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## **New Regulations Governing Business Transfers are Becoming Effective Starting from August 2020**

According to Legislative Decree no. 14/2019, new rules governing the transfer of companies which are under an insolvency procedure will come into force as from 14 August 2020.

The so-called “TUPE” regulations in Italy is comprised of two sets of protections: an unions’ information procedure, which is to be triggered in advance by both the transferor and the transferee, as well as several rights which transferor’s employees are granted with (both do not apply where the transfer is triggered by a share deal).

As far as the above unions’ information procedure is concerned, whenever the transferor employs more than fifteen employees (regardless the number of employees whose employment relationships are actually transferred to the transferee), both the transferor and the transferee must trigger such procedure at least twenty-five days before the date on which the transfer agreement or any binding agreement hereof between the transferor and the transferee is executed. This procedure, upon the unions’ written request hereof, may lead to a joint examination with the internal works councils and/or the external trade unions having requested such a joint examination.

The above-mentioned rights which the transferor’s employees are entitled to include the one to have their employment relationships automatically continuing, by operation of law, with the transferee, thus maintaining any rights arising from such employment relationships. In particular, the transferee has to grant the transferor’s employees with any entitlements set forth by the collective bargaining agreements which apply to their employment relationships as at the transfer date, until their expiry, unless such agreements are replaced by those which govern the employment agreements of the transferee’s employees. Moreover, the transferor and the transferee are joint liable with respect to those sums owed to the transferor’s employees as at the transfer date and these - if their working conditions are significantly changed within a 3-month term running as from the transfer date - are entitled to resign with immediate effect, thus being entitled to the payment of the indemnity in lieu of notice which would apply in case of dismissal not for cause. Lastly, dismissals relying on the transfer qualify as null and void, so that employees are entitled to have their employment relationships continuing with the transferee as well as to be paid with an indemnity equal to the salaries which would have been accrued as from the dismissal date, whose minimum cap amounts to 5 months of salary (this does not prevent the transferor, until the transfer date, or the transferee, once the transfer takes place, from dismissing employees according to general rules governing such a matter, whereby employees may be lawfully dismissed for individual redundancy or disciplinary grounds).

Such rights of the transferor’s employees apply in any case of transfer, except for those of companies which are facing a crisis (to be duly attested by public bodies) or are under an insolvency procedure, to the extent that an agreement hereof with the unions is reached within the above information and joint examination procedure.

In particular, based on the current regulations hereof, the above protections may be departed from, whether partially (in case of company's crisis as well as special administration procedure or restructuring agreements, where these insolvency procedures are not leading to the shutdown of the business) or fully (in case of bankruptcy, restructuring agreements, compulsory administrative winding-up or special administration procedure, where these insolvency procedures are leading to the shutdown of the business).

Otherwise, the new regulations will allow the above agreements reached with the unions to depart from the rights of the transferor's employees only in the cases and according to the terms below:

- in case of restructuring agreements or special administration procedure not leading to the shutdown of the business, only the working conditions of the transferor's employees may be changed under the agreement with the unions (while they are entitled to any other rights out of those outlined above);
- in case of bankruptcy, restructuring agreements or compulsory administrative winding-up not leading to the shutdown of the business, any rights of the transferor's employees except for the one to have their employment relationships continuing with the transferee may be lawfully departed from and the joint liability between the transferor and the transferee do not apply, even if there are no provisions hereof under the agreement with the unions (in such cases, moreover, the transferor shall pay to its employees the end-of-service allowance);
- in case of special administration procedure leading to the shutdown of the business, any rights of the transferor's employees except for the one to have their employment relationships continuing with the transferee do not apply, unless the agreement reached with the unions sets for that such rights or certain out of these rights apply (however, this agreement is also allowed to set forth that the employment relationships of those transferor's employees which are redundant shall not continue with the transferee).

Now all we can do is to wait for 14 August 2020...

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