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## Malta: Staff information and consultation on business transfers

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Malta

Phase:

Anticipation

Type:

Staff information and consultation on business transfers

Last modified: 22 June, 2021

Native name:

Regolamenti dwar Harsien tal-Impjegi fit-Trasferiment ta' Negozju (Avviż Legali 10 tal-2006, kif emendat bl-Avvizi Legali 427 tal-2007, 195 tal-2010, 129 u 443 tal-2011, 363 tal-2012, 483 tal-2014 u Avviz Legali 285 ta' l-2017 u 273 tal-2018); Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impjegi) (Avviż Legali 428 tal-2002 kif emendat bl-Avvizi Legali 427 u 442 tal-2004) u Avviz Legali 281 tal-2017 L-Att dwar l-Impjegi u Relazzjonijiet Industrijali

English name:

Transfer of Business (Protection of Employment) Regulations (Legal Notice 10 of 2006, as amended by Legal Notice 427 of 2007, 195 of 2010, 129 and 443 of 2011; 363 of 2012, 483 of 2014, 285 of 2017 and Legal Notice 273 of 2018); Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004), Legal Notice 281 of 2017 Employment and Industrial Relations Act

### Article

Article 3 (2) and Article 6 - Transfer of Business (Protection of Employment) Regulations, 2002 as amended by L.N. 433 of 2002 as amended by L.N. 427 of 2007; L.N. 195 of 2010; L.N. 129 of 2011; L.N. 443 of 2011; L.N. 363 of 2012; L.N. 483 of 2014; L.N. 285 of 2017; L.N. 273 of 2018; Article 36 (14) (g) and Article 2 - Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004), Legal Notice 281 of 2017 Article 38 of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta)

### Description

The Transfer of Business (Protection of Employment) Regulations is applicable 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. It is also applicable in the case of a service provision change; 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; where and in so far as the undertaking, business or part of the undertaking or business to be transferred is situated in Malta; to a transfer of a seagoing ship that is part of a transfer of an undertaking, business or part of an undertaking or business within the meaning of this regulation. The transferee has to be situated, or the transferred undertaking, business, or part of an undertaking or business remains within Malta for the Transfer of Business (Protection of Employment) Regulations to apply.

As of June 2021, Legal Notice 273 of 2018 which included, among other things, the removal of the application of the regulation also to a change in service provision has not entered into effect due to resistance from employer bodies.

The Transfer of Business (Protection of Employment) Regulations states that employees have to be informed at least 15 working days before the business transfer is implemented or before the employees are directly affected by the transfer as regards their working and employment conditions, whichever is earlier. However the legal notice goes on to say that 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 employee representatives shall begin within seven working days from the day on which the employee representatives have been notified of the intended transfer and such consultations shall cover the impact of the transfer on the employees' conditions of employment.

The legal notice on transfer of business does not mention a requirement of providing justification for the transfer. Nevertheless, in the case of collective redundancies, that is 10 employees in companies with more than 20 and fewer than 100 persons, 10% if between 100 and 300 are employed; and 30 if 300 or more are employed, the employer is obliged to supply the employee representatives with a statement in writing providing all relevant information and shall in any event supply employee representatives with the reasons for the redundancies, the number of employees intended to be made redundant, the number of employees normally employed, the criteria proposed for the selection of the employees to be made redundant, details regarding any redundancy payments obligations and the period over which redundancies are to be effected.

These regulations do not apply to an administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities.

## Comments

Labour legislation and relating amendments are discussed at formulation stage in the tripartite Employment Relations Board (ERB). Trade unions, employer associations and the government are represented on this board. On 14 August 2018, four legal notices were published in the Government Gazette without any consultation at the Employment Relations Board (as required by law). The employer bodies represented on the Employment Relations Board objected vociferously to this and the Prime Minister publicly stated that the four legal notices were being suspended until proper consultation takes place and the necessary amendments to the legal notices effected. As of 9 August 2019, the Transfer of Business (Protection of Employment) (Amendment) Regulations of 2018 are still suspended and are not yet in force.

### Trade unions' concern on the term 'employee representatives'

The legal term 'employee representatives' raised some concern among trade unions. They considered that it may lead to the establishment of representative bodies in which trade unions are absent which employers may recognise as proxy employee representatives. It was feared that such recognition might eventually undermine the legitimacy and activities of proper trade unions. Trade unions maintained that enforcement authorities should concentrate their efforts on non-unionised undertakings since in unionised undertakings legal matters are adequately dealt with by trade unions representatives (Baldacchino, 2009). However, it appears that over the years, the legislation did not result in tangible setbacks to the trade union movement in Malta, as trade unions kept their vital role during cases of collective dismissals.

### Cost covered by

Not applicable

### Involved actors other than national government

Employer organisation  
Trade union  
Other

### Involvement others

Employment Relations Board, Department of Industrial and Employment Relations

### Thresholds

Company size by number of employees:

21

Number of affected employees:

10

### Sources

-  DG Employment, Social Affairs and Equal Opportunities/Héra, 2011, Selected companies' legal obligations regarding restructuring
-  [EMCC actors in restructuring](#)
-  Watson Wyatt, 2006, Employment Terms & Conditions Report Europe, Volume I, Brussels
-  [Subsidiary Legislation 452.96 - Transfer of Business \(Protection of Employment\) Regulations, 2002](#)
-  [Subsidiary Legislation 452.80 - Collective Redundancies \(Protection of Employment\) Regulations, 2002](#)
-  Baldacchino, G., 2009, Trade Unions in Malta (Report 110), European Trade Union Institute, Brussels

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