



**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?



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

When an employer transfers their business or part of the business to a third party transferee, all rights and obligations arising out of the employment contracts are automatically transferred from the date of the transfer.

Thus, all employee rights and obligations generally continue to exist unaltered. This particularly applies to any entitlements that are based on the duration of the employment relationship.

Employees are entitled to decline the transfer. In such a case, the employment relationship ends after the statutory (not the contractually agreed) notice period has lapsed. The employees and the transferee are obliged to fulfil the contract until the termination date.

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

In cases of a transfer of business or part of a business the transferor is obliged to inform the employees' representatives or Works Council, or if no such Council exists, all employees of the following:

- the reason for the transfer, and
- the legal, economic and social implications of the transfer for the employees.

If measures are intended to be taken that will affect the employees (e.g. a change of working conditions), the obligation to provide information is converted into an obligation to conduct a consultation procedure with the Works Council, or if no such Council exists, with all employees. This consultation obligation entails a duty to enter into a dialogue with all employees in order to include them in the transfer process.

Furthermore, the law imposes a joint liability on the transferor and the transferee for all claims arising out of the employment relationship that have already become due prior to the transfer or that will become due until the time the employment contract could be ordinarily terminated.

This joint liability represents a mandatory provision and cannot be altered by any agreement between the transferor and the transferee. However, it is possible and advisable to set up an internal indemnification scheme for such claims between the transferor and the transferee in the business transfer agreement.

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


It is generally possible to amend employment terms. This can be done with immediate effect with the employees' consent to the change. Without the employees' consent, employment terms can only be amended unilaterally under observance of the applicable notice periods. If a collective labour agreement is applicable to the transferred employment relationships, the transferee must respect the provisions of the agreement for one year from the date of the transfer (if the collective labour agreement has not already ended prior to this date due to expiration or termination).

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

The law does not state any specific sanctions if the information or consultation obligations are breached. However, the employer may become liable for damages sustained by the employee as a consequence of a breach of such obligations.

If the transfer occurs in the context of a merger, a carve-out or an asset deal, the employees are entitled to enforce their consultation rights by preventing the execution of the transaction itself.





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.