



**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?

Section 613a of the German Civil Code (Bürgerliches Gesetzbuch) determines employers' and employees' rights and duties in cases of a business transfer.

The transferor's employees automatically transfer to the transferee at the moment the establishment is transferred, so no further action or agreements are necessary. Existing terms and conditions as well as all the statutory and contractual employment rights and liabilities remain. As the transferee steps into the employment relationship on equal terms, he is basically liable for any duties. However, together with the transferee, the transferor is jointly and severally liable for those duties that have already arisen prior to the date of transfer and are due before the end of one year after the date of transfer.

Rights and duties arising from collective bargaining agreements and/or works agreements do not transfer if other collective

bargaining agreements and/or works agreements apply to the transferee.

Employees can object to the transfer of their employment without giving reason. In case of objection, the employee will continue his employment with the transferor. If the transferor is no longer in a position to offer a job to the employee a dismissal for operational reasons may be socially justified.

Section 613a of the Code is a mandatory provision. Neither the transferor nor the transferee can deviate from the rules to the employees' detriment. The Federal Labour Court has ruled that section 613a of the Code may also apply if a business is transferred from Germany to a location abroad.

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

According to Section 613a para 5 of the German Civil Code either the transferor or the transferee must notify the employees affected in written form prior to the transfer of the business about the:

- date or planned date of transfer
- reason for the transfer
- legal, economic and social consequences of the transfer for the employees, and
- any measures that are taken into consideration with regard to employees.

Furthermore, the employees must be informed about their right to object to the transfer of employment. The information must be given prior to the transfer, albeit the Code does not contain any specific provision regarding the time of notification. If any Works Council exists, it has to be informed about the intended transfer of business.

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

The transferee cannot unilaterally change the employees' terms and conditions. It may however negotiate new terms and conditions with individual employees.


If the employees' and employers' rights and duties are governed by a collective agreement or by a works agreement they become part of the employment relationship between the transferee and the employee and may not be altered to the disadvantage of the employee before the end of the year after the date of transfer. However, prior to the expiry of this period the rights and duties may be altered if the collective agreement or the works agreement no longer applies or, where it is not the case that both parties are bound by a collective agreement, a new collective agreement is agreed between the new owner and the employee.

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

Most breaches of law result in the invalidity of the actions taken (e.g. dismissal because of the transfer, unilateral change of terms of employment, etc). Employees who are dismissed shortly before the transfer – in order to prevent the transfer of the employment relationships – have a claim to be reinstated under their previous contractual conditions by the transferee of the business.

Furthermore, if an employee was not properly informed about the transfer he can object to the transfer of employment for an indefinite period of time. In case of objection, the employment relationship will automatically revert to the transferor. Moreover, the employee may, under certain conditions, claim compensation for damages suffered due to the insufficient notice of the transfer.





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.