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Getting through an acquisition unscathed

Employees need not worry about end of service benefits, but others need a look-in

By Fraser Dawson

These days it is common to be employed by a company that goes through a change in ownership. This can be a very stressful time for employees as the new owners implement new strategies and personnel changes.

This column looks at some of the key legal matters impacting employees in such a situation. Of course, every set of circumstances is different and employees should seek legal advice accordingly.

The Good News

The change in ownership itself will not affect an individual's status as an employee or the key terms and conditions of their employment. It will also, generally, not result in any change to the date of commencement of employment for the purpose of calculating 'end of service benefit'.

Furthermore, in almost every situation employees are a business' key assets — especially those operating in the service-sector. A buyer of a business will not want to jeopardise its investment by taking any actions that could reduce the effectiveness of its workforce.

In addition, and more commonly for members of management, a change in ownership may result in employee incentive schemes (i.e., financial bonuses) becoming payable (or vesting) earlier than they would otherwise. This is most commonly the case in relatively small, high-growth, start-up or technology-sector companies.

It is also not uncommon for sellers to pay 'deal-bonuses' to staff who have been important in successfully implementing the transaction.

Moreover, buyers who are financial investors — principally, equity funds — are likely to implement their own 'management incentive scheme' when they acquire the business. This is to incentivise key employees to grow the value of the business so that it may be sold for a greater sum in the future.

These incentive schemes have, over the years, resulted in the management teams of many companies becoming extremely wealthy. As opposed to other jurisdictions where complex tax regimes apply, incentive schemes in the MENA region tend to be purely financial, and relatively simple, rather than taking the form of granting an equity interest in the business through the issuance of shares.

The Bad News

Generally speaking, a buyer of a business will fall into one of two categories: one, trade buyers who already carry on a similar business to the one being acquired; or two, financial investors, such as private equity funds. Each of these poses its own issues.

For trade buyers, often one of the primary objectives of an acquisition is to increase the effectiveness of the combined businesses (often referred to as 'synergies'). One way to achieve this is to ensure that multiple employees are not carrying out the same role.

For example, if both the trade buyer and the acquired business have central HR departments and the HR function can be run out of one unit, it is likely that the trade buyer will look to take appropriate measures to cut staff to reduce cost.

For financial investors, one of their key goals is to grow the value of the business in order that it may be sold for a greater sum in the future. As a general rule, it is necessary to increase the profits of a business to grow its value, with one way of increasing profits being by reducing costs.

Obviously, employees are one such cost that a financial investor may look to reduce through restructuring pay scales, allowances and bonuses and reducing the number of employees.

Although the key terms and conditions of employment will, in the short term, remain the same, following a change in ownership more minor terms and conditions of employment can usually be changed unilaterally by the employer, such as procedures pertaining to vacation approval and sickness reporting.

In addition, benefits that employees have historically enjoyed on a non-contractual basis, such as discretionary bonuses, can also be stopped or altered without employee consent.

Finally, a new owner of the business may request employees to accept changes to key terms and conditions, on the basis that their employment will be terminated if they do not do so. Existing financial obligations of employees and a general desire not to have to find new employment often mean employees are left with little choice in practice but to accept what is offered.

A change in ownership can either be an opportunity or a disappointment for employees. Whatever the outcome, it is important to obtain independent legal advice to ensure that you know where you stand under the law.

The most important fact to remember if you find yourself in such a situation is that key terms and conditions cannot be unilaterally changed by a new owner and, even where a change of ownership results in termination of employment.

This must be done in accordance with the existing employment relationship: notice must be given, any outstanding sums must be settled and 'end of service benefit' paid.

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