

## **ISSUES UNDER THE COMPANIES (CROSS-BORDER MERGERS) REGULATIONS ON WHICH APPLICATIONS OR COMPLAINTS CAN BE MADE TO THE CAC**

### **1. DUTY ON MERGING COMPANY TO PROVIDE INFORMATION**

#### **Regulation 24**

Complaint by an employee or an employees' representative that the merging company has failed to provide information or the information is false or incomplete in a material particular. The information that must be provided must include information:

- (a) identifying the merging companies,
- (b) of any decision taken pursuant to regulation 36 (merging companies may select standard rules of employee participation), and
- (c) giving the number of employees employed by each merging company.

Further, when a special negotiating body has been formed it must be provided with such information as is necessary to keep it informed of the plan and progress of establishing the UK transferee company until the date upon which the consequences of the cross-border merger take effect.

There is no deadline for a complaint under this regulation.

CAC can make an order requiring the company to disclose information to the complainant specifying:

- the information to be disclosed; and
- the date by which it must be disclosed.

### **2. COMPLAINT ABOUT ESTABLISHMENT OF SPECIAL NEGOTIATING BODY**

#### **Regulation 27**

Complaint by an employee, an employees' representative or, if established, a member of the special negotiating body that the special negotiating body has not been established at all or has not been established properly. Where the alleged failure is on the part of the employees or the employee representatives, a complaint can be brought by the merging company.

Complaint must be submitted within one month from the date the employees were informed or should have been informed of the results of the election of members to the special negotiating body.

CAC can make a declaration that the merging companies are still obliged to establish a special negotiating body. If the CAC finds the failure is on the part of

the employees or the employee representatives it can make a declaration that the merging companies are no longer obliged to establish a special negotiating body.

### **3. COMPLAINT ABOUT DECISIONS OF SPECIAL NEGOTIATING BODY**

#### **Regulation 32**

Complaint by a member of the special negotiating body, an employee representative, or an employee that decisions of the special negotiating body have not been correctly published or, where required by the regulations, have not been made by a majority.

Complaint must be submitted within 21 days of the publication of the decision or within 21 days of the date by which the decision should have been published.

CAC can make a declaration that the decision was not taken properly and that it shall have no effect.

### **4. BALLOT ARRANGEMENTS**

#### **Regulation 33**

Complaint by an employee or employees' representative that the arrangements for the ballot of the UK employees do not comply with the regulations.

Complaint must be submitted within 21 days of the date on which the final arrangements for the ballot are published, or should have been published.

CAC can make an order requiring the arrangements for the ballot to be modified. The order shall specify the changes required.

### **5. DUTY OF CONFIDENTIALITY**

#### **Regulation 41**

Application as to whether it was reasonable for a company to require the recipient of information received to hold the information or document in confidence.

There is no deadline for a complaint under this regulation.

CAC will issue declaration as to whether or not it was reasonable for the company to require the recipient to hold the information or document in confidence.

## **6. WITHHOLDING OF INFORMATION BY THE TRANSFEREE OR MERGING COMPANY**

### **Regulation 42**

Application by a member of the Special Negotiating Body; or where no special negotiating body has been established, an employee; or the transferee company or merging company as to whether or not the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to the transferee company or merging company.

If the CAC declares that the disclosure of the information or document in question would not be seriously harmful or prejudicial, the CAC can make an order requiring the company to disclose information to the complainant specifying:

- the information or document to be disclosed;
- the person or persons to whom the information or document is to be disclosed;
- any terms on which the information or document is to be disclosed; and
- the date before which the information or document is to be disclosed.

## **7. DISPUTES ABOUT OPERATION OF AN EMPLOYEE PARTICIPATION AGREEMENT OR THE STANDARD RULES OF EMPLOYEE PARTICIPATION**

### **Regulation 53**

Where either an employee participation agreement has been agreed or the standard rules apply, a complaint may be presented by a special negotiating body or, if no special negotiating body is established, an employee representative or employee of the transferee company who considers that the transferee company has failed to comply with the terms of the employee participation agreement or, where applicable, the standard rules.

A complaint must be brought within a period of 3 months starting with the date of the alleged failure, or where the failure takes place over a period, the last day of that period.

The CAC can make an order requiring the transferee company to take steps necessary to comply with the terms of the employee participation agreement or, where applicable, the standard rules of employee participation specifying:

- the steps which the transferee company is required to take;
- the date of the failure; and
- the period within which the order must be complied with.

If the CAC issues a declaration upholding the complaint, the applicant has three months in which to apply to the Appeal Tribunal for a penalty notice to be issued.

## **8. MISUSE OF PROCEDURES**

### **Regulation 54**

A complaint can be made by an employee representative, or if there is no such representative, an employee, who believes that a transferee company or merging company is misusing or intending to misuse the transferee company or the powers in these Regulations for the purpose of:

- depriving the employees of that merging company or the transferee company of their rights to employee participation; or
- withholding such rights from any of the people referred to above.

A complaint must be made before the date upon which the consequences of the cross-border merger take effect or within a period of 12 months after that date.

The complaint shall be upheld unless the respondent proves that it did not misuse or intend to misuse the transferee company or the powers in these Regulations for either of the above purposes.

The CAC can make an order requiring the transferee company or merging company to take such action to ensure that employees are not deprived of their rights to employee participation or that such rights are not withheld from them.

If the CAC issues a declaration upholding the complaint, the applicant has three months in which to apply to the Appeal Tribunal for a penalty notice to be issued.