



## Foresight

# Collaboration: The People Dynamic

---

In an industry struggling to recover from the effects of overstaffing and a low oil price, the benefits of pooling a skilled core of employees with those of another organisation for a particular business opportunity may be extremely appealing. Nevertheless, for joint ventures and shared services programs advice should be sought at an early stage to deal with the employment law implications which may arise at both a local and international level.

Employers may envisage loaning their employees for a particular period to the new organisation, in which case secondment arrangements might be used. The parties should consider whether existing employment contracts allow for a secondment and give the requisite flexibility; what duties the secondees will be expected to perform in their new roles; how the secondments will be supervised and administered; and how and when any secondment might be brought to an end. Of particular concern will be the potential for secondees to inflict damage on a commercial partner's business – or conversely that the secondees will be poached! To this end, attention should be paid to the confidentiality and restrictive covenant provisions of both employment contracts and inter-company agreements. A decision will also need to be

made as to the ownership of any intellectual property which is created or modified by employees while on secondment.

The secondment of employees to a joint venture may sometimes trigger the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as 'TUPE'). However, there is a bigger risk of TUPE coming into play where a joint venture is the recipient of part or the whole of a pre-existing business. If TUPE does apply, then there will be serious legal implications for those employees who are affected by the transfer, including:

- *the obligation to maintain employees' previous terms and conditions of employment after the transfer (subject to some narrow exceptions)* - This restriction on harmonisation may effectively create a two-tier workforce, as well as causing difficulties with restrictive covenants which will usually only catch upon the business interests of the old employer;
- *the obligation to protect employees from dismissal as a result of the transfer (subject to some narrow exceptions);*

- *the transfer of any collective agreements which relate to the transferring employees, together with any relevant trade union recognition* – this may prove particularly alarming for any business partner which has had no direct involvement with trade unions or collective bargaining;
- *the obligation to inform and consult with representatives of affected employees prior to the transfer* – the new employer is obliged to provide the old employer with a letter confirming what ‘measures’ it proposes taking in relation to the transferring employees, so that the old employer can inform and consult before the transfer takes place. The old employer must also inform and consult with any of its non-transferring employees who may be affected by the transfer (for example if there are any planned redundancies as a result of the transfer). Note that even if TUPE does not apply, employers may have similar obligations under separate European Works Council arrangements or under information and consultation agreements.

Aside from the usual legal considerations, HR and operations managers must also be engaged at the outset to ensure that a clear and distinctive management culture is in place which combines best practice taken from both legacy organisations. Employees will not commit themselves to the new organisation with any real dedication unless they are able to relate to it. Employees all the way down the chain must be made aware of what the combined organisation is trying to achieve, so that everyone works toward the same goals. Finally, any discord between different groups of legacy staff must be approached constructively, so as to avoid the dreaded ‘them and us’ mentality which can so often prevent a joint venture or shared services program reaching its full potential.

This is the seventh Foresight article in our Transformation series looking at the future of North Sea Oil and Gas. Discussing various issues from technology to employment and disputes, our sector experts offer their commercial opinions on the future of the industry. Please feel free to forward this Foresight to a colleague or to subscribe to our mailing list here [CMSEmployment.Team@cms-cmck.com](mailto:CMSEmployment.Team@cms-cmck.com).

### Key contact:



**Andy Atwell**

Senior Associate, Employment

**T** +44 1224 26 7145

**E** [andy.atwell@cms-cmck.com](mailto:andy.atwell@cms-cmck.com)