Switzerland: Employee transfers in an asset deal

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If a seller transfers a company's business or a part thereof to a purchaser in an asset deal (whether a traditional asset deal or an asset deal under Switzerland's Federal Act on Merger, Demerger, Conversion and Transfer of Assets and Liabilities of 3 October 2003 (the Merger Act), the existing employment relationship with the seller, and all related rights and obligations, automatically pass to the purchaser as of the day of the transfer. The sole exception is when the employee objects to the transfer, in which case the employment relationship with the purchaser terminates at the end of the notice period provided by law.

The seller and the purchaser are jointly and severally liable for any claims of an employee that fall due before the transfer, or that fall due between the transfer and the date on which the employment relationship could normally be terminated or is terminated following refusal of the transfer.

Before signing, the seller (as the employer) is required to inform the employees' representatives or, if there are none, the employees directly, in good time, of the reason for the transfer, as well as the legal and socioeconomic consequences of the transfer for the employees.

If, as a result of the transfer, measures affecting the employees are planned (such as a change of their usual place of work), then the employees' representatives or, if there are none, the employees themselves have to be consulted in good time before a decision is made on these measures.

The asset sale does not automatically become null and void if employees' consultation and information rights are breached.

If such consultation and information rights are breached, the asset sale does not automatically become null and void. The employees' representatives or all employees concerned can, however, block the acquisition via injunctive relief. It is disputed whether they can have the acquisition prohibited until the rights have been satisfied. They can, in any case, sue for damages.

If the asset sale occurs through an asset deal under the Merger Act, the employees' representatives, or all employees concerned, may also seek to block the registration of the acquisition in the relevant registry of commerce. Whether the sale of assets has been implemented by way of a traditional asset deal or as an asset deal under the Merger Act, if the transferred relationship is governed by a collective employment contract, the purchaser must comply with it for at least one year, unless the contract expires or is terminated sooner.

If the employee refuses the transfer, the employment relationship ends upon expiry of the statutory notice period; until then, the purchaser and the employee must carry out the contract.

The principles of an asset deal, as outlined above, apply *mutatis mutandis* for a merger, demerger or conversion under the Merger Act.

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