



**THE MERITAS GUIDE**  
**TO EMPLOYMENT LAW ON A BUSINESS SALE**  
*in Europe, Middle East and Africa*  
*April 2015*



*“What I truly appreciate about working with the Meritas network is knowing that, no matter which Meritas firm I engage, I’m going to get excellent work and superb service.”*

*Meredith Stone  
Vice-President General Counsel Americas  
NACCO Materials Handling Group, Inc.  
(NMHG)*

## CONNECT WITH CONFIDENCE TO A MERITAS LAW FIRM

Meritas began in 1990 as a result of a US lawyer becoming frustrated at the inconsistent service he received when referring instructions to other US states. He started to develop his own criteria for evaluating performance and service, and from those beginnings Meritas has evolved into an integrated, non-profit alliance of almost 180 independent commercial law firms located in over 70 countries.

When you work with Meritas you will have no fewer than 7,000 experienced lawyers at your disposal, all around the world, in firms that are carefully evaluated and selected and whose work is quality controlled by Meritas.

This guide has been produced by the Meritas Europe, Middle East and Africa Employment Group which is an ongoing

collaboration between 34 local firms on multi-jurisdictional labour and employment law issues.

The Group also enables member firms to share information on substantive and procedural developments in their local markets, to stay current on new and emerging workplace issues and further improve client service.

For help and advice in relation to the employment law aspects of a business sale please contact the Meritas member law firm in the relevant jurisdiction in this guide. Each firm offers substantive and procedural knowledge in every facet of workforce management, including negotiating complex employee relation issues, providing advice and representation on expatriation, and merger/transfer employment issues.

## ABOUT THIS GUIDE

Employee rights when businesses are sold/ transferred in Europe stem largely from the EU Acquired Rights Directive (Directive 2001/23).

So it is no surprise that there are similarities and common themes across European jurisdictions, namely;

- The automatic transfer principle (automatic transfer of employees from the old to the new owner, along with their contractual terms);
- Protection against dismissal by reason of a transfer;
- Employer obligations for employees (or their representatives) to be informed (almost all countries) and consulted (most countries) in relation to the transfer.

However, there are still many differences across European jurisdictions, including;

- Variation in the definition of a transfer of a business/service to bring it within the scope of the acquired rights regime (in many countries this will go beyond just a straight forward business sale).

- The consequences of a refusal by employees to be transferred;
- Sanctions imposed for failure to inform and consult and for dismissing by reason of a transfer;
- Rules in relation to small/micro employers.

In the Middle East and Africa the law is different again.

The purpose of this guide is to give HR managers, in-house legal counsel and commercial managers an overview of employee rights and employer obligations when businesses are transferred, so they can better negotiate and implement cross-border transactions, but also more effectively manage staff transferring in and out of different jurisdictions.

The guide answers four key questions:

1. Do employees automatically transfer to the buyer when a business is sold?
2. Are there information and consultation (or other) obligations?
3. Can a buyer change employees' terms and conditions after a sale?
4. What are the sanctions against non-compliant employers?



**CONTACT**

**Dimitrov, Petrov & Co.**  
[www.dpc.bg](http://www.dpc.bg)



Ms. Plamena Georgieva  
Tel: +359 2 421 4201  
[plamena.georgieva@dpc.bg](mailto:plamena.georgieva@dpc.bg)

## I. DO EMPLOYEES AUTOMATICALLY TRANSFER TO THE BUYER WHEN A BUSINESS IS SOLD?

Employment relationships are automatically transferred by law in the following cases:

- a) Merger of undertakings;
- b) Distribution of the business of one undertaking between two or more undertakings;
- c) Transfer of part of one undertaking to another undertaking;
- d) Change of the legal form of the undertaking;
- e) Change of the owner of the undertaking or a part of it; and
- f) Transfer of the business of an undertaking to another, including transfer of assets.

In general all transferor's rights and obligations arising from a contract of employment existing on the date of the transfer shall, by reason of such transfer, be transferred to the transferee.

In cases of transfer as a result of merger or change of the legal form of the undertaking, the transferee shall be solely liable with respect to all employer obligations to the employees that

existed before the date of transfer from a contract of employment existing on the date of the transfer. However, in all other cases of transfer the transferor and the transferee shall be jointly liable with respect to all employer obligations that existed before the date of transfer from a contract of employment existing on the date of the transfer.

On transfer, all employees' rights and obligations remain unchanged. However, if the working conditions became substantially worse after the transfer, the employees would be entitled to terminate their contracts of employment immediately without prior notice.

Drafting of new employment contracts is not needed. Although considering the change in the identification data of the employer, it is necessary to sign annexes to the existing employment contracts to reflect the change of the employer.

## 2. ARE THERE INFORMATION AND CONSULTATION (OR OTHER) OBLIGATIONS?

The transferor and transferee are required to inform the representatives of their respective employees and the representatives of syndicate bodies, if any, affected by the transfer of the following:

- a) The date or proposed date of the transfer;
- b) The reasons for the transfer;
- c) The legal, economic and social implications of the transfer for the employees; and
- d) Any measures envisaged in relation to the employees.

Where there are no representatives, the information must be provided to the employees concerned directly.

This information must be given at least two months prior the transfer. Where the transferor or the transferee envisages changes affecting its employees, it must consult the employees' representatives on such measures in the same two-month period with a view to reaching an agreement.

The obligations apply irrespective of whether the decision resulting in the transfer is made by the employer or an undertaking controlling the employer. In considering alleged breaches of the information and consultation requirements, the argument that such a breach occurred because the decision for the transfer was made by another body is not acceptable as an excuse.

### 3. CAN A BUYER CHANGE EMPLOYEES' TERMS AND CONDITIONS AFTER A SALE?

After the transfer the employment relationship is retained and continues to exist unchanged. Any changes in the employees' terms and conditions post-transfer could be executed by the transferee as a new employer on the basis of the general provisions of the Labour Code and following the specific legal requirements for such changes.


Following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the signing of a new collective agreement but no longer than one year after the change of the transfer.

### 4. WHAT ARE THE SANCTIONS AGAINST NON-COMPLIANT EMPLOYERS?

For breach of the obligation to provide information and to consult with employees, both the transferee and the transferor could be sanctioned to fines between €760 - €2,600. The responsible officer, unless subject to a more severe punishment, may be fined between €130 - €510.

Any other breaches of the relevant legal provisions may result in sanctions ranging between €760 - €7,700. The responsible officer, unless subject to a more severe punishment, may be fined between €550 - €5,200.





Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.