

A.L. 165 ta' l-2008

**ATT DWAR L-IMPIEGI U R-RELAZZJONIJIET
INDUSTRIJALI
(KAP. 452)**

**Regolamenti ta' l-2008 dwar l-Involviment ta' l-Impjegati
(Mergers Transkonfini ta' Kumpanniji ta'
Responsabbiltà Limitata)**

BIS-SAHHA tas-setghat moghtija bl-artikolu 48 ta' l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, il-Ministru għall-Politika Soċjali għamel dawn ir-regolamenti li ġejjin –

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2008 dwar l-Involviment ta' l-Impjegati (*Mergers Transkonfini ta' Kumpanniji ta' Responsabbiltà Limitata*). Titolu u skop.

(2) Dawn ir-regolamenti jistabbilixxu l-arrangamenti għall-involviment ta' impjegati f'*mergers* transkonfini ta' kumpanniji ta' responsabbiltà limitata u b'hekk idahhlu fis-sehh id-disposizzjonijiet rilevanti tad-Direttiva tal-Kunsill u tal-Parlament Ewropew 2005/56/KE tas-26 ta' Ottubru 2005 dwar *mergers* transkonfini ta' kumpanniji ta' responsabbiltà limitata, hawn aktar 'il quddiem imsejha "id-Direttiva".

2. (1) Għall-finijiet ta' dawn ir-regolamenti: Tifsir.

“l-Att” tfisser l-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali;

“impjegat Malti” tfisser impjegat ingaġġat ma' intrapriża stabbilita f'Malta;

“involviment ta' impjegati” tfisser kull mekkaniżmu, inkluża kull informazzjoni, konsultazzjoni u parteċipazzjoni, li bis-sahha tagħha rappreżentanti ta' l-impjegati jistgħu jeżerċitaw influwenza fuq deċiżjonijiet li għandhom jittiehdu f'kumpannija;

“kumpannija” u “*merger*” għandhom l-istess tifsira moghtija lillhom bl-Att dwar il-Kumpanniji, u bir-regolamenti mahruġa tahtu; Kap. 386.

“kumpanniji li qed jinghaqdu” ghandha l-istess tifsira moghtija lilha bl-Att dwar il-Kumpanniji, u b’regolamenti mahruġin tahtu u tinkludi l-kumpanniji kollha li jiehdu sehem f’xi *merger* transkonfini, inkluża kumpannija li tkun qeghda takkwista;

“*merger* transkonfini” ghandha l-istess tifsira moghtija lilha bl-Att dwar il-Kumpanniji, u bir-regolamenti mahruġin tahtu u tinkludi kull *merger* ta’ kumpanniji ffurmati skond il-liġi ta’ xi Stat Membru u li jkollhom l-uffiċċju registrat tagħhom, il-ġestjoni ċentrali jew il-post prinċipali tan-negożju fil-Komunità, sakemm mill-inqas tnejn minn dawn il-kumpanniji ikunu regolati mil-liġijiet ta’ Stati Membri differenti;

“parteciċipazzjoni” tfisser l-influwenza tal-korp rappreżentattiv ta’ l-impjegati jew tar-rappreżentanti ta’ l-impjegati, jew tat-tnejn, fl-affarijiet ta’ enti legali f’dawk li huma:

(a) id-dritt li telegġi jew tahtar xi whud mill-membri ta’ l-organu ta’ sorveljanza jew dak amministrattiv tal-kumpannija, jew

(b) id-dritt li tirrikmanda jew topponi, jew it-tnejn, il-hatra ta’ xi whud jew ta’ kull membru ta’ l-organu ta’ sorveljanza jew dak amministrattiv tal-enti legali;

“Stat Membru” tfisser stat membru ta’ l-Unjoni Ewropea jew taż-Żona Ekonomika Ewropea.

(2) Bla ħsara għad-disposizzjonijiet tas-subregolament (1) ta’ dan ir-regolament, kliem u frażijiet użati f’dawn ir-regolamenti għandhom, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg mod iehor, it-tifsira moghtija lilhom fl-Att.

(3) Fin-nuqqas ta’ tifsira li tinghata f’dawn ir-regolamenti, kliem u frażijiet ohra li jinsabu f’dawn ir-regolamenti u li jinsabu wkoll fid-Direttiva għandu jkollhom l-istess tifsira li għandhom fl-istess Direttiva.

Applikabilità.

3. Dawn ir-regolamenti għandhom japplikaw għal *mergers* ta’ kumpanniji iffurmati skond il-liġi ta’ xi Stat Membru u li jkollhom l-uffiċċju registrat tagħhom, il-ġestjoni ċentrali jew il-post prinċipali tan-negożju tagħhom fil-Komunità, sakemm mill-inqas tnejn minn dawk il-kumpanniji jkunu regolati mil-liġijiet ta’ Stati Membri differenti u sakemm ukoll mill-inqas wahda mill-kumpanniji li jinghaqdu, jew il-kumpannija li tirriżulta mill-*merger*, tkun registrata f’Malta.

4. Ir-rappreżentanti ta' l-impjegati ghandhom dritt li jirċievu, mill-bord tad-diretturi tal-kumpannija Maltija li qed tinghaqad, u li jghaddu, fi żmien raġonevoli, xi opinjoni fuq ir-rapport tal-bord tad-diretturi tal-kumpannija Maltija li qed tinghaqad li jsir skond ir-regolament 8 tar-Regolamenti ta' l-2007 dwar *Mergers* Transkonfini ta' Kumpanniji b'Responsabbiltà Limitata, mahruġa taht l-Att dwar il-Kumpanniji.

Rapport.

A.L. 415 ta' l-2007.

5. Minghajr preġudizzju għall-artikolu 38 ta' l-Att u għar-Regolamenti ta' l-2002 dwar Harsien ta' l-Impiegi fit-Trasferiment ta' Negozju, id-drittijiet u l-obbligi li johorġu mill-kuntratti ta' l-impjieg jew minn relazzjonijiet ta' impjieg bejn impjegati ta' kumpanniji li qed jinghaqdu u l-kumpanniji li qed jinghaqdu u li jkunu jeżistu fid-data meta l-*merger* transkonfini issehh għandhom, minhabba dak il-*merger* transkonfini li jkun qed issehh, jiġu trasferiti lill-kumpannija li tirriżulta mill-*merger* transkonfini fid-data meta l-*merger* transkonfini jsehh.

Trasferiment ta' drittijiet u obbligi.
A.L. 433 ta' l-2002.

6. F'*merger* transkonfini ta' kumpanniji b'responsabbiltà limitata, id-drittijiet ta' l-impjegati għal informazzjoni u konsultazzjoni għandhom jibqgħu soġġetti għar-Regolamenti ta' l-2002 dwar Sensji Kollettivi (Harsien ta' l-Impiegi), l-artikolu 38 ta' l-Att, ir-Regolamenti ta' l-2002 dwar Harsien ta' l-Impiegi fit-Trasferiment ta' Negozju, ir-Regolamenti ta' l-2006 dwar Dritt għal Informazzjoni u Konsultazzjoni ta' l-Impjegati, u r-Regolamenti ta' l-2004 dwar il-Kunsill Ewropew tax-Xogħol.

Drittijiet ta' informazzjoni u konsultazzjoni.
A.L. 428 ta' l-2002.
A.L. 433 ta' l-2002.
A.L. 10 ta' l-2006.
A.L. 324 ta' l-2004.

7. (1) Bla hsara għas-subregolament (2) ta' dan ir-regolament, il-kumpannija li tirriżulta mill-*merger* transkonfini għandha tkun soġġetta għar-regoli fis-sehh li jikkonċernaw il-partecipazzjoni ta' l-impjegati, jekk ikun hemm, fl-Istat Membru fejn dik ikollha l-uffiċċju reġistrat tagħha.

Drittijiet ta' partecipazzjoni.

(2) Minghajr preġudizzju għas-subregolament (1) ta' dan ir-regolament, ir-regoli fis-sehh li jikkonċernaw il-partecipazzjoni ta' l-impjegati, jekk ikun hemm, fl-Istat Membru fejn il-kumpannija li tirriżulta mill-*merger* transkonfini jkollha l-uffiċċju reġistrat tagħha, m'għandhomx japplikaw:

(a) meta mill-inqas waħda mill-kumpanniji li qed tinghaqad ikollha, fis-sitt xhur ta' qabel il-pubblikazzjoni ta' l-abbozz tal-pattijiet tal-*merger* transkonfini skond id-direttiva, medja ta' għadd ta' impjegati li tkun taqbeż il-500 u li tkun topera taht sistema ta' partecipazzjoni minn impjegati; jew

(b) meta l-liġi nazzjonali li tkun tapplika għall-kumpannija li tirriżulta mill-*merger* transkonfini ma tipprovdi għal mill-inqas

l-istess livell ta' parteċipazzjoni ta' impjegati kif operati fil-kumpanniji li qed jinghaqdu rilevanti:

Iżda l-livell ta' parteċipazzjoni ta' impjegati ghandu jiġi mkejjejl b'referenza għall-proporzjon ta' rappreżentanti ta' impjegati fost il-membri ta' l-organu amministrattiv jew ta' superviżjoni jew tal-kumitati tagħhom jew tal-grupp ta' ġestjoni li jkopri l-unitajiet ta' profitt tal-kumpannija, bla hsara għar-rappreżentazzjoni ta' l-impjegati; jew

(ċ) meta l-liġi nazzjonali li tkun tapplika għall-kumpannija li tirriżulta mill-*merger* transkonfini ma tkunx tipprovdi dwar impjegati ta' stabbilimenti ta' kumpannija li tirriżulta minn *merger* transkonfini li jinsabu fi Stati Membri ohra, l-istess dritt għal eżerċizzju ta' drittijiet ta' parteċipazzjoni kif igawdu dawk l-impjegati li jahdmu fl-Istat Membru fejn il-kumpannija li tirriżulta mill-*merger* transkonfini jkollha l-uffiċċju registrat tagħha.

(3) Fil-każijiet imsemmija fil-paragrafi (a), (b) u (ċ) tas-subregolament (2) ta' dan ir-regolament, il-parteċipazzjoni ta' l-impjegati fil-kumpannija li tirriżulta mill-*merger* transkonfini u l-involvement tagħhom fid-definizzjoni ta' drittijiet bħal dawk għandhom ikunu regolati skond il-prinċipji u l-proċeduri stipulati fl-artikolu 12 (2), (3) u (4) tar-Regolament KE Nru 2157/2001 fuq l-Istatut għal Kumpannija Ewropea u skond id-disposizzjonijiet li ġejjin tar-Regolamenti ta' l-2004 dwar l-Involvement ta' l-Impjegati (Kumpannija Ewropea);

A.L. 452 ta' l-2004.

(a) is-subregolamenti (1), (2), (3) u (4) tar-regolament 3, is-subregolament (1) tar-regolament 4, ir-regolament 5 u s-subregolamenti (1), (2), (3) (a), (4), (5) u (6) tar-regolament 6 u r-regolament 8 (3);

(b) is-subregolament (1), paragrafi (a), (g), u (h) tas-subregolament (4) u s-subregolament (5) tar-regolament 8;

(ċ) ir-regolament 8 (2);

(d) ir-regolament 9;

(e) is-subregolament (1), (2) (b) u (3) tar-regolament 10:

Iżda għall-finijiet ta' dawn ir-regolamenti, il-perċentwali mehtieġa mis-subregolament (2) (b) tar-regolament 10 għall-applikazzjoni tar-Regoli Standard għal Parteċipazzjoni stabbiliti fl-Iskeda għandhom ikunu $33 \frac{1}{3} \%$;

- (f) ir-regolamenti 11, 13, 15, 17;
 - (g) ir-regolament 16 (4); u
 - (h) il-paragrafu 4 (b) ta' Parti 3 ta' l-Iskeda.
- (4) Fil-każijiet meta is-subregolamenti (2) u (3) japplikaw,

(a) l-organi relevanti tal-kumpanniji li jinghaqdu ghandhom id-dritt ta' l-għażla minghajr negozjar bil-quddiem sabiex ikunu soġġetti direttament għal paragrafu 4 (b) ta' Parti 3 ta' l-Iskeda fir-Regolamenti ta' l-2004 dwar l-Involviment ta' l-Impjegati (Kumpannija Ewropea), u biex jaderixxu ma' daww ir-regoli mid-data tar-reġistrazzjoni;

(b) il-Korp Speċjali ta' Negozjati ghandu jkollu d-dritt li jiddeċiedi, b'maġġoranza ta' żewġ terzi tal-membri tiegħu li jkunu jirrapprezentaw mill-inqas żewġ terzi ta' l-impjegati, inklużi l-voti tal-membri li jirrapprezentaw l-impjegati f'mill-inqas żewġ Stati Membri differenti, li ma jiftaħx negozjati jew li jagħlaq negozjati li jkunu diġà nfethu u li jserrah fuq ir-regoli ta' parteċipazzjoni li jkunu fis-seħh fl-Istat Membru fejn jinsab l-uffiċċju reġistrat tal-kumpannija li tirriżulta mill-*merger* transkonfini.

(5) Meta mill-inqas wahda mill-kumpanniji li qed tinghaqad topera taht sistema ta' parteċipazzjoni ta' l-impjegati u l-kumpannija li tirriżulta minn *merger* transkonfini tkun ser tiġi regolata minn tali sistema bi qbil mas-subregolament (2) ta' dan ir-regolament, dik il-kumpannija għandha l-obbligu li tadotta forma legali li tkun tippermetti l-eżerċizzju tad-drittijiet ta' parteċipazzjoni.

(6) Meta l-kumpannija li tirriżulta minn *merger* transkonfini tkun qegħda topera taht sistema ta' parteċipazzjoni ta' l-impjegati, dik il-kumpannija għandha l-obbligu li tadotta miżuri sabiex tiżgura li d-drittijiet ta' parteċipazzjoni ta' l-impjegati tagħha jkunu protetti jekk isehhu *mergers* domestiċi sussegwenti għal perjodu ta' tlett snin wara li l-*merger* transkonfini jkun sehħ minhabba fl-applikazzjoni ta' dan ir-regolament.

8. Kull min jonqos milli jhares ma' xi obbligu impost fuqu taht dawn ir-regolamenti jkun hati ta' reat u jista', meta jinsab hati, jehel multa ta' mhux inqas minn elf, mija u erba' u sittin euro u disgħa u sittin ċenteżmu (€1,164.69) u mhux izjed minn hdax il-elf u sitt mija u sitta u erbghin euro u sebgha u tmenin ċenteżmu (€11,646.87). Pieni.

L.N. 165 of 2008

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(CAP. 452)**

**Employee Involvement (Cross-Border Mergers of Limited
Liability Companies) Regulations 2008**

IN exercise of the powers conferred by article 48 of the Employment and Industrial Relations Act, 2002, the Minister for Social Policy has made the following regulations –

Title and Scope. **1. (1)** The title of these regulations is the Employee Involvement (Cross-Border Mergers of Limited Liability Companies) Regulations, 2008.

(2) These regulations establish the arrangements for the involvement of employees in cross-border mergers of limited liability companies hereby giving effect to the relevant provisions of Directive 2005/56/EC of the European Parliament and of the Council of the 26th October 2005 on cross-border mergers of limited liability companies, hereinafter referred to as “the Directive”.

Definitions. **2. (1)** For the purpose of these regulations:

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

Cap. 386. “company” and “merger” have the same meaning assigned to them by the Companies Act and by regulations issued thereunder;

“cross-border merger” has the same meaning assigned to it by the Companies Act and by regulations issued thereunder and includes any merger of companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of such companies are governed by the laws of different Member States;

“involvement of employees” means any mechanism, including information, consultation and participation, through which employees’ representatives may exercise an influence on decisions to be taken within an undertaking;

“Maltese employee” means an employee employed by an undertaking established in Malta;

“Member State” means a member state of the European Union or the European Economic Area;

“merging companies” has the same meaning assigned to it by the Companies Act and by regulations issued thereunder and includes all the companies taking part in a cross-border merger, including an acquiring company;

“participation” means the influence of the body representative of the employees or the employees’ representatives, or both, in the affairs of a legal entity by way of:

- (a) the right to elect or appoint some of the members of the legal entity’s supervisory or administrative organ, or
- (b) the right to recommend or oppose, or both, the appointment of some or all of the members of the legal entity’s supervisory or administrative organ.

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

(3) In the absence of a definition given in these regulations, words and expressions used in these regulations which are also used in the Directive shall have the same meaning as they have in the same Directive.

3. These regulations shall apply to mergers of companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of such companies are governed by the laws of different Member States and provided further that at least one of the merging companies, or the company resulting from the merger, is registered in Malta. Applicability.

4. Representatives of employees are entitled to receive, by the board of directors of the Maltese merging company, and to deliver, within a reasonable time, an opinion on, the report of the board of directors of the Maltese merging company drawn up in terms of regulation 8 of the Cross-Border Mergers of Limited Liability Companies Regulations, 2007 issued under the Companies Act. Report.
L.N. 415 of 2007.

5. Without prejudice to article 38 of the Act and to the Transfer of Business (Protection of Employment) Regulations, 2002, the rights Transfer of rights and obligations.
L.N. 433 of 2002.

and obligations arising from contracts of employment or employment relationships between employees of the merging companies and the merging companies and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

Information and
consultation rights.

L.N. 428 of 2002.

L.N. 433 of 2002.

L.N. 10 of 2006.

L.N 324 of 2004.

6. In a cross-border merger of limited liability companies, employees' rights to information and consultation shall remain subject to the Collective Redundancies (Protection of Employment) Regulations, 2002, article 38 of the Act, the Transfer of Business (Protection of Employment) Regulations, 2002, the Employee (Information and Consultation) Regulations, 2006 and the European Works Council Regulations, 2004.

Participation rights.

7. (1) Subject to sub-regulation (2) of this regulation, the company resulting from the cross-border merger shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

(2) Notwithstanding sub-regulation (1) of this regulation, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office, shall not apply:

(a) where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger in accordance with the directive, an average number of employees that exceeds 500 and is operating under an employee participation system; or

(b) where the national law applicable to the company resulting from the cross-border merger does not provide for at least the same level of employee participation as operated in the relevant merging companies:

Provided that the level of employee participation is measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation; or

(c) where the national law applicable to the company resulting from the cross-border merger does not provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the

same entitlements to exercise participation rights as is enjoyed by those employees employed in the Member State where the company resulting from the cross-border merger has its registered office.

(3) In the cases mentioned in paragraphs (a), (b) and (c) of sub-regulation (2) of this regulation, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated in accordance with the principles and procedures laid down in article 12 (2), (3) and (4) of EC Regulation No. 2157/2001 on the Statute for a European Company and in accordance with the following provisions of the Employee Involvement (European Company) Regulations, 2004: L.N. 452 of 2004.

(a) sub-regulations (1), (2), (3) and (4) of regulation 3, sub-regulation (1) of regulation 4, regulation 5 and sub-regulations (1), (2), (3) (a), (4), (5) and (6) of regulation 6 and regulation 8 (3);

(b) sub-regulation (1), paragraphs (a), (g), and (h) of sub-regulation (4) and sub-regulation (5) of regulation 8;

(c) regulation 8 (2);

(d) regulation 9;

(e) sub-regulations (1), (2) (b) and (3) of regulation 10:

Provided that for the purposes of these regulations, the percentages required by sub-regulation (2) (b) of regulation 10 for the application of the Standard Rules on Participation set out in the Schedule shall be $33 \frac{1}{3} \%$;

(f) regulations 11, 13, 15, 17;

(g) regulation 16 (4); and

(h) paragraph 4 (b) of Part 3 of the Schedule.

(4) In the cases where sub-regulations (2) and (3) apply,

(a) the relevant organs of the merging companies have the right to choose without any prior negotiation to be directly subject to paragraph 4 (b) of Part 3 of the Schedule in the Employee Involvement (European Company) Regulations, 2004 and to abide by the same from the date of registration;

(b) the special negotiating body has the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated.

(5) When at least one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is to be governed by such a system in accordance with sub-regulation (2) of this regulation, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

(6) When the company resulting from the cross-border merger is operating under an employee participation system, the company shall take measures to ensure that its employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect by applying this regulation.

Penalties.

8. Any person who fails to comply with any obligation imposed on such person under these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11, 646.87).