Lakshmikumaran Sridharan attorneys
SINCE 1985
exceeding expectations

OCTOBER 2025

Transfer of Employees in Business Transfers: Key Considerations

Any potential re-structuring of a workforce as a consequence of implementing a business transfer requires an assessment of: (a) the compliances to be undertaken under applicable Indian employment and labour laws ("**Employment Laws**"); and (b) the terms and conditions stipulated in the employment contracts of the transferred employees. The key Employment Laws for this assessment are the Industrial Disputes Act, 1947 ("**ID Act**") and state-specific Shops and Establishments Acts ("**SE Acts**").

The subsequent paragraphs, set out the key points to note for undertaking workforce restructuring exercises from the perspective of applicable Employment Laws, contractual considerations and commercial objectives.

1. Employee Category

There are 2 (two) identified categories of employees under the ID Act, categorised basis the nature of work performed by them: employees who are 'workmen', and employees that are not 'workmen'. Section 2(s) of the ID Act defines the term 'workmen' to mean individuals employed in any industry for hire/reward (including contract labour, apprentices and part-time employees) to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, whether the terms of such employment are express or implied provided such employees draw wages of INR 10,000 (ten thousand rupees) or less and do not exercise functions mainly of a managerial nature.

This distinction between a 'workman' and 'non-workman' is crucial for the reasons discussed in the subsequent paragraphs.

2. Transfer of Workmen.

In case a business transfer results in the transfer of an undertaking in which 'workmen' are employed, the transferor employer will be required, under Section 25FF of the ID Act, to provide 1 (one) month's written notice indicating the reasons for retrenchment or payment of wages in lieu of notice, along with retrenchment compensation calculated as 15 (fifteen) days' average pay for each year of continued service, to the workmen who have been in continuous service for at least 1 (one) year in the transferor company, as if they were being retrenched.

The above conditions (notice and retrenchment compensation) have to be mandatorily fulfilled if a business transfer entails: (a) an interruption of the service of the workmen due to the transfer; (b) deterioration of employment conditions post transfer, and (c) non-recognition of the employee's tenure (under the terms of the business transfer) by the new employer.

In the event that the transferor employer fails to comply with the above obligations, the concerned workmen can raise an industrial dispute under Section 9A of the ID Act and seek compensation from the transferor employer. In addition, the transferor may also be liable for punishment or fine under the ID Act. In addition to the above, the consent of the transferee employee should be taken prior to giving effect to such transfer.

3. Transfer of Non-Workmen.

In case a business transfer involves the transfer of 'non-workmen', the ID Act does not apply. Certain SE Acts prescribe specific compliances in relation to transfer of non-workmen in case of business transfers. Further, in case of termination of employment, SE Acts prescribe conditions such as payment of wages owed up to the termination date and a notice period (typically 1(one) month) / wages in lieu of notice. Note that an employee who chooses to voluntarily resign from the transferor employer will also be required to adhere to a stipulated notice period/ wages in lieu of notice.

4. Modes of Transfer.

Typically, the transfer of employees (of both categories – workmen and non-workmen) in a business transfer is undertaken in one of the following ways: (a) tripartite arrangement; and (b) acqui-hire arrangement. Both arrangements are discussed in more detail below.

a. Tripartite Arrangement.

A tripartite arrangement entails a consent-based transfer of employees through the execution of a tripartite agreement between the transferor employer, transferee employer and each transferred employee.

For workmen, given that there is no break in the service of the workmen under a tripartite arrangement, the transferor employer will not be required to provide any additional benefits under the ID Act. For non-workmen, a transfer under a tripartite arrangement will be governed by the applicable SE Act and terms and conditions of their employment contracts.

Obtaining the consent of the transferred employee for participating in the tripartite arrangement is a mandatory requirement, as held by the Supreme Court of India in Manager, M/S Pyarchand Kesarimal Porwal Bidi Factory *v.* Omkar Laxman Thenge and Ors.[1],

1. 1968 SCC OnLine SC 80.

With respect to the benefits due to the transferred employees, the transferor employer and the transferee employer can contractually agree to account for the same in the purchase consideration to be paid pursuant to the business transfer agreement.

b. Acqui-Hire Arrangement.

An acqui-hire arrangement, entails a termination of the employee's services with the transferor employer (or resignation) and subsequent fresh employment with the transferee employer.

While effecting an acqui-hire arrangement in relation to workmen, in addition to adhering with any contractually stipulated exit obligations, it is imperative to ensure that: (a) the post-transfer employment conditions are as (if not more) favourable than the pre-transfer employment conditions of the transferred workmen; (b) the transferee employee contractually acknowledges the transferred workmen's continuity of service and agrees to pay benefits to such workmen, as if there is no break in their service. Failure to provide for the above steps would require compliance with the statutory notice and retrenchment compensation mechanisms described in Paragraph 2 above as a pre-condition for effecting the transfer of such workmen.

While effecting an acqui-hire arrangement in relation to non-workmen, the transferor employer will be required to comply with notice and compensation requirements (including leave encashment) under the applicable SE Act and the employment contracts with such non-workmen. In case of voluntary resignation, the transferor employer and concerned non-workmen can mutually agree to waive the notice period.

Lastly, the transferor employer should ensure payment of leave encashment and gratuity (for eligible employees) at the time of termination of the transferred employees' service with the transferor employer. The remaining service benefits may be carried forward to the new employer and accounted for in the purchase consideration to be paid pursuant to the business transfer agreement.

Deciding which of the above modes of transfer should be utilised is a decision which should be undertaken after carefully determining the commercial objectives, logistical feasibility and the cost and risk appetite of the transferor and transferee given the actions required to effect any of the above modes of transfer (for instance, consent requirements, compensation obligations, entitlement to benefits, liability for employment-related dues, etc.).

5. Timelines

There are no statutory timelines prescribed for effecting employee transfers. However, the process can vary in duration depending on the mode of transfer. Tripartite agreements may require time for negotiation and finalisation among all parties. In acqui-hire arrangements, employees may need adequate time to review and consider the new terms of employment offered by the transferee employer.

Additional time should also be factored in wherever statutory or contractual notice period obligations need to be complied with. It is therefore advisable to initiate and complete all necessary formalities (such as the agreed drafts of the tripartite agreements, offer letter and employment agreement with the transferee employer) well in advance of the proposed transfer date under the business transfer agreement.

6. Handling Employee Liabilities

As referenced above, a critical issue in employee transfers is the identification and alignment between the transferor employer and the transferee employee in relation to the treatment of employment related benefits and dues accrued to the transferred employee. For instance, in acqui-hire arrangements, an employer should ensure payment of leave encashment and gratuity (for eligible employees) at the time of termination of the transferred employees' service with the transferor employer with the liability of bearing the remaining benefits being passed to the transferee employee.

7. Employee Claims and Litigation Risks

Employers should note that there maybe certain instances where employees may challenge their transfer despite such employers' best efforts to ensure compliance with applicable Employment Laws and employment agreements. Common claims include non-payment of compensation, pending dues, or breach of employment terms.

8. Additional Compliances

While the ID Act and state-specific SE Acts remain the primary Employment Laws which apply to transfer of employees, employers should also account for statutory compliances with other Employment Laws such as: (a) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952[2] and the Employees State Insurance Act, 1948[3] (which both prescribe joint and several liability on the transferor employer and transferee employee for payment of benefits under these legislations (until the date of business transfer)[4]; and (b) the Maternity Benefits Act, 1961[5] (which prescribes that women on maternity leave cannot be terminated during their protected period).

Further, registrations obtained under Employment Laws may also need to be surrendered, transferred or freshly obtained by the transferee. Overlooking these additional compliances can delay or invalidate the transfer.

Conclusion

The transfer of employees pursuant to a business restructuring or acquisition in India is a legally sensitive and operationally

2. Section 17-B, Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
3. Section 93-A, Employees State Insurance Act, 1948.
4. However, these legislations limit the liability of the transferee employer to the value of assets obtained due to the business transfer.
5. Section 12 read with Section 27, Maternity Benefits Act, 1961.

complex process that demands a nuanced understanding of both statutory obligations and contractual dynamics. The distinction between 'workmen' and 'non-workmen' is foundational, as it determines the nature and extent of protections and procedural requirements applicable to each category. Further the choice between a tripartite arrangement and an acqui-hire arrangement requires a careful strategic decision to be made.

Employers should ensure meticulous compliance with the processes and steps described in this article given that the presence of one or more of the following can likely derail a business transfer and result in an industrial dispute (if applicable) or other employment related litigation: (a) non-compliance with statutory notice and compensation obligations (if applicable); (b) failure to obtain employee consent; (c) inadequate allocation of accrued employment benefits; and (d) failure to comply with any contractual exit obligations.

Thus, a successful employee transfer during business restructuring hinges on the following: (a) early legal assessment of employment categories and applicable laws; (b) strategic selection of transfer mode aligned with commercial objectives and risk appetite (c) meticulous documentation, including tripartite agreements, offer letters, and employment agreements with the transferee employer; and (d) proactive compliance with statutory and contractual obligations to mitigate litigation and reputational risks.

Businesses must treat employee transfers not as a peripheral HR exercise but as a core legal and strategic component of any restructuring or acquisition transaction.