



C L I F F O R D
C H A N C E

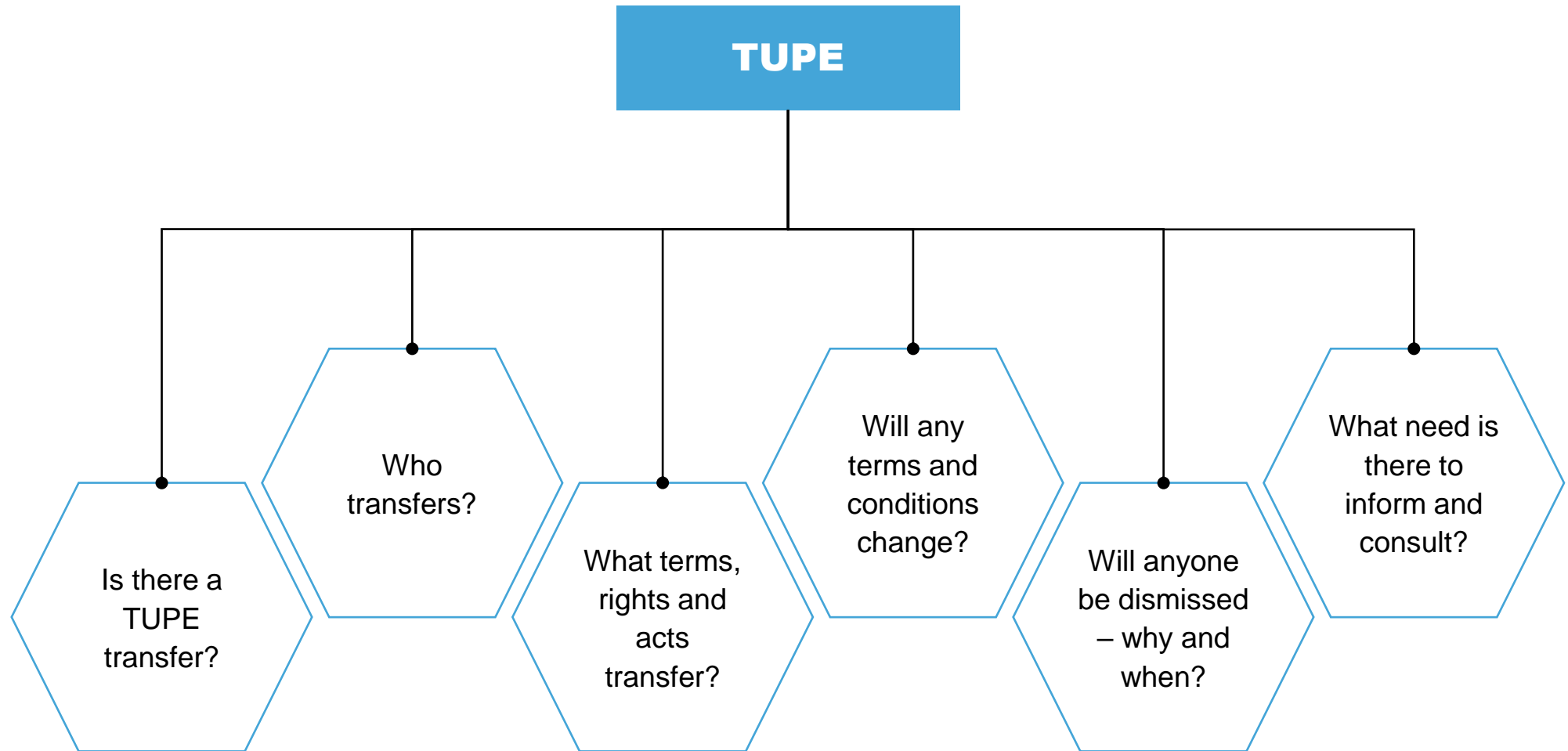
ELA – INTRODUCTION TO EMPLOYMENT LAW
TUPE – THE BASIC PRINCIPLES – A PRACTICAL GUIDE

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NOVEMBER 2023

FIVE PRINCIPLES



WE ADVISE ON ...



IS THERE A TUPE TRANSFER?



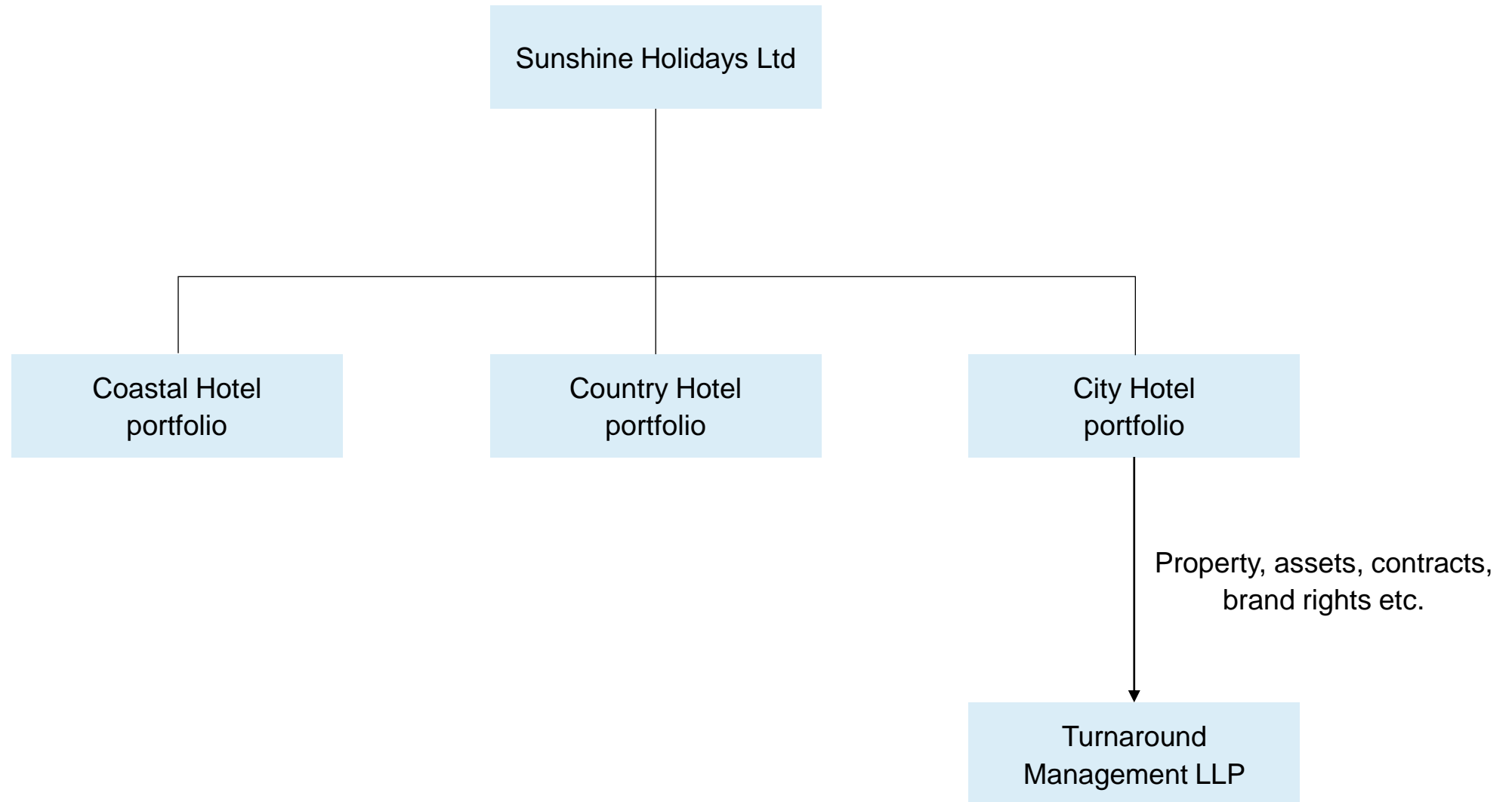
Standard

- Transfer of an economic entity:
 - asset intensive; or
 - labour intensive.
- Economic entity retains its identity.

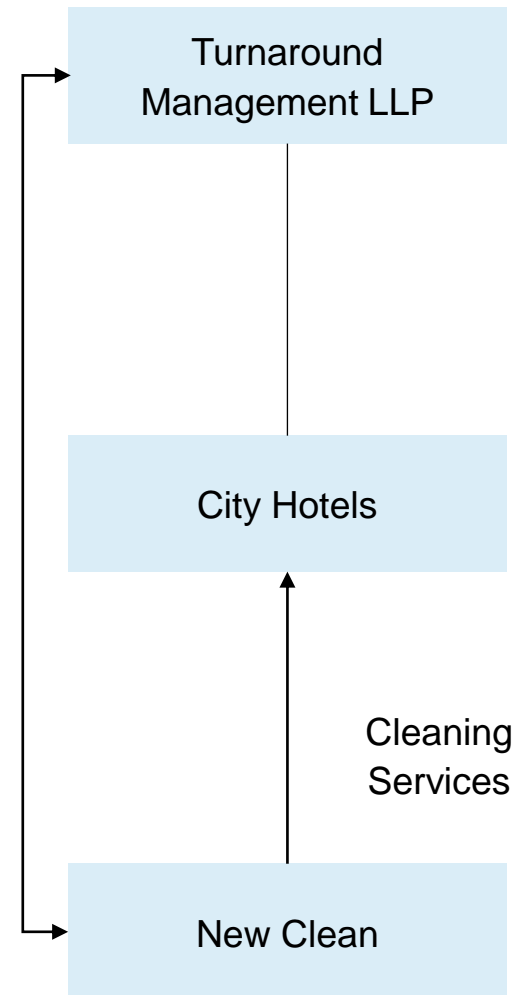
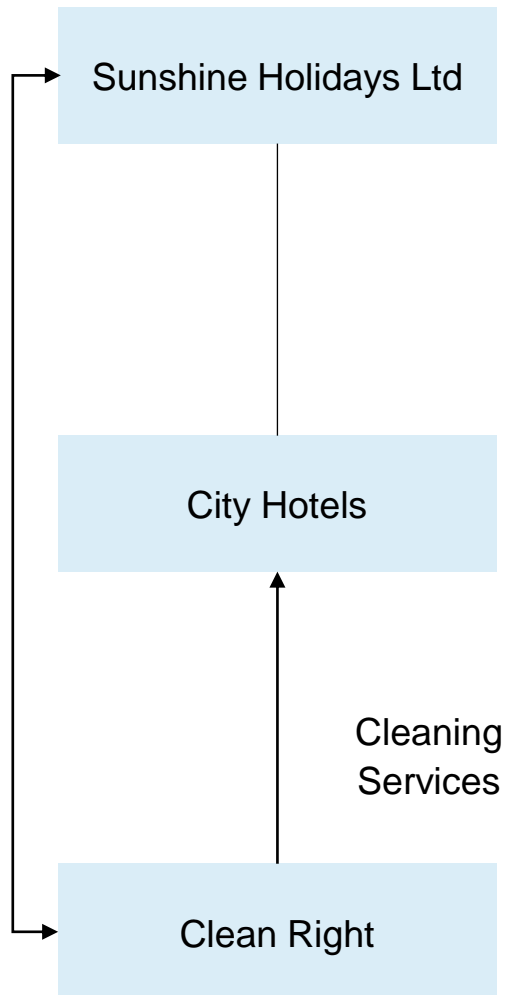
Service provision change

- Change of service provider (outsourcing, re-sourcing, in-sourcing).
- Activities – fundamentally the same.
- Conditions:
 - there is an **organised grouping** of employees;
 - which has as its **principal purpose**;
 - the carrying out of the activities concerned; and
 - **on behalf of the client**.
- Not single specific event or task of short-term duration.

EXAMPLE – BUSINESS TRANSFER?

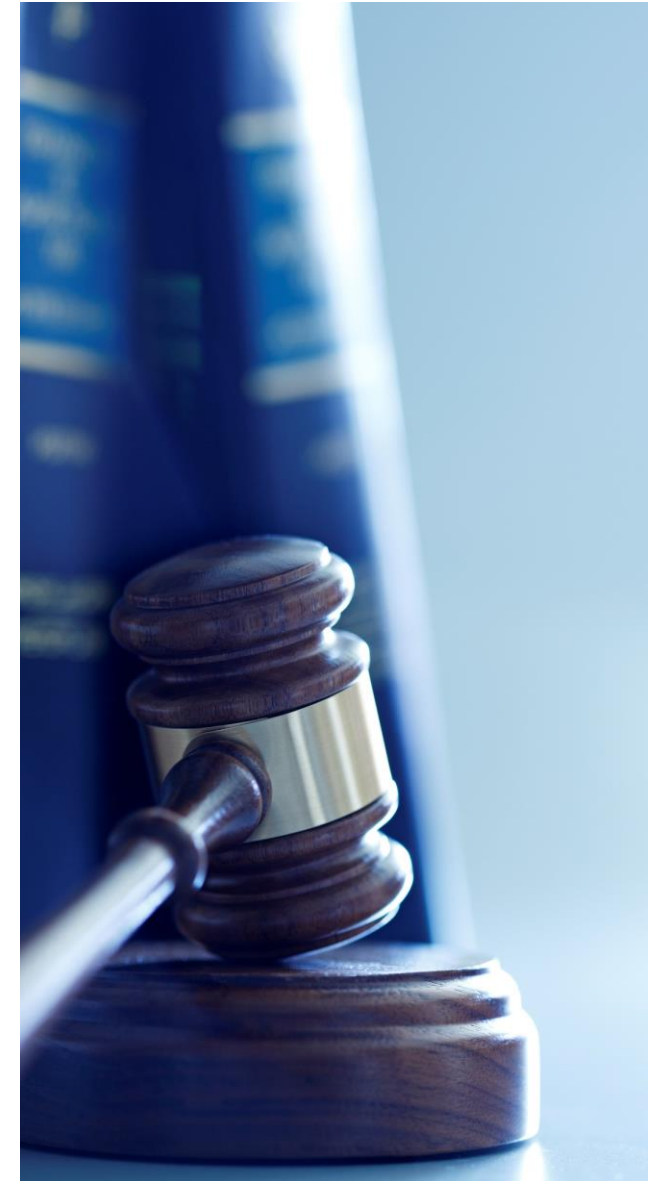


EXAMPLE – SPC?

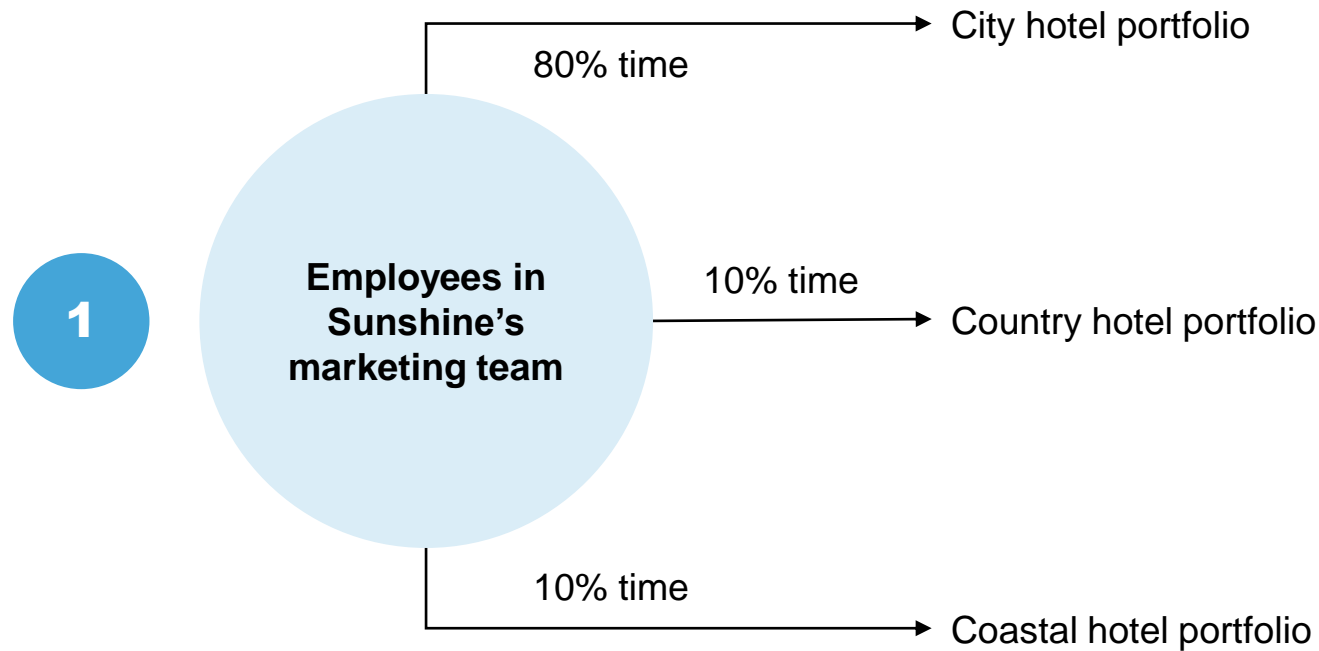


WHO TRANSFERS?

- Employees.
- Assigned.
- Time –v- true multi-factorial test.
- Other than temporary.
- Right to object.



EXAMPLE – WHO TRANSFERS?

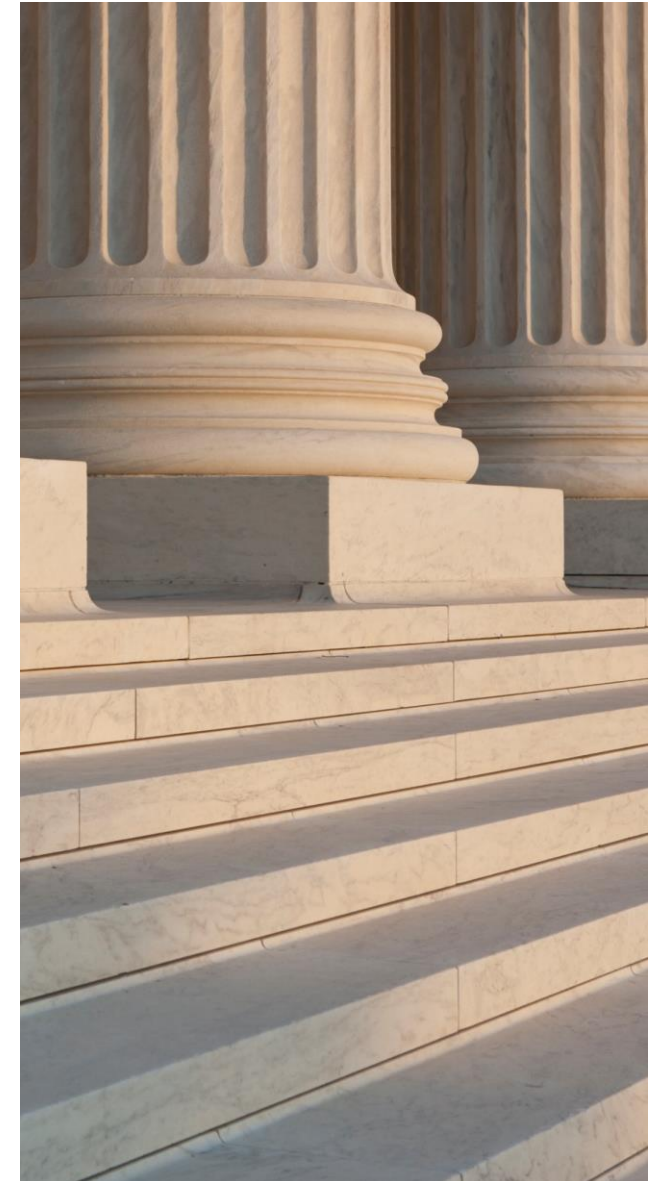


2 Seconded from overseas hotel (employed by overseas company).

3 Self employed IT consultant, engaged full time for City Hotels.

WHAT TERMS, RIGHTS AND ACTS TRANSFER?

- All rights, powers, duties and liabilities.
- Terms of employment – statutory novation:
 - impossible to replicate;
 - substantial equivalence.
- No rights under an occupational pension scheme relating to “*old age, invalidity or survivors benefits*” **BUT** “Beckmann rights”.
- Acts or omissions before the transfer.
- Dismissed immediately before the transfer by reason of the transfer – liability transfers.
- Collective agreements.
- Trade union recognition.
- Continuity of service.



EXAMPLE – WHAT TERMS TRANSFER?

Reception Staff Employment Contact

1. You have free medical insurance.
2. You will only be required to work in the hotel to which you are assigned.
3. We will pay you £20 an hour.
4. You will be entitled to a Christmas bonus of 5% of your wages for that year, but we can change or withdraw this at any time.

Sunshine Holidays Limited

Date

Employee

Date

Sunshine Handbook

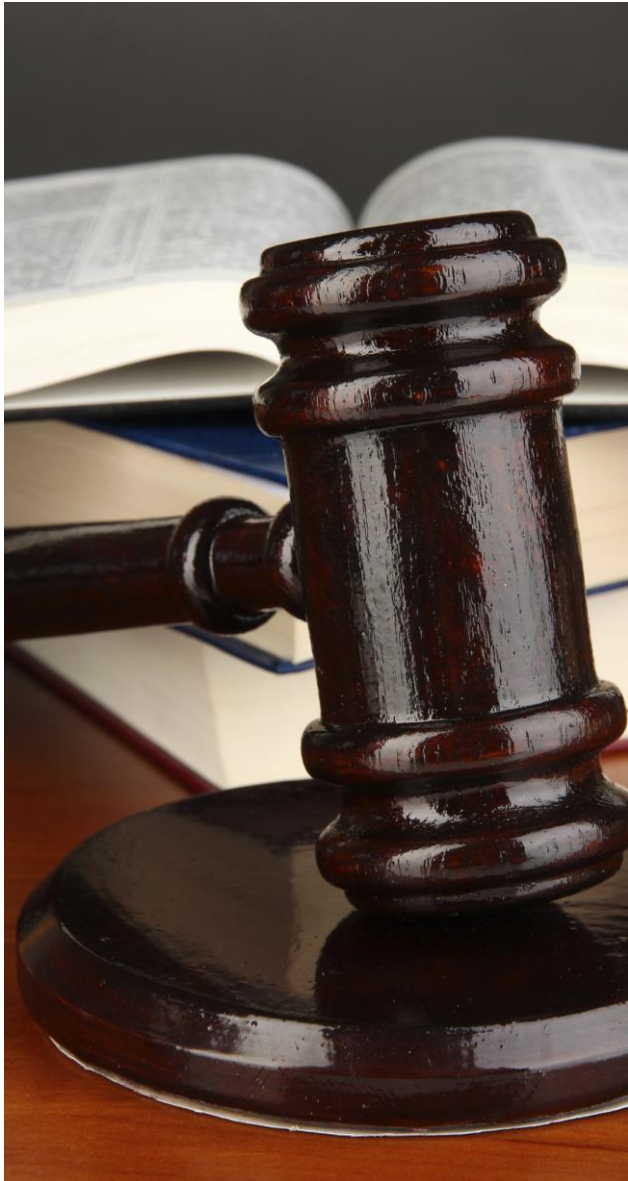
We believe good health and fitness helps motivate our employees and so as a discretionary policy (but no more) we offer free access to our hotel gyms.

WILL ANY TERMS AND CONDITIONS CHANGE?

- Cannot change if the reason is the transfer.
 - even if employee agrees.
- Ways to vary terms.
 - the reason is not the transfer;
 - pursuant to the terms and conditions of employment;
 - ETO reason entailing a change in the workforce **AND** the employee agrees;
 - collective agreement after 12 months **and** overall no less favourable; or
 - dismiss and re-engage.



WILL ANYONE BE DISMISSED – WHY AND WHEN?



- Unfair if the transfer is sole or principal the reason for the dismissal.

Justified if

- The reason is not the transfer.
- ETO reason entailing a change in the workforce.

Consider

- Before or after the transfer – transferor cannot borrow transferee's reason.
- Settlement agreements.
- Quasi-constructive dismissal
 - substantial change in working conditions to material detriment.

EXAMPLE – WILL ANYONE BE DISMISSED – WHY AND WHEN?

Pre Transfer

→ All employees in Catering dismissed

Vs

Post Transfer

→ Employees pooled with Catering employees of existing portfolio and only some dismissed

ETO Reason

→ All canteens closed due to COVID
(only room service)

Vs

Sole or principal reason being the transfer

→ Turnaround Management already has sufficient catering staff

WHAT NEED IS THERE TO INFORM AND CONSULT?

- Appropriate representatives.
 - trade union; or
 - elected employee representatives.
- Inform – always.
- Consult – if “measures” are “envisaged”.
- Transferee tells transferor about its measures.
- Each employer consults about its own measures.
- Transferor tells its representatives of transferee’s measures. Consult?
- In good time before the transfer.
- In good faith.
- With a view to reaching agreement.

- 13 week:
 - Just and equitable.
 - Joint and several.
 - Special circumstances.
- Employee liability information.
 - see Regulation 11;
 - 28 days;
 - just and equitable:
 - £500.
 - terms of agreement.

PRACTICAL ISSUES TO CONSIDER WHEN NEGOTIATING TUPE PROVISIONS



1. Employment liabilities pre and post transfer

2. Responsibility and liability for information and consultation

3. Redundancy costs

4. Bonus apportionment

PRACTICAL ISSUES TO CONSIDER WHEN GUIDING THE CLIENT THROUGH TUPE CONSULTATION

1. When does the transfer happen?

2. Who are the affected employees?

3. Will there be any measures?

4. Will the transferee have a direct role?

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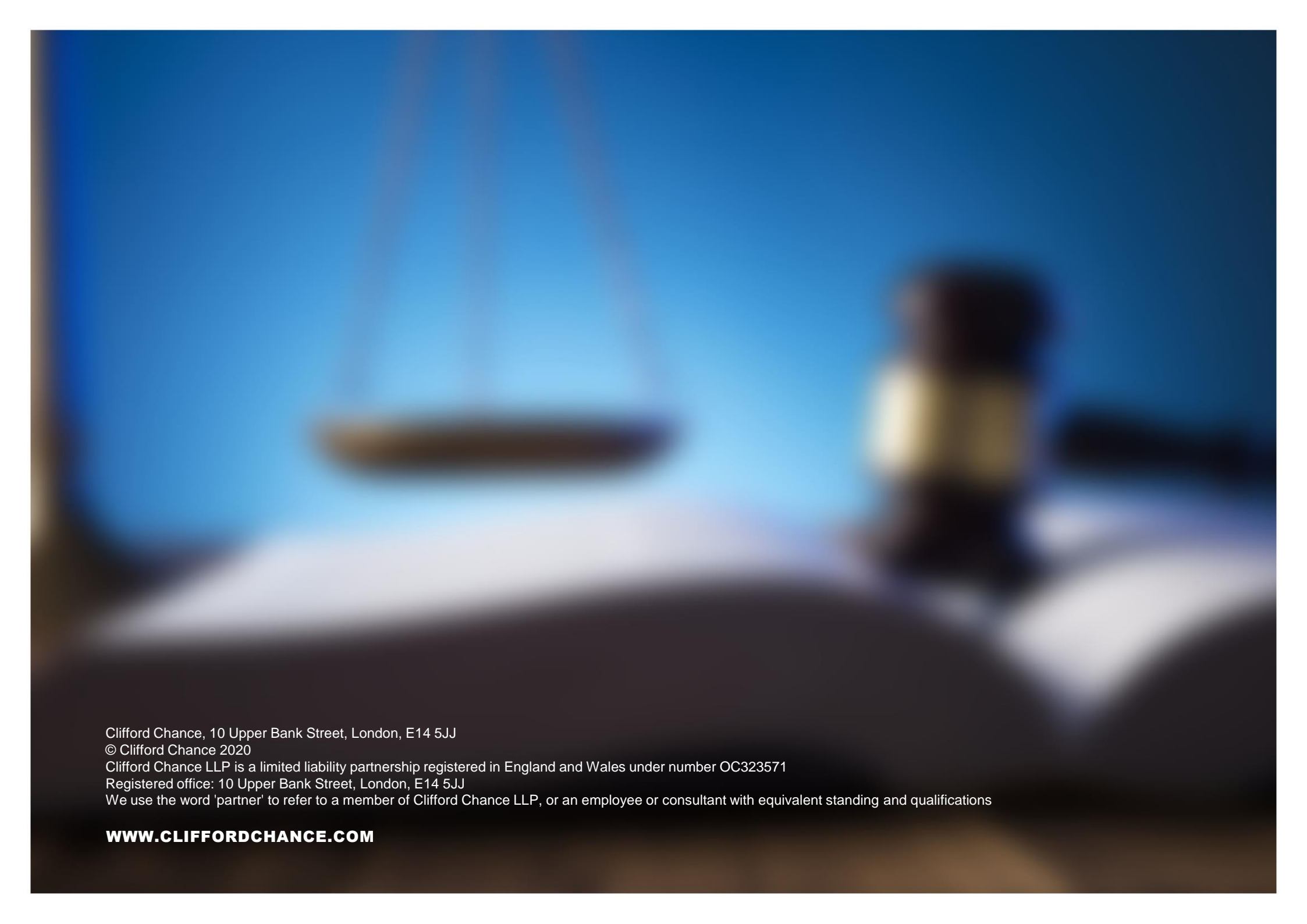
ROME

TOKYO

RIYADH²

1. Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

2. Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.



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