

論文名稱：勞動法上因企業併購基於勞動契約所涉問題
研究－歐盟與英國法上比較

*The Study in Problems involving Labour Contracts
Arising from the Enterprise Merger & Acquisition
(Transfer) in Labour Law –Comparisons between
the Legislation in EU & UK*

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論文提要內容：

西哲洛克 (John Locke 1632-1704)，於《政府論》下篇中曾言：「法律按其真正的含意，與其說是限制，還不如說是指導一個有智慧的人去追求他的正當利益。」「法律的目的並非廢除和限制自由，而是保護與擴大自由。」亦即，之所以群體生活秩序，須以法律為名而行約制，乃因吾人均免除不了人性的利己，與無知的恐懼。所以，以良知為群體生活基礎的文明世界，以法律規制吾人所免除不了之私利及恐懼，並協助吾人實踐文明基礎的核心價值。相同的，於勞動法而言，契約責任、雇主責任與社會責任，在勞方與資方間，追求的並非任何一方的絕對權利與絕對保障；相反的，是在尋求一個群體生活下的理性完滿。

臺灣自一九九六年起因整頓地方金融機構，進而演變成金融機構間合併與金融控股公司化的風潮，在相關併購法制紛紛建立後，更帶動非金融機構公司間的併購。然而，於併購整個複雜過程中，對受影響勞工而言，另一方面，則產生一連串的勞動保障問題。因此，論文重點，關注於因企業併購產生組織變動時，與整個併購過程一連串相關的勞動保障。相關勞動保障，均於併購過程中環環相扣，進而形成一個完整的勞動保障體系。再者，傳統個體勞動領域問題，亦因併購商定留用與否，其所涉勞動者眾，進而形成「集體化」趨勢。此

種併購關係下的集體化趨勢，亦可為吾國法制中個勞領域之勞動保障，帶來另一層不同以往的新的省思。凡此，均基於企業組織與勞動者間之勞動契約而生，並於契約關係下展開。一個基於所有權移轉自由、交易自由與組織經營自由下，所探討之契約責任、雇主責任與社會責任，及其所形成的勞動保障。相信，更能透析勞動者基於勞動契約，在民法、商事法、勞動法與社會安全法制間，所產生與經營組織間的互動關係，與勞動保障背後之規範目的與真意。

本文除在本國法制下探討相關勞動保障議題外，並將以併購盛行已久，而資本事業蓬勃發展，勞動保障較臻完備之歐盟與英國法制，併為相關議題之全面介紹與討論。並且，將在各該論述之後，為中外法制間之比較，顯現勞動保障異同，進而提出本文看法及建議。

中文關鍵詞：企業、勞動契約、債之移轉、概括承受、營業合併、改組、轉讓、併購、合併、分割、收購、股份轉換、股份交換、大量解僱、爭議行為、罷工、糾察、歐盟指令。

Abstract

John Lock (1632-1704) said in the 《Two Treatises of Government》 Book II, Chapter 2 of the State of Nature §6 :「The state of Nature has a law to govern it, which obliges every one, and reason, which is the law, teaches all mankind who will but consult it, that been all equal and independent, no one ought to harm the another in his life, health, liberty or possessions; for men been all the workmanship of one omnipotent and infinitely wise Maker.」 And said in the Extent of the Legislative Power §137 :「which men would not quit the freedom of the state of Nature for, and tie themselves up under, were it not to preserve their lives, liberties, and fortunes, and by stated rules of right and

property to secure their peace and quiet...weherein they had a liberty to defend there right against the injuries of others. 」 In the same way, the protection of the Labour law between the labor and employer is not in pursuing of the absolutely Rights and Protect of the labour. On the contrary, it is seeking a rationality and perfectly in the social life.

Arising from the reorganization of local financial institutions in Taiwan since 1996, it turns out to be a trend of merger among the financial institutions and transformation into financial holding companies. Moreover, after the relevant legislation is established gradually, it furthers the acquisition among non-financial institutions. Nevertheless, with regard to the affected employees, a series of labour protection issues are derived from the complicated procedures during acquisition. The paper concentrates on a series of labour protection related issues arising from the organization alteration due to acquisition among industries and from the entire acquisition processes.

The labour protection matters concerned are closely connected to one another during the acquisition processes and furthermore they form a completed labour protection system. The whole mechanism is based on the labour contract between the industry and the labour, and develops under the contract relationship. We believe that the discussed contract responsibility, employers' responsibility and social responsibility as well as labour protection formed by the three responsibilities under free to transfer ownership, free to trade and free to operate organization can help us to see through the truth and reality, which the labour interaction with the operating organization generates in the basis of the labour contract according to Civil Code, Business Law, Labour Law and Social Security Legislation, as well as which the purpose

of regulation behind the labour protection is going to be. Apart from the employees protection issues derived from the acquisition under the legislation in home country, the paper herein also treats the related issues on the legislation of European Union and United Kingdom, where the acquisition prevails over a long period of time as well as the comparisons between the native legislation and the foreign one.

Keywords : Directive 、 Regulation 、 Undertaking 、 Business 、 Transfer 、
Employment Contract 、 Protection of Employment 、 Collective
Redundancies 、 Unfair Dismissal 、 Trade Union 、 Industrial
Disputes 、 Strike 、 Picketing 、 Liability.