



**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?

Pursuant to the Portuguese Employment Code, there is a transfer of an undertaking when there is a change of ownership of an undertaking or establishment or part of an undertaking or establishment that constitutes an economic unit, regardless of its cause (e.g. sale, break-up, merger).

An economic unit is defined by law as an organised set of resources aimed at the pursuit of a principal or ancillary economic activity.

The law expressly sets out that the assignment or the retrocession of the right to run a business that is an undertaking, establishment or economic unit is also considered to be an undertaking transfer.

Whenever an undertaking is transferred and is expected to maintain its functioning identity, there is an automatic

assignment of the employees to the transferee, except for those that have been temporarily moved to work in the undertaking. The contractual terms and conditions that governed the employment relationship with the transferor should be maintained irrespective of the transfer of the undertaking.

Therefore, the transferee automatically assumes the transferor's rights and liabilities as soon as the transfer of the undertaking is concluded. This automatic effect cannot be objected to by the transferee nor waived by means of an agreement with the transferor.

Notwithstanding the above, during the year following the transfer of the undertaking, the transferor and the transferee are jointly and severally liable for the payment of the employees' entitlements, which have become due

before the transfer.

However, the transferee is entitled to require the transferor to reimburse the amounts the former was called to pay by the employees.

Furthermore, any collective bargaining agreement to which the transferor was bound, applies to the transferee until it expires or, at least, during the 12 months following the transfer, except if another collective bargaining agreement commences to apply to the transferee in the meanwhile.

It should also be highlighted that liability for paying any fines imposed on the transferor by the Portuguese Working Conditions Authority for a breach of employment law is assigned to the transferee (the transferee is, however, allowed to require the transferor to reimburse the amounts paid).

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

When a transfer of an undertaking is envisaged, both the transferor and the transferee should inform the representatives of the employees (Works Council, trade union committees or trade unions representatives) or, if these do not exist, the employees themselves, of the date and grounds of the transfer, its legal, economic and social consequences and the envisaged measures affecting the employees.

The information should be provided in writing with reasonable notice (no less than 10 days prior to the transfer). Additionally, both the transferor and transferee should consult the representatives of the employees with a view to agreeing upon the measures to be applied as a consequence of the transfer.

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

Existing employment agreements are automatically transferred to the transferee, who is bound to comply with the same conditions as apply to the transferor.

Nevertheless, this does not prevent the transferee from changing some limited aspects of the employment relationship where the law or the applicable collective bargaining agreements generally allow the employers to unilaterally alter the terms under which work is rendered by the employee (e.g. workplace changes or the definition of the working schedule). The transferee cannot change or withdraw the employees' acquired rights.


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

A refusal to accept the liabilities associated with the transferred employees or the violation of the consultation and information obligations are deemed to be infringements, which may lead to a fine being imposed by the Portuguese Working Conditions Authority.

The amount of any fine may vary according to the seriousness of the infringement, the turnover of the liable entity and the degree of guilt.

Generally, the employees may resort to court to enforce the applicable legal provisions.





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.