

L.N. 433 of 2002

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

**Transfer of Business (Protection of Employment) Regulations,
2002**

IN exercise of the powers conferred by article 38 of the Employment and Industrial Relations Act, 2002, the Deputy Prime and Minister of Social Policy has made the following regulations :-

1. The title of these regulations is the Transfer of Business (Protection of Employment) Regulations, 2002. Title.

2. (1) For the purposes of these regulations - Definition.

“Act” means the Employment and Industrial Relations Act, 2002;

“transfer” means a transfer of an undertaking which retains its identity as an organised group of resources having the objective of pursuing an economic activity;

“transferee” shall mean any natural or legal person who, by reason of a transfer, becomes the employer in respect of the undertaking or part of the undertaking so transferred;

“transferor” means any natural or legal person who, by reason of a transfer of the undertaking or part of the undertaking, ceases to be the employer in respect of the undertaking or part of the undertaking so transferred.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) Article 38 of the Act and these regulations shall apply: Applicability.

(a) to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger:

Provided that there is a transfer within the meaning of this regulation whenever there is a transfer of an economic entity which retains its identity, with the objective of pursuing an economic activity;

(b) to any undertaking engaged in economic activities whether or not that activity is central or ancillary and whether or not it is operating for gain;

(c) where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated within a member state of any international organisation to which Malta is a party or in Malta.

(2) Article 38 of the Act and these regulations shall not apply to:

(a) an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities;

(b) sea-going vessels.

Applicability of
article 38 of the Act.

4. Sub-article (2) of article 38 of the Act shall only apply to those undertakings that are being transferred and that employ more than twenty employees, including all full-time and part-time employees.

Safeguarding of
employees' rights.

5. (1) For the purpose of these regulations, sub-articles (1) and (3) of article 38 of the Act, shall apply in relation to employees' rights to old age, invalidity or survivors' benefits under supplementary company pension schemes outside the provisions of the Social Security Act.

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(2) The transfer of the undertaking, business or part of the undertaking or business shall not in itself constitute sufficient grounds for dismissal of employees by the transferor or the transferee:

Provided that this provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce.

(3) Whenever a transfer which involves a substantial change in working conditions to the detriment of the employee results in the termination of the contract of employment, the employer shall be regarded as having been responsible for such a termination.

(4) If the undertaking, business or part of an undertaking or business preserves its autonomy, the status and function of the employees' representatives of the employees affected by the transfer shall be preserved on the same terms and subject to the same conditions as existed before the date of the transfer.

(5) If the term of office of the representatives of the employees affected by the transfer expires as a result of the transfer, the representatives shall continue to be considered and recognised as such and enjoy the protection provided by the Act until such a time as a new representative is in place.

6. (1) For the purposes of sub-article (2) of article 38 of the Act, the transferor and the transferee shall be bound to give the information therein specified by means of a written statement containing all the information specified in sub-article (2) of article 38 of the Act.

Duty of transferor and transferee to inform employees' representatives.

(2) The written statement mentioned in the preceding subregulation is to be delivered to the employees' representatives at least fifteen working days before the transfer is carried out or before the employees are directly affected by the transfer as regards their conditions of work and employment, whichever is the earlier.

(3) The obligations laid down in sub-article (2) of article 38 of the Act and in the preceding sub-articles shall apply irrespective of whether the decision resulting in the transfer is taken by the employer or an undertaking controlling the employer.

(4) In considering alleged breaches of the information and consultation requirements laid down in these regulations, the argument that such a breach occurred because the information was not provided by an undertaking controlling the employer shall not be accepted as an excuse.

7. The transferor and the transferee shall also be bound to forward to the Director responsible for employment and industrial relations, a copy of the written statement mentioned in article 5 of these regulations on the same day that these are notified to the employees' representatives.

Duty of Employer to inform the Director responsible for employment and industrial relations

8. In those cases where the transfer includes measures affecting the conditions of employment of the transferred employees, consultations between the transferor, the transferee and the employees' representatives shall begin within seven working days from the day on which the employees' representatives have been notified of the intended transfer and such consultations shall cover the impact of the transfer on the employees' conditions of employment.

Beginning of consultations.

9. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than five hundred liri (Lm500) for every employee that is affected by the transfer.

Offences.