

AIRBERLIN/ LUFTHANSA: BUSINESS TRANSFER – YES OR NO?

Translation of an entry from the von der Fecht blog

In case of a business transfer, all employment contracts with the seller are obligatorily and automatically carried over to the buyer, including all financial conditions, leave regulations as well as the acquired staff membership, according to §613a BGB in the German law system. This already emphasizes the particular importance of this regulation in cases of restructuring and bankruptcy, since buyers of companies often refuse to keep the “unnecessary weight” of the old business. According to mainstream media, airberlin seems to show this exact tendency.

The German jurisdiction developed a number of criteria to determine if a business transfer has legitimately taken place according to §613a BGB. For instance, an important factor is the transfer of tangible resources like buildings, machines, means of transport etc. However, in the area of service industries, the take-over of the core stuff may already be sufficient. Only an attorney specialized in employment and labor law is able to carry out a professional examination to check if all conditions are fulfilled. However, the management of airberlin and their trustee must be clearly in the wrong when they are telling the press that the supposed business transfer already failed because of the fact that all of their to-be-sold planes are only leased. This (most likely, intentionally) disguises that the ownership relationships of operating equipment do not even play a role in the matter.

In the following cases, for an ideal consideration of the needs and concerns of the affected employees, it is crucial to competently answer the question whether a correct business transfer has happened or not:

- Work contract terminations which are only declared over the intended business transfer are invalid;
- Transitioning to a transfer company after the termination of contract with airberlin: Signing the termination agreement equals nullifying all rights and remedies from the employment at airberlin and
- Signing a new employment contract with a business buyer with changed conditions.

In the event of bankruptcy proceedings, the regulation in §613a BGB can be of high importance for affected employees, since they are legitimately able to claim their position in the transfer company – specifically in the case when the bankrupt company is unable to pay their employees the money from the salaries that they are owed.

About von der Fecht LLP:

The von der Fecht LLP is a law firm specialized in matters of bankruptcy and restructuring which has been successfully and eminently assisting major cases of restoration for 40 years now. Specifically in the case employment terminations, the

von der Fecht LLP is able to provide a significantly wide range of expertise. The firm's attorneys specialized in employment and labor law won paramount and progressive high court proceedings concerning transfer companies. Consequently, the von der Fecht LLP is decidedly familiar with the usual actions and intentions of both the debtor (who is in possession of his assets) and the trustee, allowing the experts to give valuable and essential advice in favor of the employee.