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Effect of Mergers on Employees: Insight into Ethiopian Law

Introduction

In a typical M & A transaction, one of the key issues that requires legal analysis and adequate planning is the effect of the transaction on the employment contracts of the merging entities. During merger, interests of employees consist of job security and favorable benefits, whereas interests of the employer include obtaining gains in efficiency which may result in layoffs, decreases in compensation or increase in employee effort. Consequently, labor laws in different jurisdiction try to mitigate the tension created between the diverging interest of the employee and the employer during merger. This article provides an overview on the implication of merger in light of the Ethiopian labor law requirements.

Merger in Ethiopia

Merger is broadly defined under Ethiopian law to include: ¹

- The amalgamation of two or more business organizations previously having independent existence;
- The pooling of the whole or part of the resources of business organizations for the purpose of carrying on a certain commercial activity; or
- The direct or indirect acquisition of shares, securities or assets or the taking control of its management through purchase or any other means.

Mergers conducted or having effect in Ethiopia are required to obtain advance merger approval from the Trade Competition and Consumer Protection Authority (“**Competition Authority**”). The minimum applicable threshold to obtain the approval is that the registered capital, annual turnover or the value of the assets of the merging parities is above a minimum threshold of ETB 30,000,000 (approximately USD 1,034,482).

The Trade Competition and Consumer Protection Proclamation No. 813/2013 (“**Competition Law**”) regulates merger notification requirements as well as the parameters of approving or restricting merger. The human resource aspect of merger is regulated by the Labor Proclamation No. 1156/2019 (“**Labor Law**”).

¹ Article 9(3) of Proclamation No. 813/2013 Trade Competition and Consumer Protection Proclamation

Ethiopia's Labor Law on Merger

The Labor Law has provided the rights and obligations of the employer and the employee when there is amalgamation, division or change in ownership of a company as follows:

- a. Amalgamation, division or change in ownership shall not have the effect of modifying the terms of employment contracts: and
- b. The employment contracts of existing employees cannot be terminated as a result of amalgamation, division or change in ownership.

As a result, the Labor Law protects employees from losing their jobs or from facing less favorable terms of employment due to a merger. The Labor Law provides grounds of termination of employment contract and any termination of employment contract that is not consistent with the grounds of termination provided in the Labor Law is considered unlawful termination. The implication of an unlawful termination is that it will make the employer liable to payment of compensation and severance.

When companies merge, there is a possibility of having two employees for the same position or some positions becoming redundant. The Labor Law permits termination of employment contracts when (i) a post of a worker is cancelled for good cause and (ii) the worker cannot be transferred to another job position. Good cause is defined to include:

- a. Any event which entails direct and permanent cessation of the employee's activities in part or in whole resulting in the necessity of terminating a contract; or
- b. A decision to alter work methods or introduce new technology with a view to raise productivity.

Furthermore, the Labor Law unlike the Competition Law, does not define 'amalgamation, division and transfer of ownership' in the context of an employer and employee relationship. By drawing an analogy between the description of merger provided in the Competition Law and the Labor Law, it can be pointed out that amalgamation as well as change of control is recognized by both laws. However, the pooling together of resources to undertake a certain commercial activity such as setting up of a joint venture is only recognized under the Competition Law and not the Labor Law. Consequently, there is a gap between the definition of merger provided under the Competition Law and the concept of merger provided under the Labor Law. This gap has created a grey area in terms of the regulatory requirements with regards to transition of employees as a result of a joint venture.

In conclusion, human resource regulatory aspects that should be considered in relation of mergers in Ethiopia include (i) clarifying whether the proposed structure of the merger is regulated under the Labor Law and (ii) clarify whether the proposed structure of the merger is accepted as a ground for modification of employment contracts.

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