



**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

**Pirola Pennuto Zei &  
Associati**

[www.studiopirola.com](http://www.studiopirola.com)



Mr. Umberto Orso Giacone

Tel: +39 02 669 951

[umberto.orso.giacone@](mailto:umberto.orso.giacone@studiopirola.com)

[studiopirola.com](http://studiopirola.com)

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

According to Article 2112 of the Italian Civil Code it is considered as a transfer of business any operation or transaction, leading to a transfer of a business or of a part of it, with or without profits, irrespective of the means used for said transfer, including the usufruct or the lease of business as well as of companies' merger or spin-off.

The above provisions apply to any operation involving a change in the “ownership of an organized economic entity” concerning the production or the exchange of goods and services, included the transfer of only a part of an undertaking.

A transfer of a part of business occurs where the transferred complex of goods objectively appears as an entity having an organizational and economic autonomy finalized at the performance of an activity for the production of goods and services.

Italian Case Law states that a transfer of business takes place also in the case that it concerns only a group of employees, provided that such employees are permanently coordinated and organised between them and they have a special know-how (e.g. transfer of the employees working in tax collection service). In such a case it is not necessary that, together with employees are transferred further assets or contracts. In such a case it is not necessary that, together with the employees, are transferred to other assets, so that the operation is considered in all respects a transfer of business.

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

Should the transfer concern an entity (or a part of it) employing more than 15 people on the whole (regardless of the number of employees to be actually transferred), a compulsory joint consultation procedure with Trade Unions must be put in place by each party of the transfer, by giving a formal notice to Trade Unions at least 25 days before the implementation of the takeover.

Article 47 of Law 428/1990 lays down a timing such as to allow to anyway conclude the procedure before the transfer becomes effective.

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

The employment relationships continues with the transferee on the same terms and conditions as with the transferor, preserving all previous rights deriving from their labour contracts.

Transferor is bound to apply contractual and economic terms and conditions (either collective or corporate) in force at the transfer date up to their expiration date, except that the above-mentioned agreements are substituted by other same level contracts in force in the transferee enterprise. In this case, the new collective agreements applied by the transferee will govern the employment relationships of the employees transferred after the date of transfer.

Should a transfer involve significant changes in an employee's position, the employee can resign for "cause" within a three month period following the transfer and he is entitled to receive payment in lieu of notice.


Transfer of a business does not constitute a "justifiable reason" for dismissal of one or more employees working in the business or branch being the object of the transfer. The transferor and transferee remain jointly and severally liable for all entitlements the employees had at the time of the transfer, unless the employees themselves release the transferor from his obligations by special proceedings provided by Law.

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

In the case that the transferor and/ or the transferee fail to comply with the aforementioned consultation procedure, the Unions can start a quick proceeding before a Court in order to obtain a declaratory judgement of anti-union behaviour and may go as far as to force the parties of the transfer of business to restart the consultation procedure.

The failure of the procedure does not affect the legal effectiveness of the transfer, but the non-compliance of the Court order can result in criminal penalties for legal representatives both of the Transferor and the Transferee.





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.