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INTRODUCTION

"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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TURKEY

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

When an undertaking/business is transferred to a new entity all existing employment contracts are automatically transferred to the new entity. The transferee becomes responsible for all rights and obligations arising from said employment contracts. The transferor remains jointly and severally liable for two years after the transfer.

As a general rule, neither the employee nor the former and new employer (the transferor and the transferee) can terminate employment contracts based solely on the fact that a transfer has occurred. If the new employer wants to terminate the contracts he must do so based on one or more of the general grounds for termination provided for in the Labour Code. The transfer of a business is not one of these reasons.

The employees can refuse to go with the business and thus terminate their employment contract if the transfer results in major material changes in the essence of the employment relation, such as location, working schedule and hours, nature of business, etc. In such a case, employees may be considered to have justified reasons to terminate their contracts.

The employee must be notified in writing of the change of employer. It is recommended to obtain a written acknowledgement.

TURKEY

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

The Transferor must notify the employee in writing of the change of employer. It is recommended to obtain a written acknowledgement from the employee. If the transfer of business results in major changes in the essence of the employment relation, it is also necessary for the Transferor and/or the Transferee to obtain the written consent of the employee for each of those changes. In the absence of such consent, the employees may terminate the employment agreement on justified grounds.

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

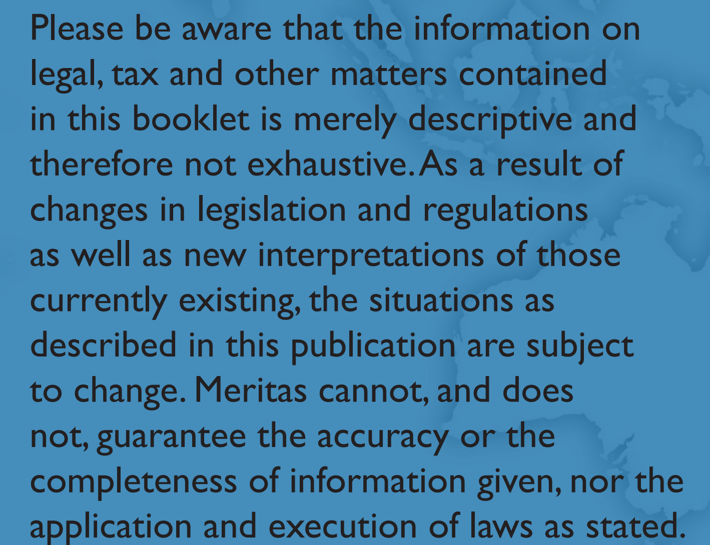
The transferee cannot unilaterally worsen the employment terms and conditions post-transfer. Nevertheless, it is always possible to unilaterally improve the terms of employment agreements to the benefit of the employees. Note that all changes to the material/essential provisions of the employment contracts require the written consent of the employees.

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

If the employer without a justified reason terminates an employment contract, the employee can claim that the termination was unfair and request an order from the court to be reassigned to his previous post. In that case that such a request is upheld the court would additionally:

a. award unemployment compensation equal to four months' salary, and
b. order the employer to re-employ the employee within one month, on the same terms of employment as before.

The employer may refuse to re-employ in which case it would pay the terminated employee a one-time compensation. According to the current case law the amount of such compensation ranges between 4 and 12 months' salary.



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.