The effect of the Transfer of Undertakings provisions of SBA legislation and of the Civilian Employment Regulations on Cyprus Locally Employed Civilians

Civilian Employment Regulations (CERs) and SBA legislation

1. The paper applies only to Cyprus Locally Employed Civilians (LECs) who are employed in either delivering or supporting Fire and Rescue services in Cyprus, as part of DFRMO. Individuals who fall into this category are MoD employees. The Cyprus Civilian Employment Regulations (CERs) form part of the employment contract between Cyprus LECs and the MoD. In addition, the employment contracts are governed by SBA law (especially SBA Ordinances).

2. The following interpretation of the effect that CERs and SBA legislation have on pay and conditions is therefore unique to this group of employees. It should not and cannot therefore be used for other groups of staff. The positions identified in this paper cannot be considered as precedent for any other projects that are ongoing, or undertaken in the future, in Cyprus.

3. This paper sets out the effect that a number of applicable SBA Ordinances and CERs have on the employment terms and conditions of DFRMO LECs in Cyprus. It then identifies the effect on those employment terms in the event of a transfer to Industry, should such a transfer take place. This paper does not comment on the possibility of such an event on the basis that DFRP bids are under evaluation and remain therefore commercially sensitive.

4. It must also be emphasised that whilst this represents a considered interpretation by MoD, any final determination on whether the positions as stated are correct could only be made by the SBA courts.

5. **Pay.** The Crown Employees (Pay and Allowances) Ordinance 2015 (Ordinance 7 of 2015), as amended by Ordinances 12 and 15 of 2015, has the following effect:

   (1) It applies to Crown employees who:
   
   i. Were recruited on the island.
   ii. Are employed to carry out duties solely or mainly in Cyprus.
   iii. Commenced employment before 1 September 2015.

   (2) The Ordinance requires a reduction in the gross monthly pay and associated allowances with the percentage deduction based on the gross pay. The deduction also applies to the 13th month salary.

   (3) It is understood that permission has been given to challenge the application of these Ordinances (7, 12 & 15 of 2015) with a court decision at first instance, likely to be given around April/May 2018.

6. **Pensions.(BFC Fire-Fighter Pension Scheme).** Chapter 21 of the CERs provides the details of the scheme, which applies to Locally Employed Civilian Fire Fighters employed by the Ministry of Defence.

7. **Provident Fund.** Chapter 17 of the CERs identifies the arrangements surrounding the provision of the Provident Fund.

8. **Medical Fund (MF).** Chapter 18 of the CERs provides for a MF. All LECs should be members of the fund, unless they opt out or resign. Currently, LECs are entitled to apply to the MF Committee for a payment associated with medical expenses that an individual has incurred, within limits determined by the Committee.

**Impact of Transfer of Undertakings.**

9. Noting the employment terms and conditions of DFRMO LECs in Cyprus, the following section of this paper identifies the impact to those terms and conditions if there was to be a transfer of an
undertaking. The information provided applies generally but, where appropriate, specific information pertaining to DFRMO LECs is identified. As mentioned previously, given the commercial sensitivity of the Industry proposals, MoD as the employer is not commenting on whether the outcome of the DFRP project would involve a transfer of staff to a DFRP contractor. The information in this paper is provided in response to a request for more information on the application of the transfer of undertakings provisions.

Employment Rights (Transfer of Undertaking) Ordinance 8 (2001)

10. Ordinance 8 (2001) specifies criteria to determine whether there is a “transfer of an undertaking” for its purposes. It is not intended to cover those criteria in this paper but merely to state the impact and protection, when those criteria are fulfilled, that are offered as a result of the application of Ordinance 8 (2001).

11. The purpose of Ordinance 8 (2001) is to protect individuals’ terms and conditions of employment in the SBA when an undertaking is transferred. The Ordinance states that all rights and obligations arising from an employee’s contract of employment, which exist on the date of a transfer, will be transferred to the transferee as if that contract of employment had originally been made with the new employer.

12. The benefits of the protection offered through Ordinance 8 (2001) mean that the new employer cannot unilaterally change the employment terms and conditions of an individual. The aim is to ensure that individuals should not suffer any detrimental impact to their employment terms as a result of any transfer. Any proposed changes must be made, as before the transfer, through agreement with the individual, or through mechanisms provided by the contract.

13. When considering known issues in Cyprus, the following paragraphs explore the impact of those issues from the context of Ordinance 8 (2001).

14. Pay

a. Subject, as before, that authoritative determination can only be made by a court, and notwithstanding the recent permission to challenge the pay ordinance, on balance, it is considered likely that the pay reductions authorised under Ordinance 7, 12 & 15 of 2015 would continue to apply if a transfer of employment was to occur as a result of Ordinance 8 (2001).

b. The timing of the outcome of the challenge is quite critical when considering its link with Ordinance 8 (2001). If any challenge to the pay ordinance was to be upheld prior any transfer of staff in accordance with Ordinance 8 (2001), the outcome of the ruling would be applied to individuals' terms and conditions of employment which would transfer from MOD to the contractor (noting however that there may be an appeal process of between 6 months and 2 years). Conversely, if the outcome of that challenge was outstanding at the time of any Ordinance 8 (2001) staff transfer, then Ordinances 7, 12 and 15 of 2015 would continue to be applied, on the basis that they formed part of individuals’ terms and conditions of employment which were in place immediately prior to transfer.

c. If the pay challenge was upheld after a transfer of staff in accordance with Ordinance 8, and Ordinance 7, 12 &15 of 2015 were therefore deemed as unenforceable, it is considered probable (but subject to a court consideration) that, by virtue of Ordinance 8 (2001), individuals would be able to claim for back pay. This is on the basis that the reduced pay levels would be considered never to have been part of the terms and conditions which applied to them at the time of their transfer.

15. Continuity of Employment. The effect of Ordinance 8 (2001) is that an individual’s continuity of employment is maintained. This means that employment with both MOD and the Contractor would be treated as one continuous period of employment. This is relevant to entitlement to those employment benefits and legislative employment protections which require a certain length of previous service.

16. Voluntary Redundancy Scheme. Para 8.3 of Chapter 11 states:
“All LEC staff in-scope to transfer to Contractors will be offered the opportunity to state a preference to be redeployed within the bases if this were possible or to elect to be considered for voluntary redundancy as opposed to transferring to the contractor”.

17. **Medical Fund.** Given that the MF is provided for by the CERs, it is part of an individual’s terms and conditions and would be subject to protection under any employment transfer.

18. ** Provident Fund.** Chapter 11, Section 8, Para 8.3 of the CERs, states that “BFC will offer transferred staff the opportunity to elect to take an advance payment of their full accrued provident fund/ gratuity benefits at the time of transfer, providing that they meet the minimum qualifying periods of their respective schemes”. Otherwise, the legislation requires replication of the Provident Fund arrangements after any transfer to a new employer.

19. **Pensions (BFC Fire-Fighter Pension Scheme)** The MoD will ensure that the employees' accrued pensionable service in the BFC fire-fighters pension scheme is protected. In respect of future pension provision MOD will ensure that employees have access to a suitable pension scheme.

**Summary**

20. This brief paper sets out MoD’s understanding of key employment terms and conditions and provides general advice on how those terms would be affected and/or protected through the application of Ordinance 8 (2001). It demonstrates that both legislative and contractual provisions offer much protection to the employees in the event of a transfer.