 an agreement has not yet been reached with the trade union.  |

1. Check

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

### II. Obligations of the target

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.

In the case of share deals, there is no requirement 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 (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.

- 3.1. the works council(s) of both purchaser and target, if laid down in the applied collective bargaining agreement.
- 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.
- 5.1. 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

### I. 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 into the Companies Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered into 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 into the Companies Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered into 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 writing.

4. Consult

5. Implement

1. Check

2. Prepare

- 3.2. trade unions – if the company employ 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 writing. 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.

4.1. the works council at least once.

4.2. the trade unions.

- 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

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).

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 into the Companies Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered into 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 into the Companies Register) or before a binding agreement has been reached between the parties (with the merger agreement not yet entered into 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 writing.

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 writing. 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. the works council at least once;

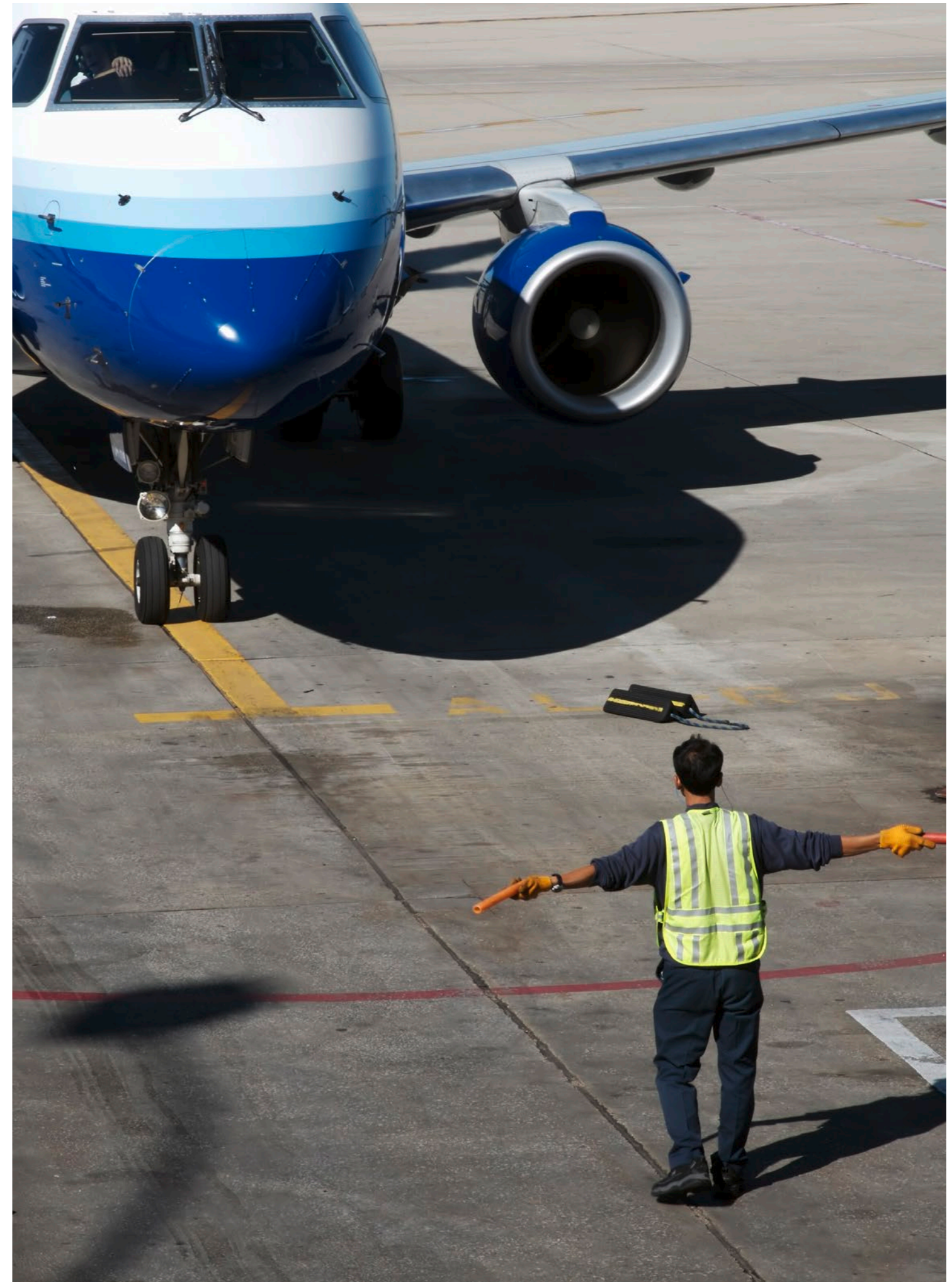
4.2. the trade union.

### 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 employment law equates a merger to a transfer of undertakings. For further details, see Section B. Asset deal.



# Luxembourg



## A. Share deal

### I. 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 to 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. Asset deal for important rules relating to asset deals.

3. Inform/Notify

- 3.1. Luxembourg employment 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.

1. Check

### II. Obligations of the target

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 to 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. Asset deal for important rules relating to asset deals.

3. Inform/Notify

- 3.1. Luxembourg employment 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

### I. Obligations of the seller

1. Check

whether:

- 1.1. the transfer of undertakings (“*Transfert d’entreprise*”) pursuant to 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. 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.

3. Inform/Notify

- 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.

- 3.1. 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. 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	<p>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.</p> <p>5.2. A coordinated timetable between the seller and the purchaser should be established.</p>		<p>If the asset deal qualifies as a transfer of undertakings, the following additional requirements apply:</p>
	<p><b>II. Obligations of the purchaser</b></p>		
1. Check	<p>whether:</p> <p>1.1. the transfer of undertakings (“<i>Transfert d’entreprise</i>”) pursuant to Council Directive 2001/23/CE and articles L.127-1. to L.127-6. of the Luxembourg Labour Code applies to the transaction.</p> <p><i>Usually it applies to asset deals and imposes additional obligations on employers, and gives extra protection to employees;</i></p> <p>1.2. a relevant staff representative body exists;</p> <p>1.3. a collective bargaining agreement exists which may stipulate special requirements;</p> <p>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;</p> <p>1.5. any contract in the asset deal includes a change of control provision.</p>	3. Inform/Notify	<p>2.3. An information memo has to be drafted containing:</p> <ul style="list-style-type: none"> <li>— the fixed or potential date for the transfer;</li> <li>— the reason for the transfer;</li> <li>— the legal, economic and social consequences of the transfer for the employees;</li> <li>— the planned measures in relation to the employees.</li> </ul> <p>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.</p> <p>3.1. In due time and <i>before</i> the asset deal, the business manager should provide information concerning the possible important changes that the asset deal could induce, to:</p> <ul style="list-style-type: none"> <li>— the relevant staff representative bodies;</li> <li>— if there is no staff representative body, the concerned employees directly (only in case of transfer of undertakings).</li> </ul> <p>3.2. Inform the employees concerning the change of employer (not mandatory but recommended).</p> <p>In case of a transfer of undertakings:</p> <p>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.</p>
2. Prepare	<p>2.1. 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).</p> <p>2.2. We recommend preparing the wording of individual letters to be sent to the employees confirming the change of employer (not mandatory).</p>	4. Consult	<p>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.</p> <p>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.</p> <p>4.3. However, please note that the employer is not bound by the opinion or advice given by the relevant staff representative body.</p>

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.



# Macedonia



## A. Share deal

### I. Obligations of the purchaser

#### 1. Check

whether:

- 1.1. a representative trade union exists at the target company.
- 1.2. obligations exist towards employees which arose before the date of transfer (if so, the purchaser as the new employer shall be jointly and severally liable together with the previous employer regarding those obligations towards employees which arose before the date of transfer).
- 1.3. the Act on the Takeover of Joint Stock Companies (Takeover Act) applies. If so, the purchaser as bidder and the management body of the target company are obliged to immediately inform the employees' representatives/employees of the intention to takeover.

#### 2. Prepare

- 2.1. information for the attention of the trade union/employees regarding:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

#### 3. Inform/Notify

- 3.1. The present and the future employer must notify the trade union/employees of the following:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

If the company does not have a trade union, the obligation to inform/notify refers to the employees.

- 3.2. The future employer must inform the trade union representatives of their employees affected by the transfer, before they become directly affected, of the consequences for their own working and employment conditions.

#### 4. Consult

- 3.3. If the Takeover Act applies, the purchaser as bidder and the management body of the target company are obliged to immediately inform the employees' representatives/employees of the existence of the intention to takeover.

- 4.1. Prior to the transfer of rights and obligations arising out of the employment relationship, the present and future employer must consult with the trade union/employees, with the purpose of reaching an agreement on the following:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

If the company does not have a trade union, the obligation to consult refers to the employees.

#### 5. Implement

- 5.1. With the execution of the status changes, all rights, obligations and responsibilities from the employment agreement and the employment relationship are transferred to the new employer (the purchaser).
- 5.2. The purchaser undertakes to ensure the provision of all rights, responsibilities and duties of the employees who have been transferred thereto for at least one year, or up to the expiry of the employment agreement (if this is an employment agreement with a specific term which expires sooner) or the expiry of the collective agreement binding the previous employer (if the collective agreement expires before one year).
- 5.3. If because of the change of employer, the rights from the employment agreement are worse due to objective reasons, and the employee terminates the employment agreement for this reason, the employee is entitled to the same rights as if the agreement was terminated for business reasons (i.e. the employee is entitled to severance pay, the amount of which shall be calculated taking into consideration the time spent working with both the previous and the new employer).

1. Check	<p><b>II. Obligations of the seller/target</b></p> <p>whether:</p> <p>1.1. a collective agreement exists,</p> <p>1.2. the Takeover Act applies.</p>	3. Inform/Notify	<p>3.1. The present and future employer must notify the trade union/ employees of the following:</p> <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</li> <li>— any measures being planned to alleviate such consequences.</li> </ul> <p>If the company does not have a trade union, the obligation to inform/notify refers to the employees.</p>
2. Prepare	<p>2.1. information for the attention of the trade union (if one does not exist, for the attention of the employees) regarding:</p> <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</li> <li>— any measures being planned to alleviate such consequences.</li> </ul> <p>2.2. In addition, if the Takeover Act applies, then within 5 days from publishing the takeover bid, the management body of the target company is obliged to submit to the employees' representatives (if this doesn't exist, to the employees) their opinion on the takeover bid, which should contain:</p> <ul style="list-style-type: none"> <li>— the position of the management body on the influence of the bid on the interests of the target company, and in particular the employees, as well as of the strategic plans of the bidder for the target company;</li> <li>— data on the existence/non-existence of negotiations in relation to the takeover bid between the bidder and the management body of the target company;</li> <li>— the manner in which the bidder establishes the right to vote over the shares they already own;</li> <li>— a statement as to whether any of the members of the management body who own shares to which the takeover bid refers intend to accept or reject the offer and to enclose their explanation, and</li> <li>— supported data on the last audited annual report of the target company listing the book value of the shares to which the takeover bid refers.</li> </ul> <p>The employees' representatives (or if this doesn't exist, the employees) may give their opinion on the takeover bid within 3 working days from receiving the opinion of the management body.</p> <p>If the management body of the target company receives an opinion from the employees' representatives/employees, it is obliged to publish it along with their own opinion.</p>	4. Consult	<p>3.2. The seller undertakes to inform the trade union representatives of their employees of the transfer in a timely manner prior to the execution of the transfer.</p> <p>4.1. Prior to the transfer of rights and obligations arising out of the employment relationship, the present and future employer must consult with the trade union/employees, with the purpose of reaching an agreement on the following:</p> <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</li> <li>— any measures being planned to alleviate such consequences.</li> </ul> <p>If the company does not have a trade union, the obligation to consult refers to the employees.</p> <p>4.2. When the seller plans to implement measures in relation to their employees, they must consult the trade union representatives of their employees in relation to such measures in a timely manner in order to reach an agreement.</p>
		5. Implement	<p>5.1. The rights and responsibilities of the seller regarding their employees for whom the employment relationship is being terminated remain the same until the day of the transfer, unless stated otherwise under other statutory provisions.</p> <p>5.2. The obligation to inform and consult the trade union representatives of the employees includes the measures ascertained in relation to the transfer of the employees and must be executed prior to the change in working conditions.</p>

## B. Asset deal

### I. Obligations of the seller

1. Check

whether:

- 1.1. a representative trade union exists at the target company.
- 1.2. obligations exist towards employees which arose before the date of transfer (if so, the purchaser as the new employer shall be jointly and severally liable together with the previous employer regarding those obligations towards employees which arose before the date of transfer).

2. Prepare

the following in draft form:

- 2.1. information for the attention of the trade union/employees regarding:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

3. Inform/Notify

- 3.1. The present and the future employer must notify the trade union/employees of the following:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

If the company does not have a trade union, the obligation to inform/notify refers to the employees.

- 3.2. The future employer must inform the trade union representatives of their employees affected by the transfer, before they become directly affected, of the consequences for their own working and employment conditions.

4. Consult

- 4.1. Prior to the transfer of rights and obligations arising out of the employment relationship, the present and future employer must consult with the trade union/employees, with the purpose of reaching an agreement on the following:
  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.

If the company does not have a trade union, the obligation to consult refers to the employees.

5. Implement

- 5.1. With the execution of the status changes, all rights, obligations and responsibilities from the employment agreement and the employment relationship are transferred to the new employer (the purchaser).
- 5.2. The purchaser undertakes to ensure the provision of all rights, responsibilities and duties of the employees who have been transferred thereto for at least one year, or up to the expiry of the employment agreement (if this is an employment agreement with a specific term which expires sooner) or the expiry of the collective agreement binding the previous employer (if the collective agreement expires before one year).
- 5.3. If because of the change of employer, the rights from the employment agreement are worse due to objective reasons, and the employee terminates the employment agreement for this reason, the employee is entitled to the same rights as if the agreement was terminated for business reasons (i.e. the employee is entitled to severance pay – the amount of severance pay shall be calculated taking into consideration the time spent working with both the previous and the new employer).

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

1. Check Whether:
- 1.1. a collective agreement exists.
2. Prepare 2.1. information for the attention of the trade union (if one does not exist, for the attention of the employees) regarding:
- the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.
3. Inform/Notify 3.1. The present and future employer must notify the trade union/ employees of the following:
- the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.
- If the company does not have a trade union, the obligation to inform/ notify refers to the employees.
- 3.2. The seller undertakes to inform the trade union representatives of their employees of the transfer in a timely manner prior to the execution of the transfer.
4. Consult 4.1. Prior to the transfer of rights and obligations arising out of the employment relationship, the present and future employer must consult with the trade union/employees, with the purpose of reaching an agreement on the following:
- the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.
- If the company does not have a trade union, the obligation to consult refers to the employees.

## 5. Implement

- 4.2. When the seller plans to implement measures in relation to their employees, they are to consult the trade union representatives of their employees in relation to such measures in a timely manner in order to reach an agreement.
- 5.1. The rights and responsibilities of the seller regarding their employees for whom the employment relationship is being terminated remain the same until the day of the transfer, unless stated otherwise under other statutory provisions.
- 5.2. The obligation to inform and consult the trade union representatives of the employees includes the measures ascertained in relation to the transfer of the employees and must be executed prior to the change in working conditions.

## **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 into the relevant public register of companies.

# Mexico



## A. Asset deal

Pursuant to Mexican employment law, when an asset deal takes place and most of the assets that constitute the economic legal entity are transferred, meaning the transfer of the business centre that encompasses the elements allowing the continuity of the employees' labour conditions and activities, an employer substitution occurs. An employer substitution implies the survival of the employee-employer working relationship, with the latter being replaced by the purchaser.

### I. Obligations of the purchaser

1. Check

- 1.1. Review whether there is any pending litigation regarding the employees' reinstatement. Pursuant to Mexican law, when a former employee demands reinstatement, they cannot be definitively substituted. The definitive substitution of an employee in this circumstance may result in additional costs for the purchaser, as well as unlawful conduct.
- 1.2. Take into consideration that pursuant to Mexican employment law, at least 90% of the employees in each place of business shall be Mexican. Foreign employees may be hired, justified in light of their expertise and suitability; however, foreign employees in each technical or professional category shall not exceed an amount equal to 10% of the company's employees in that area or field.
- 1.3. Take into account that employment agreement conditions, whether individual or collective, shall not be modified without the employees' consent, as the substitution of the employer does not initiate a new working relationship.
- 1.4. Any pending litigation or debts with regard to the employees, detected while auditing the target, shall be taken into consideration in order to avoid costs and liability. Pursuant to Mexican employment law, the new employer becomes liable for any pending issues concerning the employees, even when the issue originated or arose prior to the acquisition or is a result of a previous situation attributable to the former employer.

For a period of six months after the purchase, the former and new employer will be jointly liable for said issues; after the aforementioned period, only the new employer will be liable for any labour-related obligations, whether this was assumed before or after the purchase.

2. Prepare

3. Inform/Notify

- 1.5. The liability risk for the new employer, regarding situations prior to the purchase, is also applicable to the employees' social security. Any prior debt or social security obligation valid at the time of the purchase pending compliance and assumed before the acquisition may be borne by the new employer.
- 2.1. Although pursuant to Mexican employment law the new employer is not obliged to inform the employees and union of anything other than the employer's substitution, it is common practice in Mexico to confirm by means of a notice that the new employer will honour the employees' current benefits, employment conditions and seniority. In this regard, it is recommendable to prepare a draft notice with information that may be considered of the employees' interest.
- 3.1. Pursuant to Mexican employment law, the purchaser shall notify the employees of the employer substitution arising from the purchase deal. Such notice is important since it constitutes proof of the exact purchase date. The six-month joint liability period for the former and current employer will start to run from the date of the notice.
- 3.2. If the target's employees are affiliated to a union, the purchaser shall notify the union of the employer substitution. This notice constitutes proof of the purchase date, the importance of which relies on the calculation of the joint liability period.
- 3.3. Pursuant to Mexican employment law, all employees shall be registered with the Mexican Social Security Institute (IMSS) in order to be entitled to medical attention. The purchaser shall notify the IMSS about the employer substitution no later than 5 days after the purchase in order to avoid the imposition of fines.
- 3.4. Also, since the registration of the employees with the referred institute is maintained through a fee paid by the employer, any debt concerning this matter will be considered under the six-month joint liability period, which will begin to run from the date of this notice (for social security purposes).
- 3.5. All employees shall be registered with the National Employee Housing Fund Institute (INFONAVIT), which represents an obligation for the employer. In this regard, the purchaser shall notify this institute about the employer substitution no later than 5 days after the purchase, otherwise fines may be imposed. All the obligations assumed before the purchase by the former employer will be considered under a two-year joint liability period, which will be calculated from the date of this notice.

4. Consult  
 4.1. Pursuant to Mexican employment law, the purchaser is not obliged to carry out a consultation period for the transaction, neither with the employees nor any government entity.

5. Implement  
 5.1. See sections 2 and 3.

**II Obligations of the seller**

1. Check  
 1.1. Prior to the transaction, it is recommendable for the seller to ensure compliance with regard to social security, the housing fund and any other obligations towards the employees arising from the working relationship. Since, as explained above, the former and new employer remain jointly liable for a certain period, depending on the nature of the obligations, indemnities concerning labour claims dated before the purchase are most likely to be set in the corresponding sale and purchase agreement; notwithstanding the purchaser's possibility of claiming liquidated damages, in case indemnities are not set.

1.2. It is recommendable to duly inform the purchaser about the employees' current labour conditions, which may include providing the individual or collective employment agreement. Indemnities in the sale and purchase agreement may be set and disputes brought before courts may arise from misinformation, attributable to the seller.

2. Prepare  
 2.1. It is recommendable to draft an internal document or note regarding the deal, in order to inform the employees about the employer substitution, as well as to avoid any conflict by means of notifying that their employment agreement will not, and cannot, suffer amendments to their detriment.

3. Inform/Notify  
 3.1. Ensure that the purchaser notifies the employees of the employer substitution arising from the purchase deal for the sake of the certainty of the beginning and end of the joint liability period.  
 3.2. Where applicable, ensure that the purchaser notifies the union of the employer substitution for the purpose of certainty with regard to the joint liability period.  
 3.3. The seller shall notify the IMSS about the termination of their working relationship with the employees no later than five days after the purchase, otherwise sanctions such as fines may be imposed. Likewise, this notice will represent proof of certainty regarding the purchase date.

4. Consult

5. Implement

1. Check

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

3.4. The seller shall notify the INFONAVIT about the employer substitution no later than five days after the purchase to avoid sanctions and to ensure the certainty of the asset transfer.

4.1. Pursuant to Mexican employment law, the seller is not obliged to carry out a consultation period for the transaction.

5.1. See sections 1, 2 and 3.

**B. Share deal**

Pursuant to Mexican employment law and binding judicial criteria, when a share deal takes place there are no legal proceedings to be carried out before the authorities or employers, as the employer remains the same (assuming any labour obligations were assumed by the company and not by its shareholders as individuals).

**I. Obligations of the purchaser**

1.1. It is recommendable to ensure that there are not, or the company has at least not been informed about, any pending litigations, proceedings, debts and obligations arising from working relationships as a share transfer translates into the acquisition of assets and liabilities with no distinctions.

2.1. Not applicable.

3.1. Not applicable.

4.1. Not applicable.

5.1. Not applicable.

**C. Merger and Division**

Whenever a merger or division of companies occurs, business centres may be acquired by the merging entity or the entity resulting from the division. In this regard, employer substitution takes place; therefore, the legal proceedings and recommendations outlined in Section A. Asset deal of this jurisdiction's guide are applicable equating the purchaser to the merging entity or the company resulting from the division.

# Monaco



## A. Share deal

### I. Obligations of the purchaser

Whether

- |                  |   |
|------------------|---|
| 1. Check         | 1.1. A change in the ownership structure of an enterprise does not alter the identity of the employer. Monaco statute does not contain significant requirements relating to employment law in such share deal arrangements. |
|                  | 1.2. In principle, employees are unaffected by a share deal. As a result, all their terms and conditions of employment remain the same.   |
| 2. Prepare       | 2.1. Not applicable   |
| 3. Inform/Notify | 3.1. Not applicable.  |
| 4. Consult       | 4.1. Although there is no general legal obligation to inform employees/employees' representatives of a share deal, there may be relevant agreements specific to the company which contain information obligations.          |
| 5. Implement     | 5.1. Not applicable (unless otherwise stated in a relevant internal agreement)  |

### II. Obligations of the target

Whether

- |                  |   |
|------------------|---|
| 1. Check         | 1.1. A change in the ownership structure of a company does not alter the identity of the employer. Monaco statute does not contain significant requirements relating to employment law in such share deal arrangements. |
|                  | 1.2. In principle, employees are unaffected by a share deal. As a result, all their terms and conditions of employment remain the same.   |
| 2. Prepare       | 2.1. Not applicable   |
| 3. Inform/Notify | 3.1. Not applicable   |
| 4. Consult       | 4.1. Although there is no general legal obligation to inform employees/employees' representatives of a share deal, there may be relevant agreements specific to the company which contain information obligations.      |
| 5. Implement     | 5.1. Not applicable (unless otherwise stated in a relevant internal agreement).   |

1. Check

2. Prepare

3. Inform/Notify

## B. Asset deal

### I. Obligations of seller

Whether:

- 1.1. the circumstances of the deal trigger a requirement for a transfer of employment contract pursuant to the public provisions stipulated under Article 15 of Law n°729 of 16 March 1963;
  - 1.2. This will be the case if an economic entity (an organised group of persons and assets performing an economic activity which pursues a specific purpose) is transferred to another employer whilst retaining its identity.
- All further comments in this section are based on this assumption;
- 1.3. no recent or upcoming employment terminations stem from the deal. Otherwise, unfair dismissals will lead to high level of compensation (for damages and/or the employee's reinstatement) for one or both parties to the Deal;
  - 1.4. Which employees are allocated to the transferred assets; it is important for the seller to identify the employees to be transferred jointly with the assets in order to allow the purchaser to pursue these employment contracts under in the same conditions.
  - 1.5. the terms of any relevant collective bargaining agreement or internal regulation include any information and consultation obligations in relation to the asset deal.

The following in draft form:

- 2.1. Not mandatory but recommended: notification letters to the employees concerned confirming the change of employer, the date of implementation and the retention of acquired rights (e.g. seniority, paid holidays...)
- 2.2. Not mandatory but recommended: Three-part convention to be signed by the seller, the purchaser and each transferred employee in order to support the transfer conditions.
- 3.1. the employees to be transferred of the change of employer.

4. Consult  
 4.1. Not applicable as long as the asset deal does not lead to the closure of the employees' position within the seller company. Nevertheless, it is recommended to inform the employees' representatives of an asset deal and the consequences on employment at their monthly meeting with the management team prior the asset deal.

5. Implement  
 5.1. 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 circumstances of the deal do, in fact, trigger a requirement for a transfer of employment contracts pursuant to the public provision stipulated under Article 15 of Law n°729;  
 1.2. This will be the case in the event of an asset deal provided that an economic entity (an organised group of persons and assets exercising an economic activity which pursues a specific objective) is transferred to another employer whilst retaining its identity.  
 1.3. Which employees are allocated to the assets and will be transferred to the purchaser of the assets as a result of the transfer.  
 1.4. The relevant information pursuant to any individual or collective bargaining agreement, or internal regulations of the seller (if applicable).  
 1.5. The payment scheme applicable to these employees, including basic remuneration, any additional bonuses, payments and other incentives, labour regulations, holiday entitlements, etc.  
 1.6. any outstanding liabilities exist towards employees, considering that 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;  
 1.7. 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

3. Inform/Notify

4. Consult

5. Implement

1. Check

the following in draft form:

2.1. Not mandatory but recommended: Three-part convention to be signed by the seller, the purchaser and each transferred employee in order to support the transfer conditions.

2.2. New employment contract with the employees to be transferred.

3.1. the Labour Authority of the change of employer of the transferred employees.

4.1. Not applicable as long as the asset deal does not lead to a closure of the position within the purchaser company.

5.1. The purchaser must provide the transferred employees of the target company with the same acquired rights they enjoyed previously.

5.2. Provide each of the transferred employees with a copy of all HR policies, rules and regulations used by the purchaser, if applicable.

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

whether:

1.1. the identity of the employer changes for the employees (this will always be the case for all employees in the event of a merger involving the creation of a newco); or

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);

1.3. In the event of a merger pursuant to section 1.1., all pre-merger companies are subject to the obligations of the seller in an asset deal (see section B. I.), whereas the post-merger company is subject to the obligations of the purchaser in an asset deal (see section B. II);

1.4. In the event of a merger pursuant to section 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 section 1.3.

- 1.5. It is advisable for the buyer/the merging parties to verify in advance if:
- 1.6. any outstanding liabilities exist towards employees of the merging (absorbed) entity, which will be transferred across to the new/surviving entity;
- 1.7. employees enjoy a particular status in as much detail as possible, including the content of employment contracts, holiday and payment entitlements, the 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.



# Montenegro



## 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:
    - the date or proposed date of the change of employer;
    - the reasons for the change of employer;
    - the legal, economic and social consequences of the change of employer for the employees, and any measures being planned to alleviate such consequences.
3. Inform/Notify
 

The present employer must inform the future employer of any rights and obligations arising out of any collective bargaining agreements and employment agreements that are being transferred.

The present employer must inform the employees of the transfer of employment agreements.

The present and future employer must notify the representative trade union/ employees of the following:

  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - the legal, economic and social consequences of the change of employer for the employees, and any measures being planned to alleviate such consequences.
4. Consult
 

No consultation requirement.

### 5. Implement

The present and future employer must implement measures to alleviate the social and economic consequences for the employees in cooperation with the representative trade union. The future employer is obliged to conclude the employment agreement with the employee within five days from the takeover. The employment agreement with the purchaser cannot contain a lesser scope of rights than the previous agreement with the predecessor, as long as the collective agreement of the previous employer is in force. The future employer is obliged to implement the collective bargaining agreement of the present employer for at least one year from the day the employer is changed, unless the following occurs before this period expires:

- the term for which the collective bargaining agreement has been concluded expires;
- a new collective bargaining agreement is concluded.

## B. Share deal

### 1. Check

Not applicable.

### 2. Prepare

the following in draft form:

Information for the attention of the employees regarding the change of shareholder.

### 3. Inform/Notify

the employees about the change of shareholder at least five days before the transfer of shares.

The seller must inform the purchaser about any rights and obligations arising out of any collective agreements and employment agreements that have been transferred.

### 4. Consult

Not applicable.

5. Implement

sections 2 and 3.

The seller, purchaser and target are to implement measures to alleviate the social and economic consequences for the employees at least 15 days before the transfer of shares.

The purchaser, i.e. the target, is obliged to implement the collective bargaining agreement of the target company for at least one year from the day of the change of majority shareholder, unless the following takes place before this period expires:

- the term for which the collective bargaining agreement has been concluded expires;
- a new collective bargaining agreement is concluded.

**A. Asset deal**

**III. Obligations of the seller**

Not applicable.

**IV. Obligations of the purchaser**

Not applicable.



# The Netherlands



## A. Share deal

### I. Obligations of the purchaser

#### 1. Check

whether:

- 1.1. a works council has been established and if so, verify for which entity/entities. Special attention should be given if the works council is installed at the target. Where a works council exists, verify whether covenants with the works council(s) have been concluded and/or whether the target has informed the works council about a possible 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 (and the works council) relating to a transaction (both regarding timing as content);
- 1.4. the purchaser is planning to implement changes to the workforce after the transaction (such as relocation, harmonisation of employment terms, redundancies) which depending on the timing of implementation is something which should be shared with the seller's works council prior to the transaction, as some changes could trigger the advisory (or additional) rights of a works council;
- 1.5. the transaction could trigger co-determination rights for the purchaser's works council and the purchaser's position on this. If the parties' views differ, agree on a procedure to avoid a delay to the transaction or court proceedings;
- 1.6. the transaction is an auction sale, meaning that the shareholder/company does not yet select a possible purchaser, but first arranges a selection procedure. If the works council has an advisory right regarding the transaction, it is not uncommon to inform the works council about the auction sale first and, once a potential purchaser has been selected, to allow the works council to give advice.

#### 2. Prepare

- 2.1. a written request for advice. The wording of the request for advice 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;

#### 3. Inform/Notify

- 2.2. confirmation from the target company that communication with its works council will be aligned to (the works council of) the purchaser and that the purchaser will not enter into dialogue with its works council before the parties have aligned their communications. Also, confirmation from the target company that it will ensure not to make promises to its works council regarding future commitments for the employees which the purchaser is not willing to fulfil;
- 2.3. the 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.

- 3.1. 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 under the definition found in the Merger Code, notification of which is an obligation from the purchaser and seller.

#### 4. Consult

- 4.1. at least once in person with the (complete) works council(s). It 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 mandatory under 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 writing the manner and timing of the implementation of the decision. Verify whether the response of the works council is positive or negative. In the latter case, it is key to inform the works council in writing whether the conditions set by the works council will be met and if not, why. Bear in mind that following negative advice, the implementation of the decision should be delayed with one month as of the date on which the company informs the works council in writing about the implementation of the decision. Upon confirmation of the works council, the one-month waiting period can be ignored.

1. Check	<p><b>II. Obligations of the target</b></p> <p>whether:</p> <ol style="list-style-type: none"> <li>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 that 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;</li> <li>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;</li> <li>1.3. a CBA applies, allowing trade unions to become involved. Verify timing and arrange to coordinate with the works council on the timing of involvement of trade unions.</li> </ol>	<p>4. Consult</p> <p>5. Implement</p>	<ol style="list-style-type: none"> <li>4.1. during at least one consultation meeting with the works council;</li> <li>4.2. trade unions (if applicable).</li> <li>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.</li> </ol>
2. Prepare	<p>the following in draft form:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2.2. a notification 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 whether the social plan should be discussed and agreed with the works council or with trade unions.</li> </ol>	1. Check	<p><b>B. Asset Deal</b></p> <p><b>I. Obligations of the seller</b></p> <p>whether:</p> <ol style="list-style-type: none"> <li>1.1. the asset deal leads to a transfer of undertakings as defined under 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 from which the assets are sold remains unchanged after the transaction;</li> <li>1.2. the transaction triggers an advisory right on the part of the works council;</li> <li>1.3. the CBA includes an obligation to involve trade unions, and if so, when and how;</li> <li>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 only the company produces, for example);</li> <li>1.5. the new owner has a pension scheme or is willing and able to continue the pension scheme of the seller. Where the seller and purchaser both participate in the same industry-wide pension scheme, the seller should notify purchaser of the status of pension premium payments;</li> <li>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.</li> </ol>
3. Inform/Notify	<ol style="list-style-type: none"> <li>3.1. the works council;</li> <li>3.2. trade unions;</li> <li>3.3. the Social Economic Council (usually at a later stage);</li> <li>3.4. staff;</li> <li>3.5. other stakeholders (customers, press, etc.);</li> </ol>		

## 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 the 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 their personnel file will be transferred as well;
- 2.4. the wording of the pension fund of the pension insurer, in some cases.

## 3. Inform/Notify

- 3.1. the works council, trade unions and key staff;
- 3.2. the Social Economic Council.

## 4. Consult

- 4.1. at least once with the works council;
- 4.2. trade unions;
- 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 the works council and trade unions.

## 5. Implement

- 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 an asset purchase agreement. The seller and purchaser remain liable for one year after the transaction for the obligations of the seller which existed prior to the transaction. Include the date on which the transaction takes place in the individual letters.

## 1. Check

**II. Obligations of the purchaser**

whether:

- 1.1. the asset deal leads to a transfer of undertakings as defined under 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 from 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. If so, arrange for the seller to send all communications (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 the continuation of (certain) employment conditions;
- 1.3. the collective bargaining agreement includes an obligation to involve trade unions and, if so, when and how this is to be done;
- 1.4. certain employment conditions of the seller can be continued after the transaction by the purchaser;
- 1.5. a pension scheme applies for the seller's staff and, if so, which pension scheme (if any) shall apply after the transaction. Where the seller and purchaser participate in the same industry-wide pension scheme, the purchaser shall verify the status of pension premium payments by the seller which were due prior to transfer. The 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.

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 as well. Determine whether the works council or trade unions should take part in negotiations on a social plan;

## 2. Prepare



- 2.2. the wording for trade unions;
- 2.3. the wording for individual employees, welcoming them as an employee, sometimes also confirming the 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. 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 above regarding the possible liability on the purchaser for the pension premiums due prior to transfer in case of participation in the same industry-wide pension fund.

1. Check

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

1. Check

## A. Share deal

### I. Obligations of the purchaser

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 employees' representative bodies (trade unions, 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 employees' representatives in relation to the transaction.

the following in draft form:

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

### II. Obligations of the target

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 company granting employees' 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.

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

## B. Asset deal

### I. Obligations of the seller

- 1. Check
  - whether:
    - 1.1. the assets constitute a stable commercial venture (going concern). If so, the transaction will be deemed a transfer of undertakings within the meaning under the Acquired Rights Directive, and the obligations defined in sections 2 to 6 below will apply. The transfer of undertakings applies to employees, i.e. employees hired on the basis of an employment agreement, and does not apply to employees hired on the basis of service agreements or those with their own registered business (self-employed);
    - 1.2. any internal regulations exist granting individual employees additional entitlements as a result of the transaction;
    - 1.3. any internal regulations exist governing the information and/or consultation of employees' representative bodies (trade unions or works councils, if such bodies exist) in relation to the transaction;
    - 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, the seller will be jointly and severally liable with the purchaser.

- 2. Prepare
  - the following in draft form:
    - 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.
- 3. Inform/Notify
  - 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) how work is organised or the basis of employment at the seller if the transaction results in material changes in this respect.
  - 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 section 2.
- 4. Consult
  - 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) how work is organised or the basis of employment at the seller if the transaction results in material changes in this respect.
  - 4.2. the trade unions operating at the seller (if such bodies are in place) to negotiate with them any changes to employment conditions 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.
  - 4.3. If trade unions and works councils are not in place, there is no duty to consult.
- 5. Implement
  - 5.1. Not applicable, unless stated otherwise in the internal regulations in force at the target company.
- 6. Other
  - 6.1. Transfer the personnel files of the transferred employees to the purchaser.
  - 6.2. If a company social benefit fund has been set up at the seller, transfer this to the purchaser (or a proportion thereof where an organised part of an undertaking is being transferred).

- 6.3. De-register the transferred employees from the Social Security Institution within seven days after the transfer.
- 6.4. If the seller no longer employs any employees after the transaction, it will need to de-register itself as a payer of social security contributions from the Social Security Institution and inform this body of the transfer within 7 days after it takes place.
- 6.5. If a transferred employee is a foreigner who has a work permit, the seller for which a work permit was issued must report the transfer to the local immigration authorities in writing within 7 days after the transfer.

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

1. Check

whether:

- 1.1. the assets constitute a stable commercial venture (going concern). If so, the transaction is deemed to be a transfer of undertakings within the meaning under the Acquired Rights Directive, and the obligations defined in sections 2 to 6 below apply. The transfer of undertakings applies to employees i.e. employees hired on the basis of an employment agreement and does not apply to employees hired on the basis of service agreements or those with their own registered business (self-employed);
- 1.2. the seller's employees subject to the transfer are receiving any pay benefits apart from their basic salary. If so, the purchaser is obliged to observe these after the transfer, until remuneration 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;

2. Prepare

3. Inform/Notify

4. Consult

- 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), the purchaser will be solely liable for them. If the assets constitute an organised part of the undertaking, the purchaser will be severally liable with the seller;
- 1.7. the seller is in arrears as regards paying taxes and social security contributions.

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 with regard to work, remuneration and re-qualification conditions. The letters must be finalised at least 30 days before the anticipated transfer date.
- 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) how work is organised or the 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 section 2 above.
- 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) how work is organised or the basis of employment at the purchaser, if the transaction results in material changes in this respect.

5. Implement
- 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.
  - 5.1. work organisation regulations, if: (I) the number of employees after the transaction amounts to at least 50; (II) or the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50, unless such regulations already exist at the purchaser. If trade union bodies exist at the seller, these groups must be involved in the implementation process.
  - 5.2. regulations on compensation conditions and other work-related benefits, if: (I) the number of employees after the transaction amounts to at least 50; or (II) the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50 unless such regulations already exist at the purchaser. These regulations may stipulate that a social fund is not set up at the purchaser. If trade union bodies exist at the seller, these groups must be involved in the implementation process.
  - 5.3. company social fund by-laws regulating social benefits available to the purchaser's employees, if: (I) the number of employees after the transaction amounts to at least 50; or (II) the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50, and the compensation regulations do not stipulate that a social fund is not to be established. If trade union bodies exist at the seller, these groups 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 a proportion thereof where an organised part of an undertaking is being transferred).
  - 6.3. The transferred employees have a right to terminate their employment upon seven days' notice within two months following the transfer. For the employee, such termination has the same consequences as those envisaged for termination of the employment upon notice by the employer.

1. Check

- 6.4. Past employment with the seller will count as continuous employment with the purchaser. New employment contracts do not have to be entered into between the purchaser and the transferred employees.
- 6.5. Register the transferred employees with the Social Security Institution within seven days following the transfer.
- 6.6. If the headcount reaches or exceeds 100 employees after the transaction, the purchaser should create a H&S service.

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

Mergers always result in a transfer of undertakings within the meaning under the Acquired Rights Directive. Consequently, the following obligations apply.

whether:

- 1.1. employees subject to the transfer are receiving any pay benefits apart from basic salary. If so, these benefits must be observed after the merger by the surviving entity (or new entity) until the remuneration 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 employment. If the benefits are 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 employees' 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 employees' representative bodies (trade unions or works councils, if such bodies exist) in relation to the merger;

2. Prepare	<p>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;</p> <p>1.6. either party is in arrears as regards transferring taxes and social security contributions.</p> <p>the following in draft form:</p> <p>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 employees; and (IV) any anticipated measures concerning the employment conditions of either party's employees, concerning work, remuneration and re-qualification conditions in particular.</p>	5. Implement	<p>5.1. the work-related organisational regulations at the surviving entity (or new entity) if: (I) the number of employees after the transaction amounts to at least 50; or (II) the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50, unless such regulations are already in force at the surviving entity. If trade union bodies exist at the surviving entity (or new entity), these groups must be involved in the implementation process.</p> <p>5.2. The regulations on remuneration conditions and other work-related benefits at the surviving entity (or new entity), if: (I) the number of employees after the transaction amounts to at least 50; or (II) the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50, unless such regulations are already in force at the surviving entity. These regulations may stipulate 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 groups must be involved in the implementation process;</p>
3. Inform/Notify	<p>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) how work is organised or the basis of employment at either party if the transaction results in material changes in this respect.</p> <p>3.2. individual employees or, alternatively, trade union organisations (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 section 2 above.</p>	6. Other	<p>5.3. The company social fund by-laws regulating social benefits available to the employees of the surviving entity (or new entity), if: (I) the number of employees after the transaction amounts to at least 50; or (II) the trade union (if one exists) requests it, if the number of employees is more than 20 but less than 50, and the compensation regulations do not stipulate that a social fund is not to be set up. If trade union bodies exist at the surviving entity (or new entity), these groups must be involved in the implementation process.</p> <p>6.1. The personnel files of employees subject to the transfer must be transferred to the surviving entity (or new entity).</p>
4. Consult	<p>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) how work is organised or the basis of employment at either party if the transaction results in material changes in this respect.</p> <p>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. An agreement must be reached regarding such changes within 30 days after the trade unions are informed of these plans.</p>		<p>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).</p> <p>6.3. Transferred employees must be de-registered from the Social Security Institution within seven days after the transfer by the absorbed entities.</p> <p>6.4. The absorbed entities must be de-registered as payers of social security contributions from the Social Security Institution within 7 days after the transfer.</p>

# Portugal



- 6.5. The new entity must be registered as a payer of social security contributions 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. Past employment will count as continuous employment with the surviving entity (new entity). New employment contracts do not have to be entered into.
- 6.8. If a transferred employee is a foreigner who has a work permit, the entity for which a work permit was issued must report the transfer to the local immigration authorities in writing within seven days after the transfer.
- 6.9. If the headcount reaches or exceeds 100 employees after the merger, a H&S service must be created at the surviving entity (or new entity).

1. Check

2. Prepare

## A. Share deal

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

Although there is no obligation arising directly from the transfer of undertakings, the employees' committee is entitled to request information regarding any project which involves changes to the share capital.

## B. Asset deal

### *1. Obligations of the seller*

whether:

- 1.1. an employees' representative committee exists;
- 1.2. a share option plan exists;
- 1.3. a pension scheme exists;
- 1.4. employment contracts and provision of services agreements
- 1.5. Collective bargaining agreements and/or works agreements apply, as well as the specific conditions laid down in these agreements.

In the event of a transfer of undertakings according to the Portuguese Labour Code, the seller must inform the employees' representatives and, where applicable, the employees themselves (cumulative duty of information), 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 on the employees;
- (IV) any planned measures regarding the employees;
- (V) the content of the transfer of undertakings contract executed between transferor and transferee.

<p>3. Inform/Notify</p>	<p>The information referred to above should be provided in writing in good time before the transfer, at least ten business days prior to the mandatory consultation with the employees' representatives – in an attempt to obtain an agreement on the measures that the seller and purchaser intend to adopt in relation to the employees as a result of the transfer, in order, <i>inter alia</i>, to adapt the employees' working conditions.</p> <p>There is also the obligation to immediately inform the employees covered by the transfer of undertaking where reaching an agreement or at the end of the consultation with the employees' representatives (where the representative committee has not intervened).</p> <p>The employees' representatives must be consulted at least ten days before the transfer takes place.</p> <p>Companies must inform the Portuguese Authority for Working Conditions ('AWC') of the content of the contract between the transferor and transferee and all the elements which constitute the economic unit (if this is the case). Information to the AWC:</p> <ul style="list-style-type: none"> <li>— Mandatory: for medium and large companies; and</li> <li>— At the request of the AWC: in case of micro or small enterprises.</li> </ul> <p>At the request of either party, the competent department of the Ministry of Employment shall intervene in the negotiations between the transferor and the transferee with the employees' representatives under the same terms as those established for the procedure of a collective dismissal – in other words, this entity is now assigned the following functions: (I) promoting the regularity of the substantive and procedural negotiation instructions ; (II) reconciling the parties' interests; and (III) upholding the employees' rights.</p> <p>As of five working days (from receipt of the information regarding the transfer of undertakings), a representative committee may be designated (with a maximum of three members if the transfer includes up to five employees, and a maximum of five members if it includes more employees) in the absence of the employees' representatives.</p>	<p>5. Implement</p>	<p>Implementation following proper information/notification.</p> <p>Transfer may only take place at least seven working days as of the agreement or the end of the consultation period with the employees' representative.</p> <p>Please note that in practical terms a longer period may be required for the implementation of specific employment changes such as those affecting the pension scheme, etc.</p>
		<p>6. Right of opposition</p>	<p>The employees included in a transfer of undertakings may exercise the right to oppose the transfer of their employment contracts, maintaining the employment contract with the transferor, if invoking serious impairment, namely due to the transferee's patent lack of solvency, difficult financial situation, or if its work organisation policy does not inspire their confidence.</p>
		<p>7. Just cause of termination</p>	<p>The employee has five working days to exercise in writing their right of opposition (as of the end of the period for the appointment of the representative committee, if such appointment has not been made; after reaching an agreement; or upon the termination of the consultation of the employees' representative's period).</p> <p>The transfer of undertakings is considered as just cause for the termination of the employment contract by the employee.</p> <p>The grounds shall be the same as those established for the right of opposition.</p> <p>In case of termination of the employment contract under just cause, the employee is entitled to compensation in the same terms as those legally foreseen for a collective dismissal.</p>
<p>4. Consult</p>	<p>See section 3 above.</p>		

## ***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 employment law, both the seller and purchaser must combine the information and consultation to be given to the employees' 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 jointly and severally liable for all obligations due on the date of transfer and for a period of two years 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.



## A. Share deal

### I. Obligations of the purchaser

1. Check

whether:

- 1.1. an employees' 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 employees' representative body, and its history;
- 1.2. a collective bargaining agreement (or industry agreement) exists and if so, the terms of this agreement;
- 1.3. any special employment arrangements or terms (including those applicable in case of a share deal) exist between the target and its employees (these may be contained in employment contracts, collective bargaining agreements or industry agreements, or in the internal regulations of the target);
- 1.4. contacts exist with 'key' members of the employees' representative body of the target to ensure proper communication.

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).

1. Check

whether:

- 1.1. a collective bargaining agreement (or industry agreement in force) provides for any obligations in case of a share deal.

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

whether:

- 1.1. an employees' 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 employment arrangements or terms are in place (these may be contained in employment contracts, collective bargaining agreements or industry agreements, or in the internal regulations of the target) applicable in case of an asset deal.

1. Check

The following in draft form:

2. Prepare

- 2.1. documents formalising the termination of employment of targeted employees by mutual consent or via their transfer to the purchaser.

3. Inform/Notify

- 3.1. the targeted employees of the termination of their employment and their subsequent hiring by 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 the termination of employment of targeted employees from the seller.

**II. Obligations of the purchaser**

- 1. Check whether:
  - 1.1. a collective bargaining agreement (or industry agreement) exists;
  - 1.2. targeted employees have special employment terms that are to be provided to them by the purchaser for the targeted employees to agree to such transfer.
- 2. Prepare the following in draft form:
  - 2.1. new employment contracts and the documentation required to establish employment with the purchaser.
- 3. Inform/Notify 3.1. Not applicable, unless stated otherwise in a collective bargaining agreement (or industry agreement in force).
- 4. Consult 4.1. Notify the targeted employees of 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.

1. Check

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

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

whether:

- 1.1. an employees' 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 employment arrangements or terms (including those applicable in case of a merger) exist between either of the companies involved and their employees (these may be contained in employment contracts, collective bargaining agreements or industry agreements, or the internal regulations of both companies).

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 to the data related to the employer;
- 2.3. amendments to other HR documentation related to the data on the employer;
- 2.4. documents on the termination of employment of employees who have refused to continue their employment due to the merger.

3.1. employees of the merger in writing.

4.1. Notify employees of the merger in writing.

5.1. Execute the documents listed in section 2 above.



## 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:
    - the date or proposed date of the change of employer;
    - the reasons for the change of employer;
    - 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.
3. Inform/Notify
 

The present employer must inform the future employer of any rights and obligations arising out of internal employment bylaws and employment agreements that are being transferred.

The present employer must inform the employees of the transfer of employment agreements.

The present and future employer must notify the representative trade union/ employees of the following:

  - the date or proposed date of the change of employer;
  - the reasons for the change of employer;
  - 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.
4. Consult
 

No consultation requirement.

5. Implement

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 bylaws of the present employer for at least one year from the day the employer is changed, unless the following occurs before this period expires:

- the term for which the collective agreement has been concluded, expires;
- a new collective agreement is concluded.

### 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 bylaw, 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 bylaws 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. Obligation of the seller***

Not Applicable

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

Not Applicable

1. Check

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

**A. Share deal**

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

- 1.1. whether any special arrangements or employment terms exist between the company involved 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 the company's internal regulations/rules.
- 1.2. if labour/trade unions are recognised by the company, details of the employees who are members of each union, any collective labour agreement(s) and details of information or consultation which has occurred or is proposed with any recognised union representatives.
- 1.3. Review the rules or documentation relating to any share options, share incentives or phantom share option schemes and non-share-based incentives, schemes or arrangements in place for the benefit of the involved company's employees.
- 1.4. Otherwise, there are generally no conditions to be satisfied, and no notifications necessary as there is technically no change of employer.
- 2.1. Not applicable, unless any special arrangements or specific employment terms exist.
- 3.1. Not applicable, unless any special arrangements or specific employment terms exist.
- 4.1. Not applicable, unless any special arrangements or specific employment terms exist.
- 5.1. Not applicable, unless any special arrangements or specific employment terms exist.

## II. Obligations of the target

- |                  |   |
|------------------|---|
| 1. Check         | <p>1.1. Whether any special arrangements or employment terms exist between the involved companies and their employees relating to a 'change of ownership'. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements or in the companies' internal regulations/rules;</p> <p>1.2. If labour/trade unions are recognised by the company, details of the employees who are members of each union, any collective labour agreement(s) and details of information or consultation which has occurred or is proposed with any recognised union representatives.</p> <p>1.3. Review the rules or documentation relating to any share options, share incentives or phantom share option schemes and non-share-based incentives, commission or bonus schemes or arrangements in place for the benefit of the involved companies' employees, and details of any employee benefit trust in which any employee is a beneficiary or potential beneficiary.</p> <p>1.4. Otherwise, there are generally no consequences for employment conditions, and no notifications necessary as there is no change of employer.</p> |
| 2. Prepare       | 2.1. Not applicable, unless any special arrangement or specific employment terms exist.   |
| 3. Inform/Notify | 3.1. Not applicable, unless any special arrangement or specific employment terms exist.   |
| 4. Consult       | 4.1. Not applicable, unless any special arrangement or specific employment terms exist.   |
| 5. Implement     | 5.1. Not applicable, unless any special arrangement or specific employment terms exist.   |

1. Check

## B. Asset deal

### I. Obligation of the seller

Employees who benefit from general protection under the Employment Act, or "EA Employees" generally comprise employees earning no more than S\$4,500 per month (and expressly excludes seamen, domestic employees and statutory/government board employees).

Editor's Note: The Employment Act will undergo several major changes in April 2019 including, among others, the removal of the salary cap of S\$4,500 for all employees (except for seamen, domestic employees, public servants and those covered under other legislation due to the nature of their work), meaning the definition of EA Employees will change and the scope of protection widened accordingly.

- 1.1. whether the sale is a mere transfer of assets or if there is a transfer of business or trade on a "going concern" basis.
- 1.1.1. If the transaction is a mere transfer of assets, the employees of the seller will not be transferred across to the purchaser. There are generally no restrictions against the dismissal of such employees, save that the applicable contractual notice (or payment in-lieu of notice) provisions should be complied with. The Employment Act specifies minimum notice periods for EA Employees.
- 1.1.2. If there is a transfer of a business or trade on a "going concern" basis, the contracts of the EA Employees will be automatically amended from the seller to the purchaser. There is no requirement for the EA Employees to consent to the transfer. Employees who are not EA Employees will have their employment terminated unless their employment contracts are amended to the purchaser or unless new employment contracts are entered into with the purchaser. If the intention is not to retain employees, the applicable contractual notice (or payment in-lieu of notice) provisions should be complied with. The Employment Act specifies minimum notice periods for EA Employees.
- 1.2. if labour/trade unions are recognised by the company, details of employees who are members of each union, any collective labour agreements and details of information or consultation which has occurred or is proposed with any recognised union representatives.

	1.3. Review the rules or documentation relating to any share options, share incentives or phantom share option schemes and non share-based incentives, schemes or arrangements in place for the benefit of the involved company's employees.	1. Check
2. Prepare	2.1. If there is an automatic amendment of EA Employees, to prepare information set out in section 3.1. below	
3. Inform/Notify	3.1. If there is an automatic amendment of EA Employees, as soon as it is reasonable and before the automatic transfer takes place, the seller must inform the affected EA Employees or the trade union representing the employees of the fact that the transfer is to take place, the reasons for it, the implications of the transfer and the measures that will be taken by the seller or purchaser in connection with the transfer.	
	3.2. Employers who employ at least ten employees are required to notify the Ministry of Manpower if five or more employees are retrenched within any six-month period beginning 1 January 2017. This applies to permanent employees, as well as contract employees who are contracted on at least six-month terms.	
4. Consult	4.1. Consultations may take place between the seller and affected employees, or trade unions representing the affected employees.	
5. Implement	5.1. Although there is no set time limit specified under Singapore law, the seller is required to notify affected employees or their union within a reasonable time of the impending transfer so as to enable them or their unions to enter into consultations and to ensure that there is continuity of employment when they are transferred to the purchaser, and that their terms of employment are no less favourable than those they had been enjoying before the transfer.	
	5.2. Retrenchment notifications to the Ministry of Manpower (as described above) must be made within five (5) working days from the date on which the affected employees are notified.	2. Prepare
		3. Inform/Notify

## **II. Obligation of the purchaser**

- 1.1. whether the sale is a mere transfer of assets or if there is a transfer of business or trade on a "going concern" basis:
  - 1.1.1. if the transaction is a mere transfer of assets, the employees of the seller will not be transferred across to the purchaser. There are generally no restrictions against the dismissal of such employees, save that the applicable contractual notice (or payment in-lieu of notice) provisions should be complied with. The Employment Act specifies minimum notice periods for EA Employees.
  - 1.1.2. If there is a transfer of a business or trade on a "going concern" basis, the contracts of the EA Employees will be automatically amended from the seller to the purchaser. There is no requirement for the EA Employees to consent to the transfer. Employees who are not EA Employees will have their employment terminated unless their original employment contracts are amended to the purchaser or unless new employment contracts are entered into with the purchaser. If the intention is not to retain employees, the applicable contractual notice (or payment in-lieu of notice) provisions should be complied with. The Employment Act specifies minimum notice periods for EA Employees.
- 1.2. if labour/trade unions are recognised by the company, details of employees who are members of each union, any collective labour agreement and details of information or consultation which has occurred or is proposed with any recognised union representatives.
- 1.3. Review the rules or documentation relating to any share options, share incentives or phantom share option schemes and non-share-based incentive schemes or arrangements in place for the benefit of the involved company's employees.
  - 2.1. If there is an automatic amendment of EA Employees, the purchaser is to prepare appropriate information for the seller to enable the latter to comply with the Employment Act information obligations, as described in section 3.1. below.
  - 3.1. If there is an automatic amendment of EA Employees, as soon as it is reasonable and before the automatic transfer takes place, the purchaser must inform the seller of the measures the purchaser intends to take in relation to the affected EA Employees, if any (which the seller will then convey to the affected EA Employees or the trade union representing the employees).

4. Consult

4.1. There are no mandatory consultation requirements for the purchaser to consult with the affected employees.

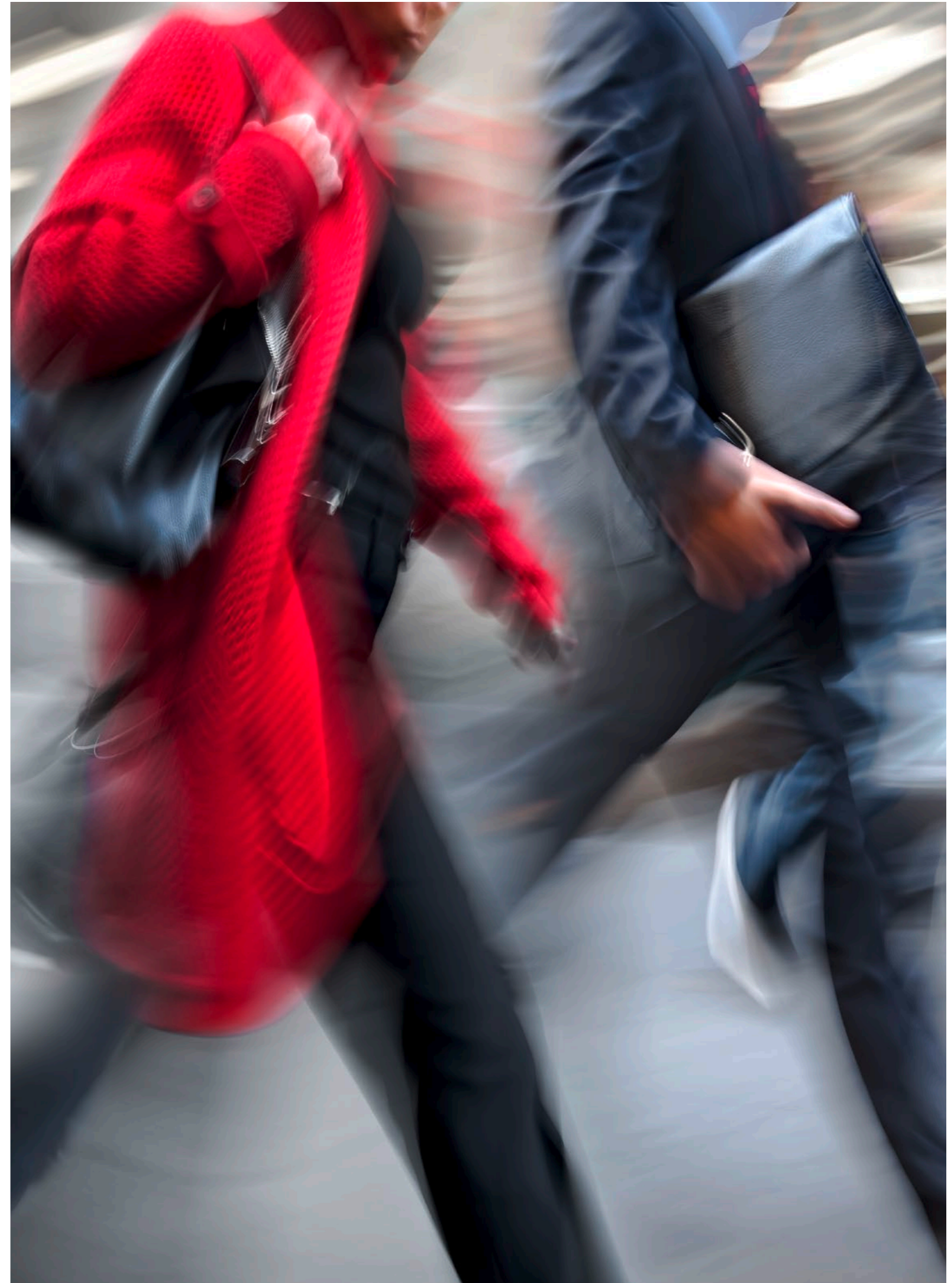
5. Implement

5.1. Pursuant to the transfer, the purchaser takes over from the seller all rights, powers, duties and liabilities under the employment contract with the employee or with the trade union representing the employees before the transfer; and the purchaser may not change any terms and conditions of employment unless the affected employee resigns.

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

In Singapore, apart from a share sale or an asset sale, a merger can also take place by way of an amalgamation. In an amalgamation, two or more Singapore-incorporated companies amalgamate and continue as one company. An amalgamation in Singapore may take the form of a short-form (usually an intra-group merger between a parent and subsidiary or between two wholly-owned subsidiaries of the same corporation) or a standard amalgamation (typically between unrelated corporations). Following an amalgamation, the amalgamated surviving company will succeed to all the properties, rights and privileges as well as assume the liabilities and obligations of each of the amalgamating companies, including employment contracts.

The rules set out in Section B. Asset deal would therefore apply in the case of an amalgamation





## A. Share deal

### I. Obligations of the purchaser

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | <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 relating to the transaction.</li> </ul> |
| 2. Prepare       | a draft of the following:  |
|                  | <ul style="list-style-type: none"> <li>2.1. an announcement of the planned transfer in accordance with section 3.1. (as there are no statutory requirements regarding this announcement, 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 employment law, employees or employees' 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).</li> </ul>  |
| 4. Consult       | <ul style="list-style-type: none"> <li>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.</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>   |

### II. Obligations of the target

whether

- |                  |   |
|------------------|---|
| 1. Check         | <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       | a draft of the following:   |
|                  | <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 employment law, employees or employees' 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

### I. Obligation 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, 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) on 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:
  - the expected date of the transfer;
  - the reasons for the transfer;
  - the legal, economic and social effects of the transfer for the seller's employees;
  - any intended actions concerning the employment conditions on the seller's employees.

3. Inform/Notify

- 3.1. employees' 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 section 2.1. above.

4. Consult

- 4.1. and negotiate with the employees' representatives (unions, works council, works trustees) on 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 there are no employees' representatives);

- 4.2. employees' representatives over the relevant issues (if applicable according to section 1.4.).

5. Implement

- 5.1. Not applicable.

### II. Obligation of the purchaser

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, the obligations stipulated in sections 2–6 must be observed);
- 1.2. any internal regulations or collective bargaining agreements exist granting individual employees additional entitlements as a result of the transaction;
- 1.3. any employment agreements exist which contain provisions granting employees special entitlements as a result of the 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, works councils) on the transaction;
- 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 term);
- 1.6. any employees' 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:
  - the expected date of the transfer;
  - the reasons for the transfer;
  - the legal, economic and social effects of the transfer on the current purchaser's employees;
  - any intended actions concerning the employment conditions on the purchaser's employees.

## 3. Inform/Notify

- 3.1. the employees' 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 section 2.1. above.

## 4. Consult

- 4.1. and negotiate with the employees' representatives (unions, works council, works trustees) on 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 there are no employees' representatives);
- 4.2. the employees' representatives on the issues of retaining the legal position and function of employee representative bodies after the transaction (if applicable according to section 1.6.);
- 4.3. the employees' representatives over the relevant issues (if applicable according to section 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 their term.

## 6. Other

- 6.1. If the number of employees of the purchaser after the transaction exceeds 20 and at the same time the Office of Labour, Social Affairs and Family retains people with disabilities among its job seekers, 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 directly to an individual with a disability who is self-employed; or
  - make payments to the Office of Labour, Social Affairs and Family; or
  - combine the above methods to fulfil the respective obligation.

## 1. Check

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

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 employees' representative bodies (trade unions, work councils) on 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 term);
- 1.5. any employees' 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 employees' representatives must be preserved until the end of their term of office.

a draft of the following:

- 2.1. The notification letter regarding the upcoming merger. According to the statutory provisions, the letter must contain information on:
  - the expected date of the merger;
  - the reasons for the merger;
  - the legal, economic and social effects of the merger on the employees of the merging parties;
  - any intended actions concerning the employment conditions on the employees of the merging parties.

## 2. Prepare

## 3. Inform/Notify

- 3.1. the employees' 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 section 2.1. above.

4. Consult

- 4.1. and negotiate with the employees' representatives (unions, works council, works trustees) on 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 there are no employees' representatives);
- 4.2. the employees' representatives over the issue of retaining the legal position and function of employee representative bodies after the transaction (if applicable according to section 1.5.);
- 4.3. the employees' representatives over the relevant issues (if applicable according to Section 1.3n);

5. Implement

- 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 their term.

6. Other

- 6.1. If the number of employees of the new employer (legal successor) after the transaction exceeds 20 and at the same time the Office of Labour, Social Affairs and Family retains people with disabilities among its job seekers, 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 directly to an individual with a disability who is self-employed; or
  - make payments to the Office of Labour, Social Affairs and Family; or
  - combine the above methods to fulfil the respective obligation.



# Slovenia



## A. Share deal

### I. Obligations of the purchaser

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | 1.1. the Takeovers Act applies (any obligation under the Takeovers Act must be performed post-closing only);   |
| 2. Prepare       | 2.1. If the Takeovers Act applies, the prospectus (takeover bid together with the offer document) shall contain plans for the maintenance of employee and management jobs, including any modification of recruitment requirements and strategic plans for both companies.                  |
|                  | 2.2. draft notifications according to section 3.   |
| 3. Inform/Notify | 3.1. If the Takeovers Act applies, notify the employees' 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. |

in accordance with sections 1– 3 above.

### II. Obligations of the target

- |                  |  |
|------------------|--|
| 1. Check         | whether  |
|                  | 1.1. the Takeovers Act applies;  |
|                  | 1.2. a works council exists.   |
| 2. Prepare       | 2.1. if the Takeovers Act applies, a publication of the employees' representatives' opinion on the effects of the takeover bid on employment;  |
|                  | 2.2. draft notifications according to section 3.   |
| 3. Inform/Notify | 3.1. If the Takeovers Act applies, notify the employees' 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. |
|                  | 3.2. if the Takeovers Act applies, the employees' representatives – or, in their absence, the employees themselves – of its opinion on the takeover bid within 10 days of publication of the takeover bid.   |

4. Consult

5. Implement

1. Check

2. Prepare

3. Inform/Notify

4. Consult

3.3. the works council (if existing) at least 30 days before making the decision if a substantial change of ownership is to occur.

4.1. Following section 3.3, consult with the works council at least 15 days before making the decision if a substantial change of ownership is to occur.

If the changes are to result in mass redundancies, the works council's consent will be required (within eight days of receiving the employer's proposal). The works council may decline to give consent, albeit only if the grounds for mass redundancies are unjustified or the proposal does not include a programme for mass redundancies according to law.

In accordance with sections 1–4 above.

## B. Asset deal

### I. Obligations of the seller

- whether:
- 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;
  - 1.2. a collective agreement has been concluded;
  - 1.3. a works council exists;
  - 1.4. a trade union exists.
- draft notifications according to section 3.
- 3.1. Subject to section 1.1., notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer.
  - 3.2. In the event that an entire company or a significant part thereof is being sold, inform the works council (if existing) at least 30 days prior to making the decision.
  - 4.1. Following section 3.1, consult with the trade union at least 15 days prior to transfer regarding the legal, economic and social consequences. Consultations with employees are not required.
  - 4.2. Following section 3.2., consult with the works council at least 15 days prior to making the decision.

5. Implement In accordance with sections 1–4 above.

### ***I. Obligation of the purchaser***

1. Check whether:

- 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;
- 1.2. a collective agreement has been concluded (subject to section 1.1., a collective agreement applying to the seller shall continue to apply for at least one year, unless the collective agreement expires prior to such one-year period or if a new collective agreement is concluded prior to that time);
- 1.3. a works council exists (subject to section 1.1., members preserve their status if the conditions for their appointment continue to exist with the new employer).
- 1.4. a trade union representative exists (subject to section 1.1., the representatives preserve their status if the conditions for their appointment continue to exist with the new employer).

2. Prepare 2.1. draft notifications according to section 3.

3. Inform/Notify Subject to section 1.1, notify the trade union or, in its absence, the employees themselves, at least 30 days before the transfer.

4. Consult Following section 3.1, consult with the 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 sections 1–4 above.

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

Slovenian employment law equates a merger with a transfer of undertakings, if the merger results in a change of employer: see Section B. Asset deal. However, depending on the type of merger, both companies will have to notify and consult their respective works councils. In exceptional cases of a merger with a joint stock company, the Takeovers Act may apply (if the purpose of the merger was a takeover).



Spain

1. Check

### **A. Share deal**

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

whether:

- 1.1. employees' representatives exist;
- 1.2. stock plan awards may be affected by the share deal;
- 1.3. collective bargaining agreements and/or other collective agreements or internal regulations apply, and the specific conditions laid down in these agreements or regulations;
- 1.4. the company is compliant with all applicable employment, social security or health and safety regulations or a risk or contingency is detected during the due diligence process;
- 1.5. any individual employees or groups of employees enjoy special rights as a result of the share deal;
- 1.6. the share deal is to be combined with a merger or asset deal;
- 1.7. the share deal may involve a restructuring or other employment measures.

2. Prepare

2.1. If the share deal involves a restructuring of the company's staff or the implementation of other employment measures (e.g. a substantial modification of working conditions), the general information and consultation procedures to implement these measures will apply to the target.

2.2. A mere share deal itself is not subject to specific information requirements. However, it is common practice to inform the employees' representatives about the change of ownership of the company (normally this information is delivered by the target). There are no specific formalities in this respect.

2.3. Additional documents may be required if, as described in section 1.7, the share deal is to be combined with a merger or asset deal. For details, please see Section B. Asset deal and Section C. Merger.

3. Inform/Notify

3.1. Forward the information drafted to the respective addressees if sections 1.7 or 1.8 apply.

4. Consult
5. Implement
- 3.2. Likewise, inform the employees' representatives about the share deal although no express requirement exists (normally this information is delivered by the target).
- 4.1. No consultation requirements to be followed by the purchaser.
- 5.1. Implementation following information if so required.

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

1. Check
- whether:
- 1.1. employees' representatives exist;
- 1.2. stock plan awards may be affected by the share deal;
- 1.3. collective bargaining agreements and/or other collective agreements or internal regulations apply, and the specific conditions laid down in these agreements or regulations;
- 1.4. any individual employees or groups of employees enjoy special rights as a result of the share deal;
- 1.5. the share deal is to be combined with a merger or asset deal;
- 1.6. the share deal may involve a restructuring or other employment measures.
2. Prepare
- 2.1. If the share deal involves a restructuring of the company's staff or the implementation of other employment measures (e.g. a substantial modification of working conditions), the general information and consultation procedures to implement these measures will apply. In such case, the relevant documentation to fulfil these information and consultation procedures will need to be prepared.
- 2.2. A mere share deal itself is not subject to specific information requirements. However, it is common practice to inform the employees' representatives about the change of ownership of the company. There are no specific formalities in this respect.
- 2.3. Additional documents may be required if, as described in section 1.7, the share deal is to be combined with a merger or asset deal. For details, please see Section B. Asset deal and Section C. Merger.

3. Inform/Notify
4. Consult
5. Implement

1. Check

2. Prepare

- 3.1. Forward the information drafted to the respective addressees if sections 1.7 or 1.8 apply.
- 3.2. Likewise, inform the employees' representatives about the share deal although no express requirement exists.
- 4.1. No consultation requirements unless sections 1.7 or 1.8 apply.
- 5.1. Implementation following information if so required.

## **A. Asset deal**

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

- whether
- 1.1. the asset deal leads to a transfer of undertakings as defined in Article 44 of the Spanish Workers' Statute and Council Directive 2001/23/EC (i.e. transfer of an autonomous economic unit, meaning an organised grouping of resources with the objective of pursuing an essential or ancillary economic activity, which retains its identity after the transfer);
- 1.2. collective bargaining agreements and/or other collective agreements, internal regulations or employment contracts include specific conditions applicable to the asset deal;
- 1.3. any individual employees or groups of employees enjoy special rights as a result of the asset deal;
- 1.4. any measures affecting the employees – such as dismissals, salary reductions or any other substantial modification which may have a negative impact on the employees' employment conditions – are intended.
- 2.1. the following in draft form:

- 2.2. If section 1.1. above applies, the seller shall inform the employees' representatives of the affected employees (or the employees that may be affected if there are no employees' 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.
- 2.3. If section 1.4. applies, an information and consultation period will have to be initiated before the measures are undertaken. Therefore, additional documentation may have to be prepared for these purposes.

## B. Share deal

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

1. Check

whether:

- 1.1. employees' representatives exist;
- 1.2. stock plan awards may be affected by the share deal;
- 1.3. collective bargaining agreements and/or other collective agreements or internal regulations apply, and the specific conditions laid down in these agreements or regulations;
- 1.4. the company is compliant with all applicable employment, social security or health and safety regulations or a risk or contingency is detected during the due diligence process;
- 1.5. any individual employees or groups of employees enjoy special rights as a result of the share deal;
- 1.6. the share deal is to be combined with a merger or asset deal;
- 1.7. the share deal may involve a restructuring or other employment measures.

2. Prepare

- 2.1. If the share deal involves a restructuring of the company's staff or the implementation of other employment measures (e.g. a substantial modification of working conditions), the general information and consultation procedures to implement these measures will apply to the target.

3. Inform/Notify

4. Consult

5. Implement

1. Check

- 2.2. A mere share deal itself is not subject to specific information requirements. However, it is common practice to inform the employees' representatives about the change of ownership of the company (normally this information is delivered by the target). There are no specific formalities in this respect.
- 2.3. Additional documents may be required if, as described in section 1.7, the share deal is to be combined with a merger or asset deal. For details, please see Section B. Asset deal and Section C. Merger.

3.1. Forward the information drafted to the respective addressees if sections 1.7 or 1.8 apply.

3.2. Likewise, inform the employees' representatives about the share deal although no express requirement exists (normally this information is delivered by the target).

4.1. No consultation requirements to be followed by the purchaser.

5.1. Implementation following information if so required.

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

whether:

- 1.1. employees' representatives exist;
- 1.2. stock plan awards may be affected by the share deal;
- 1.3. collective bargaining agreements and/or other collective agreements or internal regulations apply, and the specific conditions laid down in these agreements or regulations;
- 1.4. any individual employees or groups of employees enjoy special rights as a result of the share deal;
- 1.5. the share deal is to be combined with a merger or asset deal;
- 1.6. the share deal may involve a restructuring or other employment measures.

<p>2. Prepare</p>	<p>2.1. If the share deal involves a restructuring of the company's staff or the implementation of other employment measures (e.g. a substantial modification of working conditions), the general information and consultation procedures to implement these measures will apply. In such a case, the relevant documentation to fulfil these information and consultation procedures will need to be prepared.</p> <p>2.2. A mere share deal itself is not subject to specific information requirements. However, it is common practice to inform the employees' representatives about the change of ownership of the company. There are no specific formalities in this respect.</p> <p>2.3. Additional documents may be required if, as described in section 1.7., the share deal is to be combined with a merger or asset deal. For details, please see Section B. Asset deal and Section C. Merger.</p>	<p>2. Prepare</p>	<p>1.4. any measures affecting the employees – such as dismissals, salary reductions or any other substantial modification which may have a negative impact on the employees' employment conditions – are intended.</p> <p>2.1. the following in draft form:</p> <p>2.2. if section 1.1 above applies, the seller shall inform the employees' representatives of the affected employees (or the employees that may be affected if there are no employees' representatives) 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>2.3. If section 1.4 applies, an information and consultation period will have to be initiated before the measures are undertaken. Therefore, additional documentation may have to be prepared for these purposes.</p>
<p>3. Inform/Notify</p>	<p>3.1. Forward the information drafted to the respective addressees if sections 1.7. or 1.8. apply.</p> <p>3.2. Likewise, inform the employees' representatives about the share deal although no express requirement exists.</p>	<p>3. Inform/Notify</p>	<p>3.1. the employees' representatives of the affected employees (or the employees that may be affected if there are no employees' representatives).</p>
<p>4. Consult</p>	<p>4.1. No consultation requirements unless sections 1.7. or 1.8. apply.</p>	<p>4. Consult</p>	<p>3.2. This information shall be provided "in good time", meaning in general terms 15 days prior to the date of the transfer.</p> <p>4.1. the employees' representatives only if section 1.4 above applies.</p>
<p>5. Implement</p>	<p>5.1. Implementation following information if so required.</p> <p><b>B. Asset deal</b></p> <p><b>II. Obligations of the seller</b></p> <p>whether</p> <p>1.1. the asset deal leads to a transfer of undertakings as defined in Article 44 of the Spanish Workers' Statute and Council Directive 2001/23/EC (i.e. transfer of an autonomous economic unit, meaning an organised grouping of resources with the objective of pursuing an essential or ancillary economic activity, which retains its identity after the transfer);</p> <p>1.2. collective bargaining agreements and/or other collective agreements, internal regulations or employment contracts include specific conditions applicable to the asset deal;</p> <p>1.3. any individual employees or groups of employees enjoy special rights as a result of the asset deal;</p>	<p>5. Implement</p>	<p>5.1. Implementation following proper information.</p> <p><b>II. Obligations of the purchaser</b></p> <p>whether</p> <p>1.1. the asset deal leads to a transfer of undertakings as defined in Article 44 of the Spanish Workers' Statute and Council Directive 2001/23/EC (i.e. transfer of an autonomous economic unit, meaning an organised grouping of resources with the objective of pursuing an essential or ancillary economic activity, which retains its identity after the transfer);</p>
<p>1. Check</p>	<p>1. Check</p>	<p>1. Check</p>	

	<ul style="list-style-type: none"> <li>1.2. collective bargaining agreements and/or other collective agreements, internal regulations or employment contracts include specific conditions applicable to the asset deal;</li> <li>1.3. the company is compliant with all applicable employment, social security or health and safety regulations or a risk or contingency is detected during the due diligence process;</li> <li>1.4. any individual employees or groups of employees enjoy special rights as a result of the asset deal;</li> <li>1.5. any measures affecting the employees – such as dismissals, salary reductions or any other substantial modification which may have a negative impact on the employees’ employment conditions – are intended.</li> </ul>	
2. Prepare	<ul style="list-style-type: none"> <li>2.1. If section 1.1 above applies, the seller shall inform the employees’ representatives of the affected employees (or the employees that may be affected if there are no employees’ representatives) in good time and in detail about the following aspects: <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> </li> <li>2.2. If section 1.5 applies, an information and consultation period will have to be initiated before the measures are undertaken. Therefore, additional documentation may have to be prepared for these purposes.</li> </ul>	1. Check
3. Inform/Notify	<ul style="list-style-type: none"> <li>3.1. the employees’ representatives of the affected employees (or the employees that may be affected if there are no employees’ representatives).</li> <li>3.2. This information shall be provided “in good time”, meaning in general terms 15 days prior to the date of the transfer.</li> </ul>	
4. Consult	<ul style="list-style-type: none"> <li>4.1. the employees’ representatives only if section 1.5. above applies.</li> </ul>	
5. Implement	<ul style="list-style-type: none"> <li>5.1. Implementation following proper information.</li> </ul>	

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

whether:

- 1.1. the merger leads to a transfer of undertakings as defined in Article 44 of the Spanish Workers’ Statute and Council Directive 2001/23/EC (i.e. transfer of an autonomous economic unit, meaning an organised grouping of resources with the objective of pursuing an essential or ancillary economic activity, which retains its identity after the transfer);
  - 1.2. collective bargaining agreements and/or other collective agreements, internal regulations or employment contracts include specific conditions applicable to the merger;
  - 1.3. the companies are compliant with all applicable employment, social security or health and safety regulations or a risk or contingency is detected during the due diligence process;
  - 1.4. any individual employees or groups of employees enjoy special rights as a result of the asset deal;
  - 1.5. any measures affecting the employees – such as dismissals, salary reductions or the harmonisation of working conditions which may have a negative impact on the employees’ employment conditions – are intended.
- 2.1. The companies must inform the employees’ representatives of the affected employees (or the employees that may be affected if there are no employees’ representatives) 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. Prepare

- 2.2. the following documents to be uploaded to the company's website or made available to the employees' representatives:
- (I) common draft terms of the merger;
  - (II) the directors' reports, if applicable;
  - (III) reports by independent experts, if applicable;
  - (IV) the company's annual accounts and management reports for the past three years, including audit reports, if applicable;
  - (V) the balance sheet of the merger where different to the last balance sheet, including, if applicable, the audit report or, in the case of listed companies, the half-year report;
  - (VI) the company's bylaws and any other relevant document to will be included in the public deed;
  - (VII) the draft version of the new company's by-laws;
  - (VIII) the identification of the directors of the companies participating in the merger, the date of their appointment and the same information for the directors of the new company;

- 2.3. If the merger potentially affects the volume of employment, the employees' representatives are entitled to issue a non-binding report giving their opinion on the merger within 15 days. However, the deal is not subject to the consent or advice of the employees' representatives. For these purposes, the company shall provide the relevant information to the employees' representatives and request this non-binding report.

If section 1.5. applies, an information and consultation period will have to be initiated before the measures are undertaken. Therefore, additional documentation may have to be prepared for these purposes.

### 3. Inform/Notify

- 3.1. The employees' representatives of the affected employees (or the employees that may be affected if there are no employees' representatives) shall receive the information included in section 2.1. when publishing the invitation to the general shareholders meetings that shall adopt the resolutions on the merger.

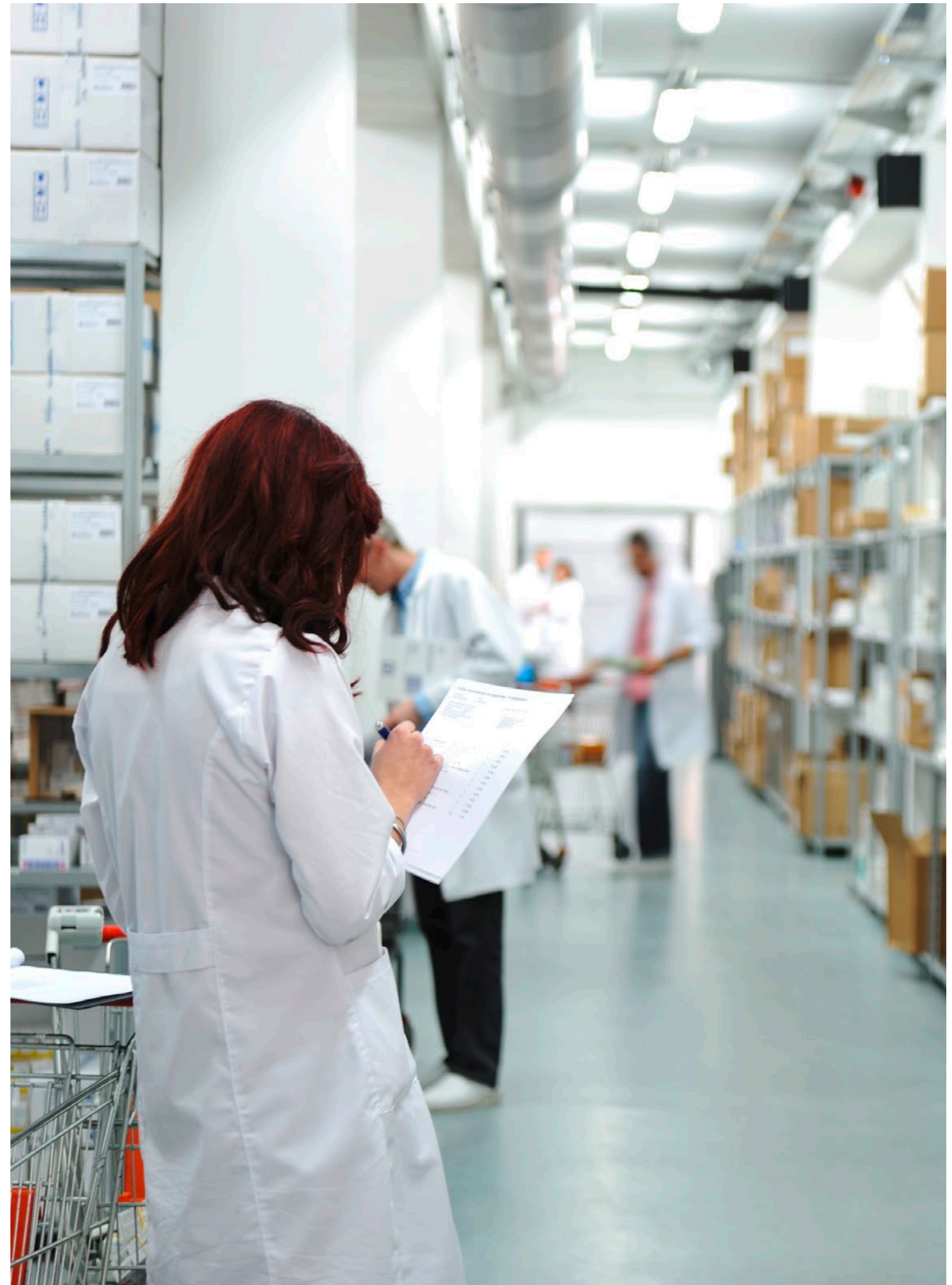
- 3.2. The company shall make available the documents included in section 2.2. above before the invitation to the shareholders' meeting is published.

### 4. Consult

- 4.1. the employees' representatives only if section 1.5. above applies.

### 5. Implement

- 5.1. Implementation following proper information.



# Switzerland



## A. Share deal

### I. Obligations of the purchaser

- 1. Check
  - 1.1. In general: no consequences for employment conditions, and no notifications necessary as there is no change of employer.
  - 1.2. 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.
- 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. 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.
- 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
- 5. Implement

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

## B. Asset deal

### I. Obligations of the seller

whether:

- 1.1. a works council (employees' representative body) exists;
- 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, the employees themselves, must not only be *informed*, but also *consulted* in good time prior to a decision over such measures being taken;
- 1.3. a merger of pension funds will take place. If accession agreements exist, clarify which of these are to continue, and which are to be dissolved (notice period);
- 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.

- 1. Check

- 2. Prepare

the following in draft form:

- 2.1. the wording of *information* for the attention of the works council or, if no such body exists, the 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;

- 2.2. the wording of *consultation* for the attention of the works council or, if no such body exists, the 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, the 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.

1. Check

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**

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 are to continue, and which are 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

5.1. the transaction and (if applicable) the merger of pensions funds.

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.

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).

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).

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

The rules mentioned in Section B. Asset deal also apply in the case of a merger.



# Turkey



## A. Share deal

### I. Obligations of the purchaser

- |                  |   |
|------------------|---|
| 1. Check         | <p>1.1. Generally, as there is no change in the identity of the employer in a share deal and all current contractual liabilities remain in place, in principle there should be no specific obligations in this regard.</p> <p>1.2. However, it would be advisable to check whether any special arrangements or employment terms exist between the companies involved and their employees relating to a 'change of ownership'. Provisions may be contained in individual employment agreements (e.g. golden parachutes) or collective bargaining agreements or in the companies' internal regulations/rules.</p> |
| 2. Prepare       | <p>2.1. Not applicable, unless any special agreements, arrangements or employment terms exist.</p>  |
| 3. Inform/Notify | <p>3.1. Although there is no general legal obligation to inform employees of a share deal, for the purpose of good corporate practice the employees may be informed of the share deal.</p> <p>3.2. Nevertheless, it would be advisable to check whether any special agreements, arrangements or employment terms exist which provide for an information obligation on the employer's part.</p>  |
| 4. Consult       | <p>4.1. Although there is no general legal obligation to consult employees on a share deal, for the purpose of good corporate practice the employees may be consulted on the share deal.</p> <p>4.2. There may be special agreements, arrangements or employment terms in place which provide for a consultation obligation on the employer's part.</p>   |
| 5. Implement     | <p>5.1. There are no additional employment law requirements regarding share deals. However, if the purchaser would like to change/amend the existing employment terms or internal regulations/policies, the general principles of employment law apply.</p> <p>5.2. Comply accordingly with the special agreements, arrangements or employment terms, if any.</p>   |

### 1. Check

### 2. Prepare

### 3. Inform/Notify

### 4. Consult

### 5. Implement

### II. Obligations of the target

- 1.1. In general, as there is no change in the identity of the employer in a share deal and all current contractual liabilities remain in place, there should be no specific obligations on the target.
- 1.2. However, it would be advisable to check whether any special arrangements or employment terms exist between the companies involved and their employees relating to a "change of ownership". Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements or in the companies' internal regulations/rules.
- 2.1. Not applicable, unless any special agreements, arrangements or employment terms exist.
- 3.1. Although there is no general legal obligation to inform employees of a share deal, for the purpose of good corporate practice the employees may be informed of the share deal.
- 3.2. There may be special agreements, arrangements or employment terms which provide for an information obligation on the employer's part.
- 3.3. Certain information obligations exist under Turkish law for collective redundancies which would have to be followed if such procedure is to be carried out by the target as a result of such share deal.
- 4.1. Although there is no general legal obligation to consult employees on a share deal, for the purpose of good corporate practice the employees may be consulted on the share deal.
- 4.2. There may be special agreements, arrangements or employment terms which provide for a consultation obligation on the employer's part.
- 5.1. There are no additional employment law requirements regarding share deals. However, if the purchaser would like to change/amend the existing employment terms or internal regulations/policies, the general principles of employment law apply.
- 5.2. Comply accordingly with the special agreements, arrangements or employment terms, if any.

## B. Asset deal

### I. Obligations of the seller

1. Check

whether:

1.1. Article 6 (*Transfer of Establishment*) of the Turkish Labour Act applies to the transaction. The provisions of said Article should apply to asset deals where a workplace is partially or entirely transferred to a third party (excluding merger transactions, further explained in the relevant section). In this case, the employment agreement would automatically be transferred to the purchaser and the employees in question would benefit from extra protection with respect to their employment terms and entitlements.

1.2. any special agreements, arrangements or employment terms exist between the companies involved and their employees relating to the transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in the companies' internal regulations/ rules.

2. Prepare

2.1. Not applicable, if Article 6 of the Turkish Labour Act applies to the transaction.

2.2. If Article 6 of the Turkish Labour Act does not apply to the transaction and certain employees need to be separately transferred to the Purchaser as part of the transaction (excluding merger transactions, further explained in the relevant section), the following must be prepared in draft form:  
— a tripartite transfer agreement to be signed by the former and new employers and each employee to be transferred;  
OR  
— an acknowledgement letter to be signed by each employee to be transferred.

3. Inform/Notify

3.1. Although there is no general legal obligation to inform employees on an asset deal which triggers Article 6 of the Turkish Labour Act, for the purpose of good corporate practice the employees may be informed of the asset deal.

3.2. There may be special agreements, arrangements or employment terms which provide for an information obligation.

3.3. If the transition does not trigger Article 6 of the Turkish Labour Act, the employees to be transferred must be informed before the completion of the transaction in order to for them to approve/ acknowledge the transfer.

4. Consult

4.1. Although there is no general legal obligation to consult employees on an asset deal which triggers Article 6 of the Turkish Labour Act, for the purpose of good corporate practice the employees may be consulted on the asset deal.

4.2. Nevertheless, it would be advisable to check if there are any special agreements, arrangements or employment terms which provide for a consultation obligation.

4.3. If the transaction does not trigger Article 6 of the Turkish Labour Act, the employees to be transferred should be consulted before the completion of the transaction in order for them to approve/acknowledge the transfer.

5. Implement

5.1. Any special agreements, arrangements or employment terms must be complied with accordingly.

### II. Obligations of the purchaser

whether

1.1. Article 6 of the Turkish Labour Act applies to the transaction. The provisions of said Article should apply to asset deals where a workplace is partially or entirely transferred to a third party (excluding merger transactions, further explained in the relevant section). In this case, the employment agreement would automatically be transferred to the purchaser and the employees in question would benefit from extra protection with respect to their employment terms and entitlements.

1.2. any special agreements, arrangements or employment terms exist between the companies involved and their employees relating to the transaction. Provisions may be contained in individual employment agreements (e.g. golden parachutes), collective bargaining agreements, or in the companies' internal regulations/ rules.

1. Check

2. Prepare

2.1. Not applicable if Article 6 of the Turkish Labour Act applies to the transaction.

2.2. If Article 6 of the Turkish Labour Act does not apply to the transaction and certain employees need to be transferred to the Purchaser as a part of the transaction (excluding merger transactions, further explained in the relevant section), the following must be prepared in draft form:  
— a tripartite transfer agreement to be signed by the former and new employers and each employee to be transferred ;  
OR  
— an acknowledgement letter to be signed by each employee to be transferred



# Ukraine



## A. Share deal

### I. Obligations of the purchaser

- |                  |  |
|------------------|--|
| 1. Check         | whether:   |
|                  | <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 employees' 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 employees' representative bodies in relation to the transaction.</li> </ul> |
| 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.  |

### II. Obligations of the target

- |          |  |
|----------|--|
| 1. Check | whether:   |
|          | <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> <li>1.2. any provisions of a collective bargaining agreement or internal regulations exist at the target company granting employees' representative bodies (trade unions, if such bodies exist) additional information or consultation entitlements relating to the transaction which must be observed by the target.</li> </ul> |

- |                  |   |
|------------------|---|
| 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)

### I. Obligations of the seller

- |            |   |
|------------|---|
| 1. Check   | <ul style="list-style-type: none"> <li>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 by law for each procedure apply (see below).</li> <li>1.2. If the redundancy option is being considered, check whether any of the potentially affected employees: (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).</li> </ul> |
| 2. Prepare | <p>the following in draft form:</p> <ul style="list-style-type: none"> <li>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.</li> <li>2.2. In case of a transfer:             <ul style="list-style-type: none"> <li>— an order to dismiss the relevant employees in connection with their transfer to the purchaser (if they have consented to such a transfer).</li> </ul> </li> </ul>   |

## 3. Inform/Notify

- 2.3. In case of redundancy:
- a decision on the forthcoming redundancy, specifying the reasons for it, the number and categories of the affected employees 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 to the material terms of employment is to be implemented (e.g. a change of salary, bonuses/other benefits, working hours, 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 amended conditions (one such statement for each employee affected).
- 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 their 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 under consideration. 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

## 4. Consult

- to take place. Considering the aforementioned time restraints, it is advisable to notify the trade union promptly after a decision has been taken by the seller regarding 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 plans 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 ownership or partial stoppage of production of/by the seller. The law does not lay down a specific timeframe for such notice to be provided. However, in light of the duty of notification in cases of redundancy, it should be provided at least three months prior to the 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 on which the change is to be implemented.
- 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.
- 4.2. In the event of redundancy:
- consult with the company-level trade union (if such a body exists at the seller). According to 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;

<sup>1</sup> Under the 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 at the employer's discretion made within:

- 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;
- three months, if:
  - 20% or more of the workforce of a company (irrespective of the total number of staff) are being dismissed.

	<ul style="list-style-type: none"> <li>— 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. As 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 under consideration.</li> </ul> <p>4.3. If a change to the material terms of employment is to be implemented:</p> <ul style="list-style-type: none"> <li>— 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 ownership or partial stoppage of production of/by the seller. The law does not lay down a specific timeframe for such notice to be provided. However, 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.</li> </ul>	2. Prepare	the following in draft form:
5. Implement	Not applicable.		
	<p><b>II. Obligations of the purchaser</b></p>		
1. Check	<p>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.</p> <p>1.2. If an employee transfer is being considered:</p> <ul style="list-style-type: none"> <li>— 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.</li> </ul>	3. Inform/Notify	<p>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):</p> <ul style="list-style-type: none"> <li>— dismissal of the employees by the transferor, with their simultaneous employment by the transferee ('Option 1'); or</li> <li>— transfer of the employees from the transferor to the transferee pursuant to a specific transfer procedure ('Option 2').</li> </ul> <p>2.2. If an employee transfer is being considered:</p> <ul style="list-style-type: none"> <li>— an employment agreement must be entered into between the employees affected by the transfer and the purchaser (this document is not mandatory under Ukrainian law);</li> <li>— if the transfer is implemented pursuant to Option 2, a written request must be issued 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 the employment relationships with these employees by a specific date.</li> </ul> <p>3.1. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with acquisition of the assets.</p> <p>3.2. If an employee transfer is being considered:</p> <ul style="list-style-type: none"> <li>— each employee affected by the transfer must be approached and offered the option of transferring their 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.</li> </ul> <p>3.3. Not applicable, unless the purchaser intends to employ some of the seller's employees in connection with its acquisition of the assets.</p> <p>4.1. If an employee transfer is being considered:</p> <ul style="list-style-type: none"> <li>— a specific transfer procedure must be agreed with the purchaser, seller and affected employees (i.e. whether the transfer is to be made using Option 1 or Option 2).</li> </ul>
		4. Consult	
		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 contracts 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. Among other things, this means the surviving company 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 the 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 affected employees and the company to be absorbed, the latter's collective bargaining agreement (if one has been concluded), internal regulations and policies, as well as orders.

#### 2. Prepare

the following in draft form:

- 2.1. notification for the attention of the 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 providing their consent to be transferred to the surviving entity as a result of the merger, and to remain employed under amended conditions (transfer).

#### 3. Inform/Notify

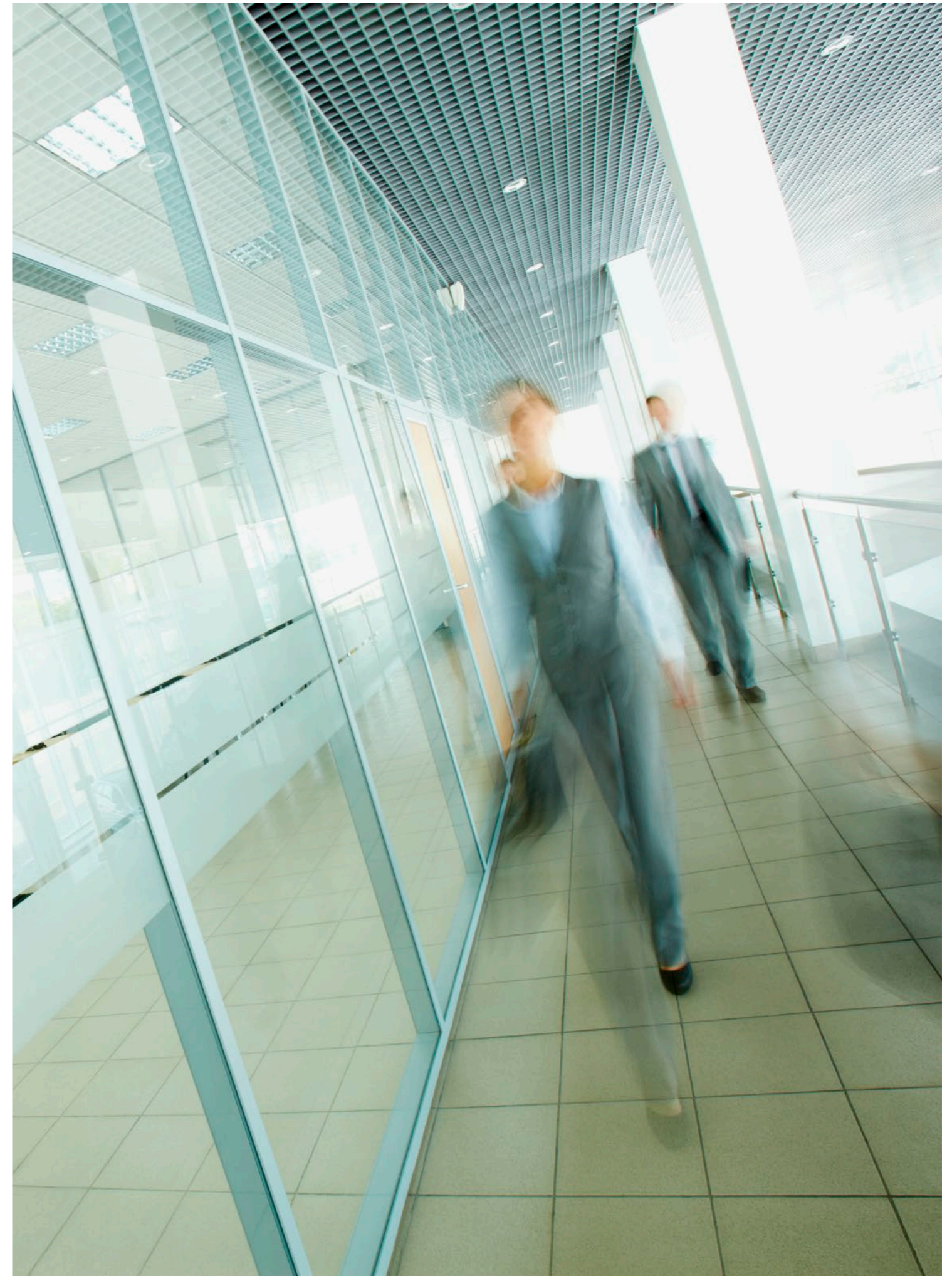
- 3.1. the employees affected by the transfer of the following:
- the planned merger;
  - the transfer of their employment to the surviving company in connection with the merger;
  - Notification can either be made by the company being 'absorbed' alone or jointly by the former and the surviving company.

#### 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 Arab Emirates



## A. Share deal

### I. Obligations of the purchaser

1. Check

- 1.1. the visa status of all employees transferring with the target company and check all visas are sponsored by the target company or otherwise in compliance with immigration and regulatory requirements;
- 1.2. any special rights or bonus provisions awarded to any employees, including whether 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.;
- 1.3. whether the target company has any UAE or GCC national employees and pensions liabilities and compliance in relation to them;
- 1.4. the accrued end of service gratuity amounts for all expatriate employees, how they are accounted for in the target company's books (ensure that they are actually accrued for) and the arrangements for paying out the entitlements;
- 1.5. any risks identified during the due diligence process carried out on the target company, e.g. any pending employment-related litigation, any recently terminated employees, etc.;
- 1.6. the location from which employees operate i.e. the licensed business premises, overseas or elsewhere;
- 1.7. whether the employees will continue to work from the same office space or will be moving to different offices (e.g. existing premises of the purchaser). If the employees are to move to a different office on a permanent basis, their existing visas may require termination and a new visa taken out, sponsored by the entity that owns/leases the new office location. If so, the steps set out in Section B. Asset deal will need to be followed in respect of such employees;
- 1.8. whether there are any consultants, freelancers, de facto employees, etc. employed by the target.

2. Prepare

Consider whether to prepare the following in draft form:

- 2.1. a letter to employees confirming the transfer of the target company and that their employment conditions will not be changed; OR
- 2.2. a letter to employees confirming the transfer of the target company and stating which of their employment conditions will be changed following the share sale.
- 2.3. Note there is no specific requirement to prepare these letters, unless otherwise specified in any employment contracts or where any employment terms will be amended to the detriment of the employee (see section 3 below).

3. Inform/Notify

- 3.1. There is no requirement to inform or notify employees, unless expressly set out in an employment contract.
- 3.2. If any detrimental changes will be made to the terms of employment, these must be set out in writing and counter-signed by the employee prior to being implemented.

4. Consult

- 4.1. The purchaser is not obliged to consult with the employees of the target company unless expressly set out in an employment contract.

5. Implement

- 5.1. Closing formalities with regard to filing documents relating to the purchaser with the relevant authorities for the share transfer to be registered with the authorities. There are no specific employment formalities unless employees are being laid off as part of the transaction (see Section 5.2. – Asset deal below). Formalities will depend on the relevant governing authority and should be checked specifically with the authority.

### II. Obligations of the target

1. Check

whether:

- 1.1. there are any employees working for the target who do not have their visas sponsored by the target or are working on a consultancy basis;
- 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.;

- 2. Prepare
  - There are no specific documents to be prepared, although the purchaser may require the target to assist in preparing the letters stated under the obligations of the purchaser section above in draft form:
    - 2.1. a letter to employees confirming the transfer of the target company and that their employment conditions will not be changed; OR
    - 2.2. a letter to employees stating which of their employment conditions will be changed following the share sale.
- 3. Inform/Notify
  - 3.1. There are no specific requirements to inform/notify employees unless expressly set out in an employment contract. This is at the target company's discretion.
- 4. Consult
  - 4.1. There are no specific requirements to inform/notify employees unless expressly set out in an employment contract.
- 5. Implement
  - 5.1. Closing formalities with regard to filing documents relating to the purchaser with the relevant authorities for the share transfer to be registered with the authorities. There are no specific employment formalities unless employees are being laid off as part of the transaction (see Section 5.2 – Asset deal below). Formalities will depend on the relevant governing authority and should be checked specifically with the authority.

## B. Asset deal

### I. Obligations of the seller

- 1. Check
  - 1.1. whether one or more employees will be transferred to the purchaser of the assets as a result of the contemplated transfer;
  - 1.2. the visa status of all employees transferring to the purchaser;
  - 1.3. whether the transferring employees include any UAE or GCC nationals;
  - 1.4. the notice periods of the employees to be transferred;

- 1.5. the accrued end of service gratuity entitlements in respect of employees to be terminated or transferred as a result of the asset transfer (if lawfully possible) and whether transferring employees want to be paid their entitlement upon transfer or roll it over to the new employer;
- 1.6. there are any risks identified during the due diligence process carried out, e.g. any pending employment-related litigation, any recently terminated employees;
- 1.7. there are any requirements set out in the employee's employment contracts in respect of their right to be informed/notified which need to be followed.

#### 2. Prepare

the following in draft form:

- 2.1. letters setting out the procedure for the payment of termination benefits and the process for cancelling existing visas and processing new visas for each employee, including the submission of documents and the attendance at medical examinations;
- 2.2. calculations for full termination payments due to each employee upon termination of their existing visas;
- 2.3. a timetable for the cancellation of employee visas;

#### 3. Inform/Notify

- 3.1. The employees will need to be informed of the sale and the requirement to cancel their existing visas, process new visas and enter into new employment contracts with the purchaser. This process will need to be managed between the seller and purchaser.

#### 4. Consult

- 4.1. There are no specific consultation obligations, unless expressly set out in an employment contract. The employees will need to expressly agree in writing to the terms of their new employment contracts.

#### 5. Implement

- 5.1. There is no automatic transfer of employees in an asset sale. Therefore, each employee's existing employment agreement and visa needs to be cancelled and new visas entered into with the purchaser as the sponsoring entity. New employment contracts will also need to be entered into with the purchaser/new sponsoring entity.

- 5.2. The cancellation of the employee’s existing employment contract and visa will also require statutory termination payments, which include pay in lieu of notice (if applicable), payment for accrued but untaken annual leave days and payment of end of service gratuity (if it cannot be transferred). End of service gratuity is payable for all employees with over one year of continuous service at a rate of 21 days’ basic pay for the first five years of employment, and 30 days’ basic pay for each year thereafter. Alternatively, the purchaser may assume these liabilities in respect of the employees – in which case both the relevant authority and the employees will have to agree to the carrying over of these liabilities to the purchaser.
- 5.3. If an employee does not wish to transfer to the purchaser and cannot be redeployed by the seller, their employment can be terminated. The employee will be entitled to the termination payments listed above and may also possibly claim for “arbitrary” dismissal (as there is no formally recognised concept of redundancy in the UAE), which is an amount of up to three months’ full pay.
- 5.4. The file and information data of every transferred employee must be handed over to the purchaser.

**II. Obligations of the purchaser**

- 1. Check
  - 1.1. whether 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 allowances, bonuses, payments and other incentives, labour regulations, holiday entitlements, etc., as well as to check whether any outstanding liabilities exist towards employees;
  - 1.2. the nationalities of transferring employees, in particular whether there are any UAE or GCC nationals and the pensions and other special arrangements in respect thereof;
  - 1.3. the accrued end of service gratuity amounts for all employees transferring with the business and the amount of accrued but untaken annual leave days taken for all transferring employees for the two-year period prior to the date of cancellation of their visa;
  - 1.4. the notice periods for any transferring employees;

2. Prepare

3. Inform/Notify

4. Consult

5. Implement

- 1.5. any risks identified during the due diligence process of the target, e.g. any pending employment-related litigation;
- 1.6. whether there are any requirements to inform, notify or consult with employees regarding any asset sale set out in their employment contracts or other supporting documents;

the following in draft form:

- 2.1. if not prepared by the seller, letters setting out the payment of termination benefits and the process for cancelling existing visas and processing new visas for each employee, including the submission of documents;
- 2.2. new employment contracts with the purchaser for all employees;
- 3.1. Employees must be notified of the cancellation of their visa, and if they are to work their notice periods (rather than being paid in lieu), they should be given equivalent notice. It is preferential for this to be done in writing (and this is compulsory for certain authorities, such as the DIFC).
- 3.2. Employees should be notified of the dates when their visas will be processed and asked not to book annual leave/travel outside the country during this time.
- 3.3. Any requirements set out in the employee’s employment contracts in respect of their right to be informed/notified should be followed.
- 4.1. No formal consultation periods are required, unless set out in the employee’s employment contracts.
- 5.1. The same rules for implementation apply as set out for the purchaser above.
- 5.2. Termination payments should be made in advance of the employee visa-cancellation process, as employees will be required to sign a form confirming they have received all sums owed to them before terminating their visas.

1. Check

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

If the existing trade licence which sponsors the employees remains in place, and the employees will continue to work from the same office, the steps, rules, and regulations applicable to a merger transaction are similar to Section A. Share deal above.

If the existing trade licence which sponsors the employees is to be terminated, or the employees moved to a new trade licence as a result of the merger, the steps, rules and regulations applicable to a merger transaction set out in Section B. Asset deal above apply.

In addition, it is advisable for the buyer/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, any other special rights provided for in the individual employment contracts and internal regulations, as well as the extent to which these will be transferred to the new/surviving entity;
- 1.3. any changes will be made to the existing employment contracts, and whether these are beneficial or detrimental to the employees – to the extent these are detrimental, the employees will have to agree in writing to these changes;
- 1.4. if the employees are to be moved to a new trade licence, the position which should be taken in respect of any termination payments (in particular, end of service gratuity) should be agreed.



# United Kingdom



## A. Share deal

### I. 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/transfer) to ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) (and therefore additional information and consultation requirements) are not triggered. For example, TUPE would apply to an asset transfer carried out before a share sale to ensure that the relevant assets are contained in, or removed from, the corporate entity whose shares are to be sold. There may also be a transfer of the undertaking (or part of the undertaking) to a holding company following a share sale, or to a parent company that has used a subsidiary to purchase the shares of the target company;
- 1.2. relevant works councils 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 bargaining 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 works councils or any relevant collective agreement (if applicable);
- 2.2. appropriate information for the EWC, if relevant.

There is no change to the identity of the employer in 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;

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 it 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;

4.3. Special consultation provisions exist under UK law for large-scale/collective redundancies.

5. Implement

5.1. Comply appropriately with any relevant agreements containing information and/or consultation obligations;

5.2. Any personal data relating to employees should be dealt with in accordance with the GDPR (and the UK's Data Protection Act 2018) and data transfers should be secure. No more information than necessary should be provided at each stage of the transaction.

### 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 TUPE (and therefore additional information and consultation requirements) is not triggered. For example, TUPE would apply to an asset transfer carried out before a share sale to ensure that the relevant assets are contained in, or removed from, the corporate entity whose shares are to be sold. There may also be a transfer of the undertaking (or part of the undertaking) to a holding company following a share sale, or to a parent company that has used a subsidiary to purchase the shares of the target company;
- 1.2. relevant works councils 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 bargaining 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. the purchaser has appropriate data protection safeguards in place to handle the personal data relating to employees, before any personal data is transferred;
  - 1.5. 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 pursuant to any agreements with works or any relevant collective agreement (if applicable);
  - 2.2. appropriate information for the EWC, if relevant.
- There is no change to the identity of the employer in 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.
- 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;
    - 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 it 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.

1. Check

2. Prepare

## B. Asset deal

### I. Obligations of the seller

- 1.1. whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the transaction. TUPE usually (but not always) 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. where TUPE applies to the transaction, determine the scope of the employees affected by the transfer. Both the seller and the purchaser have duties to inform (and normally consult) under TUPE in relation to their employees affected by the transfer. While this definition is wider than simply the group of employees who are transferring, it may not extend to the whole workforce;
  - 1.3. whether relevant works councils 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);
  - 1.4. the terms of any relevant collective bargaining agreement and whether these include any information and consultation obligations in relation to the asset deal (only applicable if the UK employer recognises a trade union);
  - 1.5. whether a relevant European works council (EWC) exists, if the purchaser is located in a different EU Member State;
  - 1.6. whether appropriate safeguards have been put in place to ensure the secure transfer of employee personal data and appropriate timing and level of information. Under GDPR it is essential for data protection considerations to be taken into account at the start of the transaction.
- the following in draft form:
- 2.1. appropriate 'employee liability information' about the transferring staff, which is sent to the purchaser to enable them to comply with their TUPE information obligations. Under TUPE the seller must provide this no later than 28 days before the date of the relevant transfer;
  - 2.2. appropriate information to be given to the appropriate representatives (see section 3.2. below);

- 2.3. appropriate information pursuant to any agreements with works councils or any relevant collective agreement (if applicable);
  - 2.4. 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;
  - 3.2. In both cases, information and consultation must involve the appropriate representatives of the affected employees. Appropriate representatives are representatives of a recognised trade union or, if there are none, elected employees’ representatives. Appropriate representatives may need to be put in place and, if so, the seller should allow sufficient time to arrange and hold an election (where there are more candidates than representative spaces). In some situations, pre-existing bodies can be used to avoid holding an election;
  - 3.3. 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’ is broad in meaning and includes any action, step, or arrangement relating to the affected employees including changes to the working arrangements or redundancies;
  - 3.4. 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. If it is envisaged that ‘measures’ are to be taken, a duty to consult under TUPE is triggered;
  - 4.2. Consultation is not negotiation. However, it must take place with a view to reaching an agreement with the appropriate representatives;
  - 4.3. There will be separate information and consultation obligations on the purchaser if collective redundancies are planned by them. It is possible (but not a requirement) for the seller to agree that the purchaser carries out pre-transfer collective redundancy consultation, normally regulated through an agreement between the parties;

5. Implement

1. Check

- 4.4. Attempts should normally be made to consult with the same group of representatives under TUPE and in relation to collective redundancies. However, this may not be possible depending on the scope of the transfer, the basis on which they have been appointed, and the individuals who are at risk in relation to the proposed redundancies.
- 5.1. Although there is no time limit specified by UK law, the information required under TUPE must be provided sufficiently in advance of the transfer to allow for meaningful consultation;
- 5.2. The maximum penalty for failure to inform (and if required, consult) is 13 weeks’ actual pay per affected employee (which can be a wider group of employees than just the employees being transferred);
- 5.3. There is a narrow 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 it is hard to rely on this defence, since ‘special circumstances’ are usually exceptional and unforeseen;
- 5.4. Any process should comply appropriately with any relevant agreements containing information and/or consultation obligations.

**II. Obligations of the purchaser**

whether:

- 1.1. the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to the transaction. TUPE usually (but not always) applies to asset deals. It imposes additional obligations on employers and gives extra protection to employees in addition to normal UK employment laws. Under TUPE, both the purchaser and the seller have obligations to inform appropriate representatives of certain facts, and to consult with them if the transfer or any measures taken in connection with it affect any of their own employees;
- 1.2. relevant works councils 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);

	<p>1.3. the terms of any relevant collective bargaining agreement include any information and consultation obligations in relation to the asset deal (only applicable if the UK employer recognises a trade union);</p> <p>1.4. a relevant European works council (EWC) exists, if the seller is located in a different EU Member State;</p> <p>1.5. no later than 28 days before the transfer, the seller has provided the employer liability information about the transferring employees in a secure manner;</p> <p>1.6. sufficient information has been sent to the seller regarding any measures envisaged to enable them to provide their employees (via representatives) with that information.</p>	4. Consult	<p>4.1. If it is envisaged that 'measures' are to be taken, a duty to consult is triggered. Consultation must take place with a view to seeking agreement with the appropriate representatives;</p> <p>4.2. There may also be information and consultation obligations if collective redundancies are necessary. It is possible for the seller to agree with the purchaser that the latter carries out pre-transfer collective redundancy consultation, normally regulated through an agreement between the parties. Attempts should be made to consult with the same group of representatives under TUPE and in relation to collective redundancies, as noted above;</p> <p>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).</p>
2. Prepare	<p>2.1. the following in draft form: appropriate information to comply with TUPE information obligations in relation to their own workforce and (as regards 'measures') the seller's workforce;</p> <p>2.2. appropriate information pursuant to any agreements with works councils or any relevant collective agreement (if applicable);</p> <p>2.3. appropriate information for the EWC if relevant.</p>	5. Implement	<p>5.1. Although there is no time limit specified by UK law, the information required under TUPE must be provided sufficiently in advance of the transfer to allow for meaningful consultation;</p> <p>5.2. The maximum penalty for failure to inform (and if required, consult) is 13 weeks' actual pay per affected employee (which can be a wider group of employees than just the employees being transferred);</p>
3. Inform/Notify	<p>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;</p> <p>3.2. In both cases, information and consultation must involve the appropriate representatives of the affected employees. Appropriate representatives are representatives of a recognised trade union or, if there are none, elected employees' representatives. Appropriate representatives may need to be elected and, if so, the purchaser should allow sufficient time to arrange and hold an election. In some situations, pre-existing bodies can be used to avoid holding an election;</p> <p>3.3. 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.</p>		<p>5.3. There is a narrow 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 it is hard to rely on this defence, since 'special circumstances' are usually exceptional and unforeseen;</p> <p>5.4. Any process should comply appropriately with any relevant agreements containing information and/or consultation obligations.</p>

## 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, as already described;
- 1.2. the information (and consultation) requirements under TUPE apply to both the seller and the purchaser. However, it may be the case that in a merger situation that a purchaser will only need to satisfy the information aspects of TUPE towards their own employees. There may not be consultation obligations for their own employees if there are no measures which will affect them. A purchaser will also need to consider what information to disclose to the seller to enable the seller to consult with their affected employees, but also consider the impact on their own workforce in relation to the transferring employees;
- 1.3. relevant works councils exist and impose obligations relevant to the merger, and, where there is trade union recognition, if the terms of the relevant collective bargaining agreement include any information and consultation obligations;
- 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 works councils or any relevant collective agreement (if applicable).

Consider the information that needs to be provided to the other party in order for them to carry out adequate information and consultation.

### 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;
- 3.2. In both cases, information and consultation must involve appropriate representatives. Appropriate representatives are representatives of a recognised trade union or, if none exist, elected employees' 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, where there are more candidates than available positions. In some situations, pre-existing bodies can be used to avoid holding an election;
- 3.3. 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;
- 3.4. 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. 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;
- 4.2. Consider whether there is a need to consult with your own employees about the transfer of staff into your organisation;
- 4.3. There may also be information and consultation obligations if collective redundancies are necessary. Attempts should normally be made to consult with the same group of representatives under TUPE and in relation to collective redundancies, but this may not be possible depending on the scope of the transfer and the individuals who are at risk in relation to the proposed redundancies.

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