

Jens Kirchner · Sascha Morgenroth  
Tim Marshall *Editors*

# Transfer of Business and Acquired Employee Rights

A Practical Guide for Europe and Across  
the Globe

 Springer

# Transfer of Business and Acquired Employee Rights



Jens Kirchner • Sascha Morgenroth •  
Tim Marshall  
Editors

# Transfer of Business and Acquired Employee Rights

A Practical Guide for Europe  
and Across the Globe

 Springer

*Editors*

Jens Kirchner  
DLA Piper UK LLP  
Frankfurt, Germany

Sascha Morgenroth  
DLA Piper UK LLP  
Frankfurt, Germany

Tim Marshall  
DLA Piper UK LLP  
London, United Kingdom

ISBN 978-3-662-49005-1

ISBN 978-3-662-49007-5 (eBook)

DOI 10.1007/978-3-662-49007-5

Library of Congress Control Number: 2016936689

© Springer-Verlag Berlin Heidelberg 2016

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made.

Printed on acid-free paper

This Springer imprint is published by Springer Nature  
The registered company is Springer-Verlag GmbH Berlin Heidelberg

# Contents

## Part I EU Law and EU Countries

<b>1. European Union Law</b> . . . . .	3
Jens Kirchner and Sascha Morgenroth	
A. Introduction . . . . .	3
B. Executive Summary . . . . .	4
C. Development of Labour Law in the European Union . . . . .	4
D. Sources of Law . . . . .	5
I. Primary Law . . . . .	5
II. Secondary Law . . . . .	5
III. Protocol on Social Policy . . . . .	6
IV. The Jurisdiction of the European Court of Justice . . . . .	6
E. General Principles of European Labour Law . . . . .	6
I. The Free Movement of Workers . . . . .	7
II. The Freedom of Establishment . . . . .	7
III. Freedom of Services Principle . . . . .	7
IV. Equality of Treatment of Men and Women . . . . .	8
F. Council Directive 2001/23/EC on Transfers of Undertakings . . . . .	8
I. Scope of Application . . . . .	9
II. Safeguarding of Employees' Rights . . . . .	11
III. Impact of the Transfer on Employees' Representative Bodies . . . . .	14
IV. Impact of Transfer on Collective Agreements . . . . .	15
V. Impact of Transfer on Company Pensions Entitlement . . . . .	15
VI. Insolvency . . . . .	16
G. Council Directive 2001/23/EC of 12 March 2001 on the Approximation of the Laws of the Member States Relating to the Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses . . . . .	16

H. Leading European Court of Justice Cases . . . . .	25
I. European Court of Justice (18 March 1986—C-24/85) <i>Spijkers ./. Benedik</i> . . . . .	25
II. European Court of Justice (10 February 1988—C-324/86) <i>Tellerup ./. Daddy's Dance Hall</i> . . . . .	25
III. European Court of Justice (15 June 1988—C-101/87) <i>Bork International ./. Foreningen af Arbejdsledere I Danmark</i> . . . . .	26
IV. European Court of Justice (14 April 1994—C-392/92) <i>Christel Schmidt ./. Spar- und Leihkasse der früheren Ämter Bordesholm, Kiel und Cronshagen</i> . . . . .	27
V. European Court of Justice (19 September 1995—C-48/94) <i>Ledernes Hovedorganisation, agissant pour Rygaard ./. Dansk Arbejdsgiverforening, agissant pour Strø Mølle Akustik</i> . . . . .	28
VI. European Court of Justice (7 December 1995—C-472/93) <i>Spano ./. Fiat Geotech and Fiat Hitachi Excavators</i> . . . . .	28
VII. European Court of Justice (7 March 1996—C-171/94 and C-172/94) <i>Merckx and Neuhuys ./. Ford Motors Company Belgium</i> . . . . .	29
VIII. European Court of Justice (11 March 1997—C-13/95) <i>Ayse Süzen ./. Zehnacker Gebäudereinigung GmbH Krankenhausservice</i> . . . . .	30
IX. European Court of Justice (10 December 1998—C-127/96) <i>Hernández Vidal</i> . . . . .	31
X. European Court of Justice (10 December 1998—C-173/96 and C-247/96) <i>Hidalgo and Others</i> . . . . .	31
XI. European Court of Justice (2 December 1999—C-234/98) <i>Allen and Others</i> . . . . .	32
XII. European Court of Justice (26 September 2000—C-175/99) <i>Mayeur</i> . . . . .	32
XIII. European Court of Justice (24 January 2002—C-51/00) <i>Temco</i> . . . . .	33
XIV. European Court of Justice (20 November 2003—C-340/01) <i>Carlito Ablor and Others</i> . . . . .	34
XV. European Court of Justice (15 December 2005—C-232/04 and C-233/04) <i>Güney-Görres and Demir</i> . . . . .	34
XVI. European Court of Justice (12 February 2009—C-466/07) <i>Klarenberg</i> . . . . .	35
XVII. European Court of Justice (11 June 2009—C-561/07) <i>Commission ./. Italy</i> . . . . .	36
XVIII. European Court of Justice (21 October 2010—C-242/09) <i>Albron Catering</i> . . . . .	36
XIX. European Court of Justice (20 January 2011—C-463/09) <i>CLECE</i> . . . . .	37
XX. European Court of Justice (11 June 2011—C-108/10) <i>Scattolon</i> . . . . .	38

XXI. European Court of Justice (18 July 2013—C-426/11) <i>Alemo-Herron and Others</i> . . . . .	38
<b>2. Austria</b> . . . . .	39
Stephan Nitzl and Christian Stuppniç	
A. Introduction/Sources of Law . . . . .	39
B. Executive Summary . . . . .	40
C. Transfer of Business in Austria . . . . .	40
I. Scope of Application . . . . .	40
II. Safeguarding of Employees’ Rights . . . . .	43
III. Impact on the Employees’ Representatives Bodies . . . . .	49
IV. Impact on Collective Agreements . . . . .	51
V. Impact on Company Pension Entitlements . . . . .	52
VI. Insolvency . . . . .	52
D. Leading Cases . . . . .	52
I. Austrian High Court of Justice (22 November 2007–8 Ob A 64/07f): Transfer of Business with Regard to Temporary Staff Businesses . . . . .	52
II. Austrian High Court of Justice (8 August 2007–9 Ob A 55/07i): Transfer of Business and Concurrent Termination of Employment . . . . .	53
III. High Court of Justice (7 October 1998–9 Ob A 193/98t): Essential Aspects of a Transfer of Business . . . . .	54
E. Grouping of Important Cases . . . . .	54
I. Economic Entity . . . . .	54
II. Continuation of the Same Business . . . . .	55
III. Transfer of Tangible and Intangible Assets . . . . .	55
IV. Transfer of Employees and/or Know-How . . . . .	55
F. Deviation in Relation to European Union Law . . . . .	55
I. Right to Object . . . . .	55
II. Termination of Employment in the Context of the Transfer . . . . .	56
G. M&A Transactions: Asset and Share Deals . . . . .	56
H. Cross-Border Transfer of Business . . . . .	56
I. Excerpts from the Austrian Law Amending the Labour Contract Law . . . . .	57
<b>3. Belgium</b> . . . . .	65
Eddy Lievens	
A. Introduction/Sources of Law . . . . .	65
B. Executive Summary . . . . .	66
C. Transfer of Business in Belgium (overdracht van onderneming, transfert d’entreprise) . . . . .	67
I. Scope of Application . . . . .	67
II. Safeguarding of Employees’ Rights . . . . .	71
III. Impact on the Employees’ Representatives Bodies . . . . .	77
IV. Impact on Collective Agreements . . . . .	82
V. Impact on Company Pension Entitlements . . . . .	83
VI. Insolvency . . . . .	84



D. Leading Cases . . . . .	86
I. Supreme Court (31 March 2003—S020084N) Consequences of Transfer of Business on Application of Collective Bargaining Agreement . . . . .	86
II. Labour Court of Appeal of Brussels (7 January 2008—45.284 and 10 October 2008—50.053) Transfer of Catering with Reference to <i>Carlito Abler and Others</i> . . . . .	87
III. Supreme Court (7 May 2012—S.10.0085.N) Transfer of Catering with Reference to <i>Carlito Abler and Others</i> . . . . .	87
IV. Supreme Court (28 January 2013—S.11.0132.N) . . . . .	87
E. Grouping of Important Cases . . . . .	88
I. Labour Intensive Activities . . . . .	88
II. Activities Requiring Tangible Assets . . . . .	88
F. Deviation in Relation to European Union Law . . . . .	88
I. No Time Limit on the Applicability of CBAs to the Transferee . . . . .	88
II. The Incorporation of Individual Rights in the Individual Terms and Conditions of Employment . . . . .	89
III. No Right of Refusal for the Employees . . . . .	89
G. M&A Transactions: Asset and Share Deals . . . . .	89
I. Asset Deal . . . . .	90
II. Share Deal . . . . .	91
H. Cross-Border Transfer of Business . . . . .	92
I. Excerpts from the Belgian Collective Bargaining Agreement n <sup>o</sup> 32bis of 7 June 1985 . . . . .	93
<b>4. The Czech Republic . . . . .</b>	<b>111</b>
Petr Samec and Markéta Cibulková	
A. Introduction/Sources of Law . . . . .	111
B. Executive Summary . . . . .	112
C. Transfer of Business in the Czech Republic . . . . .	113
I. Scope of Application . . . . .	113
II. Safeguarding of Employees' Rights . . . . .	116
III. Impact on the Employees' Representatives Bodies . . . . .	120
IV. Impact on Collective Agreements . . . . .	121
V. Impact on Company Pension Entitlements . . . . .	122
VI. Insolvency . . . . .	122
D. Leading Cases . . . . .	123
I. Case No. 21 Cdo 3046/2013 (Resolution of the Supreme Court of 24 September 2014) . . . . .	123
II. Case No. 21 Cdo 2911/2012 (Resolution of the Supreme Court of 4 November 2013) . . . . .	124
III. Case No. 21 Cdo 3945/2008 (Resolution of the Supreme Court of 14 January 2010) . . . . .	125
IV. Case No. 21 Cdo 1840/2010 (Resolution of the Supreme Court of 22 November 2011) . . . . .	126

V. Case No. 21 Cdo 449/2008 (Resolution of the Supreme Court of 18 December 2008) . . . . .	126
VI. Case No. 21 Cdo 1567/2006 (Resolution of the Supreme Court of 6 September 2007) . . . . .	127
VII. Case No. 21 Cdo 2190/2009 (Resolution of the Supreme Court of 9 September 2010) . . . . .	127
E. Grouping of Important Cases . . . . .	128
I. Object of a Contract for Sale . . . . .	128
II. Transfer of a Part of a Business . . . . .	129
III. Transfer of Obligations . . . . .	129
IV. Relationship Between the Business and Members of Its Board . . . . .	130
F. Deviation in Relation to European Union Law . . . . .	130
I. Terminological Structure . . . . .	130
II. Insolvency . . . . .	131
III. Substantial Detrimental Change in Working Conditions . . . . .	131
G. M&A Transactions: Asset and Share Deals . . . . .	132
I. Asset Deal . . . . .	132
II. Share Deal . . . . .	132
H. Cross-Border Transfer of Business . . . . .	133
I. Seven-Criteria Test of the European Court of Justice . . . . .	133
II. Applicable Law . . . . .	133
I. Excerpts from the Czech Labour Code . . . . .	134
<b>5. Denmark . . . . .</b>	<b>145</b>
Jonas Enkegaard and Kristine Friis Nolsø	
A. Introduction/Sources of Law . . . . .	145
B. Executive Summary . . . . .	146
C. Transfer of Business in Denmark ( <i>virksomhedsoverdragelse</i> ) . . . . .	147
I. Scope of Application . . . . .	147
II. Safeguarding of Employees' Rights . . . . .	154
III. Impact on the Employees' Representatives Bodies . . . . .	162
IV. Impact on Collective Agreements . . . . .	163
V. Impact on Company Pension Entitlements . . . . .	164
VI. Insolvency . . . . .	165
D. Leading Cases . . . . .	166
I. Supreme Court Case (U1970.807H) . . . . .	167
II. Maritime and Commercial Court Case (U1984.310SH) . . . . .	167
III. Supreme Court Case (U1993.11H) . . . . .	167
IV. Labour Court Case <i>Ri-Bus</i> (28 June 1994) . . . . .	167
V. Supreme Court Case <i>Scandic</i> (U2001/1993H) . . . . .	167
VI. Labour Court Case <i>Nordren</i> (25 May 2005) . . . . .	168
VII. High Court Case (U2009.307 V) . . . . .	168
VIII. High Court Case <i>Concordia ./. Arriva</i> (3 March 2011) . . . . .	168

E. Grouping of Important Cases . . . . .	168
I. Retention of Identity . . . . .	168
II. Personal Scope . . . . .	169
III. Right to Objection . . . . .	169
IV. Liability for Employee Claims . . . . .	169
F. Deviation in Relation to European Union Law . . . . .	169
I. Collective Agreements . . . . .	169
II. Bankruptcy . . . . .	169
III. Information and Consultation . . . . .	170
IV. Joint and Several Liability . . . . .	170
G. M&A Transactions: Asset and Share Deals . . . . .	170
I. Asset Deal . . . . .	171
II. Share Deal . . . . .	172
H. Cross-Border Transfer of Business . . . . .	172
I. General Applicability of the Act . . . . .	172
II. Transfer of Business . . . . .	173
III. Applicable Law . . . . .	173
I. Excerpts from the Danish Consolidated Act No. 710 of 20 August 2002 . . . . .	175
<b>6. France . . . . .</b>	<b>181</b>
Philippe Danesi and Marie-Astrid Bethenod	
A. Introduction/Sources of Law . . . . .	181
B. Executive Summary . . . . .	182
C. Transfer of Business in France . . . . .	182
I. Scope of Application . . . . .	182
II. Safeguarding of Employees' Rights . . . . .	186
III. Impact on the Employees' Representative Bodies . . . . .	189
IV. Impact on Collective Agreements . . . . .	190
V. Impact on Company Pension Entitlements . . . . .	191
VI. Insolvency . . . . .	192
D. Leading Cases . . . . .	192
I. French Supreme Court, Plenary Assembly (16 March 1990—n° 89-45.730) . . . . .	193
II. French Supreme Court (18 July 2000—n° 99-13.976) . . . . .	193
III. French Supreme Court (17 December 2003—n° 02-44.358) . . . . .	194
IV. French Supreme Court (25 October 2006—n° 04-47784) . . . . .	194
V. French Supreme Court (4 October 1995—n° 93-46.181) . . . . .	194
VI. French Supreme Court (15 November 1985—n° 82-40.301) . . . . .	195
E. Grouping of Important Cases . . . . .	195
I. The Extension of the Application of the TUPE Provisions . . . . .	195
II. The Limitation of the Application of the TUPE Provisions . . . . .	196

F. Deviation in Relation to European Union Law . . . . .	197
I. Right of Objection . . . . .	197
II. Impact of the Transfer on Collective Agreements . . . . .	197
III. Impact of the Transfer on Company Pension Schemes . . . . .	197
G. M&A Transactions: Asset and Share Deals . . . . .	197
I. Asset Deal . . . . .	198
II. Share Deal . . . . .	198
H. Cross-Border Transfer of Business . . . . .	200
I. Transfer Within the European Union . . . . .	200
II. Transfer Outside the European Union . . . . .	200
I. Excerpts from the French Labour Code . . . . .	201
<b>7. Germany . . . . .</b>	<b>205</b>
Jens Kirchner and Sascha Morgenroth	
A. Introduction/Sources of Law . . . . .	205
B. Executive Summary . . . . .	206
C. Transfer of Business in Germany ( <i>Betriebsübergang</i> ) . . . . .	206
I. Scope of Application . . . . .	206
II. Safeguarding of Employees' Rights . . . . .	210
III. Impact on the Employees' Representative Bodies . . . . .	216
IV. Impact on Collective Agreements . . . . .	216
V. Impact on Company Pension Entitlements . . . . .	217
VI. Insolvency . . . . .	218
D. Leading Cases . . . . .	219
I. Federal Labour Court (22 May 1997-8 AZR 101/96) Following the European Court of Justice Case <i>Ayşe Süzen ./.         Zehnacker Gebäudereinigung</i> . . . . .	219
II. Federal Labour Court (10 December 1998-8 AZR 676/97), Transfer of Service Contract . . . . .	219
III. Federal Labour Court (13 June 2006-8 AZR 271/05) Following the European Court of Justice Case <i>Güney-Görres         and Demir</i> . . . . .	220
IV. Federal Labour Court (22 January 2009-8 AZR 158/07) with Reference to the European Court of Justice Case <i>Klarenberg</i> . . . . .	220
V. Federal Labour Court (25 June 2009-8 AZR 258/08), Transfer of a Call Centre . . . . .	221
E. Grouping of Important Cases . . . . .	221
I. Intangible Assets . . . . .	222
II. Tangible Assets . . . . .	223
F. Deviation in Relation to European Union Law . . . . .	224
I. Joint Liability of the Transferor and the Transferee . . . . .	224
II. Information . . . . .	224
III. Right of Objection . . . . .	224
IV. Insolvency . . . . .	225
V. Impact of the Transfer on Company Pension Schemes . . . . .	225

VI. Impact of the Transfer on Collective Agreements . . . . .	225
G. M&A Transactions: Asset and Share Deals . . . . .	226
I. Asset Deal . . . . .	226
II. Share Deal . . . . .	227
H. Cross-Border Transfer of Business . . . . .	229
I. General Applicability of sec. 613a Civil Code . . . . .	229
II. Seven-Criterion-Test of the ECJ and Geographic Distances . . . . .	229
III. Applicable Law . . . . .	230
I. Excerpt from the German Civil Code . . . . .	232
<b>8. Hungary . . . . .</b>	<b>235</b>
Helga Fehér	
A. Introduction/Sources of Law . . . . .	235
B. Executive Summary . . . . .	236
C. Transfer of Business in Hungary ( <i>A munkáltató személyé-ben</i> <i>bekövetkező változás, The Change of the Employer</i> ) . . . . .	236
I. Scope of Application . . . . .	237
II. Safeguarding of Employees' Rights . . . . .	240
III. Impact on the Employees' Representative Bodies . . . . .	248
IV. Impact on Collective Agreements . . . . .	249
V. Impact on Company Pension Entitlements . . . . .	250
VI. Insolvency . . . . .	250
D. Leading Cases . . . . .	252
I. BH 1995/189 . . . . .	252
II. BH 1995/493 . . . . .	252
III. BH 2000/467 . . . . .	252
IV. BH 2003/435 . . . . .	252
V. BH 2007/99 . . . . .	253
E. Grouping of Important Cases . . . . .	253
I. Scope of Application of the Transfer of Business Rules . . . . .	253
II. Continuity of Employments . . . . .	253
III. Triangle Agreements . . . . .	253
F. Deviation in Relation to European Union Law . . . . .	254
I. Applying the Transfer of Business Rules for Business Entities Subject to Liquidation (Insolvency) Procedures . . . . .	254
II. Special Form of Notice in Order to Protect Employees from the Detrimental Changes Resulting from the Transfer . . . . .	254
G. M&A Transactions: Asset and Share Deals . . . . .	255
I. Asset Deals . . . . .	255
II. Share Deals . . . . .	255
H. Cross-Border Transfer of Business . . . . .	256
I. Application of the Transfer of Business Rules to Cross-Border Transfers . . . . .	256
II. Special Protection of Employees' Interests . . . . .	256
I. Excerpts from the Hungarian Labour Code . . . . .	257

<b>9. Italy</b> . . . . .	261
Fabrizio Morelli	
A. Introduction/Sources of Law . . . . .	261
B. Executive Summary . . . . .	262
C. Transfer of Business in Italy . . . . .	263
I. Scope of Application . . . . .	263
II. Safeguarding of Employees’ Rights . . . . .	265
III. Impact on the Employees’ Representatives Bodies . . . . .	269
IV. Impact on Collective Agreements . . . . .	269
V. Impact on Company Pension Entitlements . . . . .	270
VI. Insolvency . . . . .	271
D. Leading Cases . . . . .	272
I. European Court of Justice (7 December 1995—C-472/93) <i>Spano ./. Fiat Geotech and Fiat Hitachi Excavators</i> . . . . .	273
II. European Court of Justice (11 June 2009—C-561/07) <i>Commission ./. Italy</i> . . . . .	273
III. European Court of Justice (11 June 2011—C-108/10) <i>Scattolon</i> . . . . .	274
E. Grouping of Important Cases . . . . .	274
F. Deviation in Relation to European Union Law . . . . .	276
I. Joint Liability of the Transferor and the Transferee . . . . .	276
II. Information and Consultation Obligations . . . . .	276
III. Right of Challenging the Transfer of the Employment Contract . . . . .	277
IV. Transfer of an Undertaking in Crisis . . . . .	277
V. Impact of the Transfer on Collective Agreements . . . . .	278
VI. Priority Right in Case of New Hiring . . . . .	278
G. M&A Transactions: Asset and Share Deals . . . . .	279
I. Asset Deal . . . . .	279
II. Share Deal . . . . .	279
H. Cross-Border Transfer of Business . . . . .	279
I. Excerpts from the Italian Civil Code and the Law of 29 December 1990, no. 428 . . . . .	281
<b>10. The Netherlands</b> . . . . .	287
Hélène Bogaard	
A. Introduction/Sources of Law . . . . .	287
B. Executive Summary . . . . .	288
C. Transfer of Business in the Netherlands . . . . .	288
I. Scope of Application . . . . .	288
II. Safeguarding of Employees’ Rights . . . . .	293
III. Impact on the Employees’ Representatives Bodies . . . . .	299
IV. Impact on Collective Agreements . . . . .	300
V. Impact on Company Pension Entitlements . . . . .	301
VI. Insolvency . . . . .	302

D. Leading Cases . . . . .	302
I. HC, 26 May 2000, JAR 2000/152 ( <i>Veenendaal./ Van Vuuren</i> ) . . . . .	302
II. HC, 11 February 2005, JAR 2005/67 ( <i>Memedovic./ Asito</i> ) . . . . .	302
III. Court Amsterdam, 10 November 2008, JAR 2008/302 ( <i>ING./ Astron</i> ) . . . . .	303
IV. HC, 5 April 2013, JAR 2013/125 ( <i>Heineken./ Albron</i> ) . . . . .	303
E. Grouping of Important Cases . . . . .	304
F. Deviation in Relation to European Union Law . . . . .	305
G. M&A Transactions: Asset and Share Deals . . . . .	305
H. Cross-Border Transfer of Business . . . . .	306
I. Court Zaandam, 26 September 2007, JAR 2008/67 . . . . .	306
II. Court Eindhoven, 9 September 2008, JAR 2008/271 . . . . .	306
I. Excerpts from the Dutch Civil Code . . . . .	307
<b>11. Poland . . . . .</b>	<b>313</b>
Agnieszka Lechman-Filipiak and Katarzyna Magnuska	
A. Introduction/Sources of Law . . . . .	313
B. Executive Summary . . . . .	314
C. Transfer of Business in Poland . . . . .	315
I. Scope of Application . . . . .	315
II. Safeguarding of Employees' Rights . . . . .	318
III. Impact on Employees' Representative Bodies . . . . .	322
IV. Impact on Collective Agreements . . . . .	325
V. Impact on Company Pension Entitlements . . . . .	327
VI. Insolvency . . . . .	329
D. Leading Cases . . . . .	331
I. Supreme Court (29 April 1993—I PZP 9/93)—Resolution . . . . .	331
II. Supreme Court (7 June 1994—I PZP 20/94)—Resolution . . . . .	332
III. Supreme Court (3 April 2010—I PK 210/09)—Verdict . . . . .	332
IV. Supreme Court (8 March 2013—III PZP 1/13)—Resolution . . . . .	332
E. Grouping of Important Cases . . . . .	333
I. Subject of a Transaction as an Undertaking . . . . .	333
II. Retaining the Identity of the Business . . . . .	334
III. Assuming Control . . . . .	334
F. Deviation in Relation to European Union Law . . . . .	335
I. Scope of Application . . . . .	335
II. Information Obligation . . . . .	335
III. Transferee's Liability Connected with Collective Labour Agreements . . . . .	336
IV. Status of the Employees' Representative Bodies . . . . .	336
V. Employee's Right to Terminate the Employment Relationship with the Transferee . . . . .	337
G. M&A Transactions: Asset and Share Deals . . . . .	337
H. Cross-Border Transfer of Business . . . . .	338

I. Excerpts from the Polish Labour Code, the Act on Trade Unions, the Act on Company Social Benefits Fund, the Regulations of the Minister of Labour and Social Policy of 28 May 1996 and the Act on Employees’ Pension Schemes . . . . . 340

**12. Romania** . . . . . 351

Monica Georgiadis

A. Introduction/Sources of Law . . . . . 351

B. Executive Summary . . . . . 352

C. Transfer of Business in Romania . . . . . 353

    I. Scope of Application . . . . . 353

    II. Safeguarding of Employees’ Rights . . . . . 355

    III. Impact on the Employees’ Representatives Bodies . . . . . 361

    IV. Impact on Collective Agreements . . . . . 363

    V. Impact on Company Pension Entitlements . . . . . 364

    VI. Insolvency . . . . . 364

D. Leading Cases . . . . . 365

    I. Alba Iulia Court of Appeal, Civil Decision No. 1257/03.12.2007 . . . . . 365

    II. Iasi Court of Appeal, Civil Decision No. 542/2008 . . . . . 366

    III. Bucharest Court of Appeal, Civil Decision No. 5050/R/07.07.2009 . . . . . 367

    IV. Bucharest Court of Appeal, Civil Decision No. 6246/R/04.11.2009 . . . . . 367

    V. Bucharest Court of Appeal, Civil Decision No. 5942/R/05.10.2011 . . . . . 368

E. Grouping of Important Cases . . . . . 368

    I. A Change in Ownership Is a Necessary Condition . . . . . 369

    II. A Change in Ownership Is Deemed Irrelevant . . . . . 369

F. Deviation in Relation to European Union Law . . . . . 369

    I. Meaning of “Transfer” and “Undertaking” . . . . . 369

    II. The Administrative Reorganisation of Public Administrative Authorities . . . . . 370

    III. Seagoing Vessels . . . . . 370

    IV. Applicability of Collective Agreements . . . . . 371

    V. Employees’ Rights to Old Age, Invalidity or Survivors’ Benefits Under Supplementary Company or Intercompany Schemes . . . . . 371

    VI. Protection Against Dismissal . . . . . 371

    VII. Insolvency . . . . . 372

    VIII. Content of Information . . . . . 372

G. M&A Transactions: Asset and Share Deals . . . . . 373

    I. Asset Deal . . . . . 373

    II. Share Deal . . . . . 374

H. Cross-Border Transfer of Business . . . . . 374

    I. Debatable Applicability of Romanian TUPE Law . . . . . 375



II. Potential Transfer of Undertaking Within the EU/EEA . . . . .	375
III. Transfer of Undertaking Outside the EEA . . . . .	375
I. Excerpts from Romanian Law No. 67/2006 and Law No. 53/2003 (Labour Code) . . . . .	377
<b>13. Spain . . . . .</b>	<b>385</b>
Pilar Menor	
A. Introduction/Sources of Law . . . . .	385
B. Executive Summary . . . . .	386
C. Transfer of Business in Spain . . . . .	386
I. Scope of Application . . . . .	386
II. Safeguarding of Employees' Rights . . . . .	389
III. Impact on the Employee Representatives Bodies . . . . .	392
IV. Impact on Collective Agreements . . . . .	392
V. Impact on Company Pension Entitlements . . . . .	393
VI. Insolvency . . . . .	393
D. Leading Cases . . . . .	394
I. Supreme Court (13 March 1990): The Need to Transfer an Exploitable Business Unit . . . . .	394
II. Supreme Court (19 March 2002): Requirements for a Transfer of Undertaking to Arise . . . . .	395
III. Supreme Court (30 April 2002): Contractual Subrogation . . . . .	395
IV. Supreme Court (27 October 2004): Transfer of Staff . . . . .	395
V. Supreme Court (24 September 2012): Factors That Must Exist When Mortgaged Property is Sold in Judicial Proceedings, in Order to Amount to a Transfer of an Undertaking . . . . .	396
VI. Spanish National Court (Labour Chamber, Section 1), Judgment No. 145-2013 of 15 July 2013: Transfers of Undertakings in the Contact Centre Sector . . . . .	397
E. Grouping of Important Cases . . . . .	398
I. Sectors of Activity Essentially Based on Manpower . . . . .	398
II. Sectors of Activity Rich in Assets and Not Essentially Based on Manpower . . . . .	399
F. Deviation in Relation to European Union Law . . . . .	399
I. Safeguarding of Employees' Rights . . . . .	399
II. Information . . . . .	400
III. Right of Objection . . . . .	400
G. M&A Transactions: Asset and Share Deals . . . . .	400
I. Asset Deal . . . . .	401
II. Share Deal . . . . .	402
H. Cross-Border Transfer of Business . . . . .	403
I. Territorial Application . . . . .	403
II. Implications . . . . .	404
I. Excerpt from the Spanish Workers' Statute . . . . .	405

<b>14. Sweden</b> . . . . .	409
Johan Sundberg and Emil Ödling	
A. Introduction/Sources of Law . . . . .	409
B. Executive Summary . . . . .	410
C. Transfer of Business in Sweden . . . . .	411
I. Scope of Application . . . . .	411
II. Safeguarding of Employees’ Rights . . . . .	413
III. Impact on Employees’ Representatives Bodies . . . . .	415
IV. Impact on Collective Agreements . . . . .	415
V. Impact on Company Pension Entitlements . . . . .	417
VI. Insolvency . . . . .	418
D. Leading Cases . . . . .	419
I. AD 1996 nr 49 . . . . .	419
II. AD 1998 nr 121 . . . . .	420
III. AD 1998 nr 146 . . . . .	420
IV. AD 2001 nr 101 . . . . .	420
E. Grouping of Important Cases . . . . .	420
I. Labour Intensive Businesses . . . . .	421
II. Asset Intensive Businesses . . . . .	421
F. Deviation in Relation to European Union Law . . . . .	422
I. Public Undertakings and Seagoing Vessels . . . . .	422
II. Joint Liability of the Transferor and the Transferee . . . . .	422
III. Right of Objection . . . . .	422
IV. Information . . . . .	423
G. M&A Transactions: Asset and Share Deals . . . . .	423
I. Asset Deal . . . . .	423
II. Share Deal . . . . .	424
H. Cross-Border Transfer of Business . . . . .	425
I. Excerpt from the Swedish Employment Protection Act . . . . .	426
<b>15. United Kingdom</b> . . . . .	427
Tim Marshall and Kate Hodgkiss	
A. Introduction/Sources of Law . . . . .	427
B. Executive Summary . . . . .	428
C. Transfer of Business in the United Kingdom . . . . .	428
I. Scope of Application . . . . .	428
II. Safeguarding of Employees’ Rights . . . . .	432
III. Impact on the Employees’ Representative Bodies . . . . .	438
IV. Impact on Collective Agreements . . . . .	438
V. Impact on Company Pension Entitlements . . . . .	440
VI. Insolvency . . . . .	440
D. Leading Cases . . . . .	441
I. Fairhurst Ward Abbotts v Botes Building Ltd [2004]	
IRLR 304 CA . . . . .	442
II. Ceva Freight (UK) Ltd v Seawell Ltd [2013] CSIH 59 . . . . .	442

- III. Kimberley Group Housing Ltd v (1) Hambley and Ors (2) Leena Homes Ltd (3) Angel Services (UK) Ltd UKEAT/0488/07 and Angel Services (UK) Ltd v (1) Hambley and Ors (2) Kimberley Group Housing Ltd (3) Leena Homes Ltd UKEAT/0489/07 . . . . . 443
- IV. Oxford University v Humphreys [2000] IRLR 183 CA . . . . . 443
- V. Tapere v South London and Maudsley NHS Trust [2009] IRLR 972 EAT . . . . . 444
- E. Grouping of Important Cases . . . . . 444
  - I. Is There an Undertaking? . . . . . 445
  - II. Whether There Has Been a Transfer . . . . . 445
- F. Deviation in Relation to European Union Law . . . . . 446
  - I. Protection Against Dismissal . . . . . 446
  - II. Information and Consultation . . . . . 447
  - III. Right of Objection . . . . . 447
  - IV. Collective Agreements . . . . . 447
- G. Asset Deal and Share Deal: Duties and Possible Liabilities . . . . . 448
  - I. Asset Deal . . . . . 448
  - II. Share Deal . . . . . 449
- H. Cross-Border Transfer of Business . . . . . 451
  - I. Territorial Application . . . . . 451
  - II. Implications . . . . . 452
- I. Excerpts from the Transfer of Undertakings (Protection of Employment) Regulations 2006 . . . . . 452

**Part II Non-EU Countries in Wider Europe**

- 16. Russia . . . . . 465**
- Vladislav Mazur
  - A. Introduction/Sources of Law . . . . . 465
  - B. Executive Summary . . . . . 466
  - C. Transfer of Business in Russia . . . . . 466
    - I. Scope of Application . . . . . 467
    - II. Safeguarding of Employees’ Rights . . . . . 467
    - III. Impact on the Employees’ Representatives Bodies . . . . . 469
    - IV. Impact on Collective Agreements . . . . . 470
    - V. Impact on Company Pension Entitlements . . . . . 470
    - VI. Insolvency . . . . . 470
  - D. Leading Cases . . . . . 471
    - I. Resolution of the Plenum of the Supreme Court of the Russian Federation Dated 17 March 2004 (Resolution) . . . . . 471
    - II. Decision of the Moscow Region Court Dated 16 March 2006, No. 33-1752; Appeal Decision of the Kalinigrad Region Court Dated 15 May 2013, No. 33-1968/2013 . . . . . 471
    - III. Decisions Related to Redundancy of Employees . . . . . 472
  - E. Grouping of Important Cases . . . . . 472

F. Deviation in Relation to European Union Law . . . . .	472
G. M&A Transactions: Asset and Share Deals . . . . .	472
H. Cross-Border Transfer of Business . . . . .	472
I. Excerpts from the Labour Code and the Civil Code of the Russian Federation . . . . .	473
<b>17. Switzerland</b> . . . . .	481
Vincent Carron and Anne Roux-Fouillet	
A. Introduction/Sources of Law . . . . .	481
B. Executive Summary . . . . .	482
C. Transfer of Business in Switzerland ( <i>Betriebsübergang/transfert d'entreprise</i> ) . . . . .	483
I. Scope of Application . . . . .	483
II. Safeguarding of Employees' Rights . . . . .	486
III. Impact on the Employees' Representatives Bodies . . . . .	494
IV. Impact on Collective Agreements . . . . .	495
V. Impact on Company Pension Entitlements . . . . .	495
VI. Insolvency . . . . .	496
D. Leading Cases . . . . .	496
I. Swiss Supreme Court Decision of 5 August 2005 (BGE 132 III 32) . . . . .	496
II. Swiss Supreme Court Decision of 20 August 1997 (BGE 123 III 466) . . . . .	498
III. Swiss Supreme Court Decision of 8 October 2010 (BGE 136 III 552) . . . . .	499
IV. Swiss Supreme Court Decision of 28 November 2011 (BGE 137 V 463) . . . . .	500
E. Grouping of Important Cases . . . . .	500
F. Deviation in Relation to European Union Law . . . . .	501
G. M&A Transactions: Asset and Share Deals . . . . .	502
H. Cross-Border Transfer of Business . . . . .	502
I. Excerpts from the Swiss Code of Obligations . . . . .	503
<b>18. Turkey</b> . . . . .	505
Melek Onaran Yüksel	
A. Introduction/Sources of Law . . . . .	505
B. Executive Summary . . . . .	506
C. Transfer of Business in Turkey . . . . .	507
I. Scope of Application . . . . .	507
II. Safeguarding of Employees' Rights . . . . .	510
III. Impact on the Employees' Representative Bodies . . . . .	514
IV. Impact on Collective Agreements . . . . .	515
V. Impact on Company Pension Entitlements . . . . .	516
VI. Insolvency . . . . .	516

D. Leading Cases . . . . .	516
I. 9th Civil Chamber of Court of Appeal (2009/17867 E., 2011/17318 K., 09.06.2011 T.) . . . . .	517
II. 9th Civil Chamber of Court of Appeal (2009/16391 E., 2011/36852 K., 11.10.2011 T.) . . . . .	517
III. 9th Civil Chamber of Court of Appeal (2009/2013/5587 E., 2013/9305 K., 19.3.2013 T.) . . . . .	517
IV. 9th Civil Chamber of Court of Appeal (2009/42958 E., 2010/354 K., 19.1.2010 T.) . . . . .	518
V. 9th Civil Chamber of Court of Appeal (2009/10242 E., 2011/10048 K., 04.04.2011 T.) . . . . .	518
E. Grouping of Important Cases . . . . .	518
I. Intangible Assets . . . . .	518
II. Tangible Assets . . . . .	519
III. Information . . . . .	520
IV. Right of Objection . . . . .	520
V. Insolvency . . . . .	520
VI. Impact of the Transfer on Company Pension Schemes . . . . .	521
VII. Impact of the Transfer on Collective Agreements . . . . .	521
F. M&A Transactions: Asset and Share Deals . . . . .	521
I. Asset Deal . . . . .	522
II. Share Deal . . . . .	522
G. Cross-Border Transfer of Business . . . . .	523
H. Excerpts from the Turkish Labour Law, Commercial Law, Law on Trade Unions and Collective Bargaining Agreements and Code of Obligation . . . . .	524

### **Part III Middle East and Africa**

<b>19. United Arab Emirates . . . . .</b>	<b>531</b>
Neil Crossley	
A. Introduction/Sources of Law . . . . .	531
B. Executive Summary . . . . .	534
C. Transfer of Business in the United Arab Emirates . . . . .	535
I. Scope of Application . . . . .	535
II. Safeguarding of Employees' Rights . . . . .	537
III. Impact on the Employees' Representatives Bodies . . . . .	538
IV. Impact on Collective Agreements . . . . .	539
V. Impact on Company Pension Entitlements . . . . .	539
VI. Insolvency . . . . .	540
D. Leading Case . . . . .	540
E. Deviation in Relation to European Union Law . . . . .	542
F. M&A Transactions: Asset and Share Deals . . . . .	542
G. Cross-Border Transfer of Business . . . . .	543
H. Excerpt from the United Arab Emirates Labour Law . . . . .	544

**20. South Africa** . . . . . 545

Retha Beerman, Aadil Patel, and Faan Coetzee

A. Introduction/Sources of Law . . . . . 545

B. Executive Summary . . . . . 545

C. Transfer of Business in South Africa . . . . . 546

    I. Scope of Application . . . . . 547

    II. Safeguarding of Employees’ Rights . . . . . 549

    III. Impact on the Employees’ Representative Bodies . . . . . 551

    IV. Impact on Collective Agreements . . . . . 552

    V. Impact on Company Pension Entitlements . . . . . 553

    VI. Insolvency . . . . . 554

D. Leading Cases . . . . . 555

    I. *NEHAWU v University of Cape Town & Others* (2003) 24 ILJ 95 (CC) . . . . . 556

    II. *SAMWU & Others v Rand Airport Management Co (Pty) Ltd & Others* (2005) 26 ILJ 67 (LAC) . . . . . 557

    III. *SA Airways (Pty) Ltd v Aviation Union of SA & Others* (2011) 32 ILJ 87 (SCA) & *Aviation Union of SA & Another v SA Airways (Pty) Ltd & Others* (2012) 32 ILJ 2861 (CC) . . . . . 558

    IV. *Long v Prism Holdings Ltd & Another* (2012) 7 BLLR 672 (LAC) . . . . . 559

    V. *PE Pack 4100CC v Adam Sanders* [2013] 4 BLLR 348 (LAC) . . . . . 559

E. Grouping of Important Cases . . . . . 560

    I. *Schutte & Others v Powerplus Performance (Pty) Ltd & Another* (1999) 20 ILJ 655 (LC) . . . . . 560

    II. *Ndimba & Others v Waverley Blankets (Pty) Ltd* (1999) 20 ILJ 1563 (LC) . . . . . 561

    III. *CEPPWAWU & Others v Print Tech (Pty) Ltd & Others* (2010) 31 ILJ 1850 (LC) . . . . . 561

    IV. *HARSCO Metals SA (Pty) Ltd and Another v Arcelormittal SA Limited and Others* (2012) 33 ILJ 901 (LC) . . . . . 562

    V. *Franmann Services (Pty) Ltd v Simba (Pty) Ltd and Another* [2012] 12 BLLR 1293 (LC) . . . . . 562

    VI. *Jan Hendrik Swanepoel and Others v Leica Geosystem AG and Others* (J2454/14) [2014] ZALCJHB 199 (4 June 2014) . . . . . 563

    VII. *Sanlic House of Locks (Pty) Ltd v Strydom Johannes Theodorus* (J482/14) [2014] ZALCJHB 120 (8 April 2014) . . . . . 564

    VIII. *Rural Maintenance (Pty) Ltd and Another v The Maluti-A-Phofung Local Municipality and Others* (J859/14) [2014] ZALCJHB 180 (21 May 2014) . . . . . 565

    IX. *Unitrans Supply Chain Solutions (Pty) Ltd and Unitrans Household Goods Logistics (Pty) Ltd v Nampak Glass and TMS Group Industrial Services (Pty) Ltd t/a Vericon and Others* (J195/14) [2014] ZALCJHB 61 (24 February 2014) . . . . . 567

F. Deviation in Relation to European Union Law . . . . . 568

G. M&A Transactions: Asset and Share Deals . . . . .	569
H. Cross-Border Transfer of Business . . . . .	570
I. Excerpts from the South African Labour Relations Act . . . . .	571

## Part IV Americas

<b>21. Brazil</b> . . . . .	579
Priscila da Rocha Lago and Thiago Ramos Barbosa	
A. Introduction/Sources of Law . . . . .	579
B. Executive Summary . . . . .	580
C. Transfer of Business in Brazil . . . . .	580
I. Scope of Application . . . . .	580
II. Safeguarding of Employees' Rights . . . . .	582
III. Impact on the Employees' Representatives Bodies . . . . .	585
IV. Impact on Collective Agreements . . . . .	586
V. Impact on Company Pension Entitlements . . . . .	586
VI. Insolvency . . . . .	587
D. Leading Cases . . . . .	587
E. Grouping of Important Cases . . . . .	587
I. Superior Labour Court (30 August 2001) <i>João Tavares Machado .l. Banco Bandeirantes and Banco Banorte</i> . . . . .	588
II. Superior Labour Court (22 November 2013) <i>Adilson de Miranda .l. VRG Linhas Aéreas S.A., Gol Linhas Aéreas Inteligentes S.A., GTI S.A., S.A. Viação Aérea Rio-Grandense and Fundação Ruben Berta</i> . . . . .	588
III. Regional Labour Court (9 September 2013) <i>Labour Public Attorney's Office (MPT) .l. VRG Linhas Aéreas and Webjet Linhas Aéreas S.A.</i> . . . . .	589
F. Deviation in Relation to European Union Law . . . . .	590
G. M&A Transactions: Asset and Share Deals . . . . .	590
I. Share Deals . . . . .	590
II. Asset Deals . . . . .	591
III. Consultation Requirements . . . . .	591
IV. Restrictions on Post-transfer Reorganisations . . . . .	592
Superior Labour Court (6 June 2013) <i>Antônio Marcos Silvestre .l. J.&amp;F. Participações Financeiras and JBS Banco S/A</i> . . . . .	592
H. Cross-Border Transfer of Business . . . . .	592
I. Excerpts from the Brazilian Consolidation of Labour Laws (CLT) . . . . .	593
<b>22. Canada</b> . . . . .	595
Richard Press	
A. Introduction/Sources of Law . . . . .	595
B. Executive Summary . . . . .	597
C. Transfer of Business in Canada . . . . .	598
I. Scope of Application . . . . .	598
II. Safeguarding of Employees' Rights . . . . .	598
III. Impact on the Employees' Representatives Bodies and Collective Agreements . . . . .	606

IV. Impact on Company Pension Entitlements . . . . .	608
V. Insolvency . . . . .	609
D. Leading Cases . . . . .	610
I. Employment (Non-union Workplace) . . . . .	611
II. Human Rights . . . . .	612
III. Labour Relations (Union Workplace) . . . . .	613
IV. Insolvency . . . . .	614
E. Grouping of Important Cases . . . . .	615
F. Deviation in Relation to European Union Law . . . . .	615
I. Protection Against Dismissal . . . . .	616
II. Information and Consultation . . . . .	616
III. Right of Objection . . . . .	616
IV. Collective Agreements . . . . .	617
G. M&A Transactions: Asset and Share Deals . . . . .	617
I. Distinction Between Asset and Share Deals . . . . .	617
II. Successor Liability Concerns Over Labour & Employment Matters . . . . .	617
H. Cross-Border Transfer of Business . . . . .	617
I. Excerpts from Canadian Statutory Provisions . . . . .	619
J. Overview of the Canadian Statutory Provisions Regarding Transfers of Business . . . . .	622
<b>23. Mexico . . . . .</b>	<b>625</b>
María Ríos	
A. Introduction/Sources of Law . . . . .	625
B. Executive Summary . . . . .	627
C. Transfer of Business in Mexico . . . . .	628
I. Scope of Application . . . . .	628
II. Safeguarding of Employees' Rights . . . . .	632
III. Impact on the Employees' Representatives Bodies . . . . .	634
IV. Impact on Collective Agreements . . . . .	634
V. Impact on Company Pension Entitlements . . . . .	634
VI. Insolvency . . . . .	635
D. Leading Cases . . . . .	636
I. <i>Sindicato Mexicano de Electricistas (SME) ./. Luz y Fuerza del Centro Federal: Federal Labour Board (August 2010)</i> . . . . .	636
II. <i>Employee A ./. Food and Beverages Company A: Employment Tribunal</i> . . . . .	637
III. <i>Employee A ./. Company B: Employment Tribunal</i> . . . . .	638
IV. <i>José Luis Cenicerros Barrera (Cenicerros) ./. Asociación General de Abogados y Servicios Actuariales, S.A. de C.V. (Asociación)</i> . . . . .	638
V. <i>Daniel Ruiz Corona (Ruiz) ./. Company A</i> . . . . .	639
E. Grouping of Important Cases . . . . .	640
F. Deviation in Relation to European Union Law . . . . .	640



- I. Possible Joint Liability of the Transferor and the Transferee . . . . . 641
- II. Protection Against Dismissal . . . . . 641
- III. Information and Consultation . . . . . 641
- G. M&A Transactions: Asset and Share Deals . . . . . 642
  - I. Share Deal . . . . . 642
  - II. Asset Deal . . . . . 643
- H. Cross-Border Transfer of Business . . . . . 643
- I. Excerpt from the Mexican Federal Labour Law . . . . . 645
- 24. United States of America . . . . . 647**
- Erin D’Angelo
  - A. Introduction/Sources of Law . . . . . 647
  - B. Executive Summary . . . . . 648
  - C. Transfer of Business in the United States . . . . . 649
    - I. Scope of Application . . . . . 649
    - II. Safeguarding of Employees’ Rights . . . . . 649
    - III. Impact on Employees’ Representative Bodies . . . . . 654
    - IV. Impact on Collective Agreements . . . . . 655
    - V. Impact on Company Pension Entitlements . . . . . 657
    - VI. Insolvency . . . . . 660
  - D. Leading Cases . . . . . 661
  - E. Grouping of Important Cases . . . . . 661
  - F. Deviation in Relation to European Union Law . . . . . 661
  - G. M&A Transactions: Asset and Share Deals . . . . . 661
    - I. Distinction Between Asset and Share Deals . . . . . 661
    - II. Successor Liability Concerns Over Labour & Employment Matters . . . 662
  - H. Cross-Border Transfer of Business . . . . . 663
  - I. Excerpts from the United States Code Annotated . . . . . 663
- Part V Asia and Pacific**
- 25. Australia . . . . . 673**
- Rick Catanzariti
  - A. Introduction/Sources of Law . . . . . 673
  - B. Executive Summary . . . . . 674
  - C. Transfer of Business in Australia . . . . . 674
    - I. Scope of Application . . . . . 674
    - II. Safeguarding of Employees’ Rights . . . . . 677
    - III. Impact on the Employees’ Representative Bodies . . . . . 682
    - IV. Impact on Collective Agreements . . . . . 682
    - V. Impact on Company Pension Entitlements . . . . . 684
    - VI. Insolvency . . . . . 685
  - D. Leading Cases . . . . . 685

I. <i>Gribbles</i> Case [2005] HCA 9 . . . . .	686
II. Is There a Connection? . . . . .	686
III. Transferring Work . . . . .	687
IV. Modifying the Effect of the Transferring Workplace Instrument . . . . .	687
E. Deviation in Relation to European Union Law . . . . .	688
F. M&A Transactions: Asset and Share Deals . . . . .	688
G. Cross-Border Transfer of Business . . . . .	689
H. Excerpt from the Australian Fair Work Act 2009 . . . . .	690
<b>26. People’s Republic of China . . . . .</b>	<b>695</b>
Johnny Choi, Alan Wang, and Vivienne Jin	
A. Introduction/Sources of Law . . . . .	695
B. Executive Summary . . . . .	696
C. Transfer of Business in China . . . . .	697
I. Scope of Application . . . . .	697
II. Safeguarding of Employees’ Rights . . . . .	697
III. Impact on the Employee’s Representative Bodies . . . . .	710
IV. Impact on Collective Agreements . . . . .	710
V. Impact on Company Pension Entitlements . . . . .	711
VI. Insolvency . . . . .	711
D. Leading Cases . . . . .	711
E. Grouping of Important Cases . . . . .	711
F. Deviation in Relation to European Union Law . . . . .	712
G. M&A Transactions . . . . .	712
H. Cross-Border Transfer of Business . . . . .	712
I. Excerpts from the Labour Contract Law of the People’s Republic of China . . . . .	713
<b>27. Japan . . . . .</b>	<b>717</b>
Lance Miller, Hajime Iwaki, Lawrence Carter, and Keiji Nasuda	
A. Introduction/Sources of Law . . . . .	717
I. Overview . . . . .	717
II. Japanese Labour Laws . . . . .	718
B. Executive Summary . . . . .	719
C. Transfer of Business in Japan . . . . .	720
I. Scope of Application . . . . .	720
II. Safeguarding Employees’ Rights . . . . .	721
III. Impact on the Employees’ Representatives Bodies . . . . .	725
IV. Impact on Collective Bargaining Agreements . . . . .	725
V. Impact on Company Pension/Retirement Allowances Entitlements . . . . .	726
VI. Insolvency . . . . .	728
D. Leading Cases . . . . .	729
I. Cases Involving Company Splits . . . . .	729
II. Other Cases . . . . .	731
E. Grouping of Important Cases . . . . .	732

- F. M&A Transactions: Share and Asset Deals and Mergers . . . . . 732
  - I. Share Purchase . . . . . 732
  - II. Asset Transfers . . . . . 733
  - III. Mergers . . . . . 734
- G. Cross-Border Transfer of Business . . . . . 739
- H. Excerpts from the Japanese Act on the Succession  
to Labour Contracts upon Company Split and the Act for  
Partially Revising the Commercial Code . . . . . 740

# List of Authors

**Retha Beerman, LL.M.** (University of Michigan). Retha is an attorney and director of the Knowledge Management department of Cliffe Dekker Hofmeyr and is based in Johannesburg.

**Hélène Bogaard.** Hélène is an attorney and partner of the Dutch Employment practice group of DLA Piper and is based in the Amsterdam office.

**Vincent Carron, LL.M.** (New York University School of Law). Vincent is an attorney and partner of the Employment practice group of Schellenberg Wittmer and is based in Geneva.

**Lawrence Carter.** Lawrence is an attorney and partner of the Japanese Employment and Corporate practice group of DLA Piper and is based in the Tokyo office.

**Rick Catanzariti.** Rick is an attorney and partner of the Australian Employment practice group of DLA Piper and is based in the Melbourne office.

**Johnny Choi.** Johnny is an attorney and partner of the Chinese Employment practice group of DLA Piper and is based in the Beijing office.

**Markéta Cibulková.** Markéta is an attorney and senior associate of the Czech Employment practice group of DLA Piper and is based in the Prague office.

**Faan Coetzee, LL.M.** (University of Johannesburg). Faan is an attorney and executive consultant of the Employment practice group of Cliffe Dekker Hofmeyr and is based in Johannesburg.

**Neil Crossley.** Neil is an attorney and partner of the United Arab Emirates Employment practice group of DLA Piper and is based in the Dubai office.

**Philippe Danesi.** Philippe is an attorney, partner and head of the French Employment practice group of DLA Piper and is based in the Paris office.

**Priscila da Rocha Lago.** Priscila is an attorney and partner of the Employment practice group of Campos Mello Advogados and is based in São Paulo.

**Erin D'Angelo.** Erin is an attorney and of counsel of the US Employment practice group of DLA Piper and is based in the New York office.

**Jonas Enkegaard.** Jonas is an attorney and partner of the Employment practice group of Horten and is based in Copenhagen.

**Helga Fehér.** Helga is an attorney, partner and head of the Hungarian Employment practice group of DLA Piper and is based in the Budapest office.

**Monica Georgiadis.** Monica is an attorney, partner and head of the Romanian Employment practice group of DLA Piper and is based in the Bucharest office.

**Kate Hodgkiss.** Kate is an attorney and partner of the UK Employment practice group of DLA Piper and is based in the Edinburgh office.

**Hajime Iwaki, LL.M.** (University of Pennsylvania). Hajime is an attorney and partner of the Japanese Corporate practice group of DLA Piper and is based in the Tokyo office.

**Vivienne Jin.** Vivienne is an attorney and associate of the Chinese Employment practice group of DLA Piper and is based in the Beijing office.

**Dr. Jens Kirchner.** Jens is an attorney and partner of the German Employment practice group of DLA Piper and is based in the Frankfurt office.

**Agnieszka Lechman-Filipiak.** Agnieszka is an attorney, partner and head of the Polish Employment practice group of DLA Piper and is based in the Warsaw office.

**Eddy Lievens.** Eddy is an attorney, partner and head of the Belgian Employment practice group of DLA Piper and is based in the Brussels office.

**Tim Marshall.** Tim is an attorney, partner and joint global head of the Employment practice group of DLA Piper. He is based in the London office.

**Vladislav Mazur.** Vladislav is an attorney and legal director of the Russian Corporate practice group of DLA Piper and is based in the Moscow office.

**Pilar Menor.** Pilar is an attorney, senior partner and head of the Spanish Employment practice group of DLA Piper. She is based in the Madrid office.

**Lance Miller.** Lance is an attorney, partner and country managing partner of DLA Piper in Japan and is based in the Tokyo office.

**Fabrizio Morelli.** Fabrizio is an attorney, partner and head of the Italian Employment practice group of DLA Piper and is based in the Rome office.

**Dr. Sascha Morgenroth, LL.M.** (University of Texas at Austin School of Law). Sascha is an attorney and counsel of the German Employment practice group of DLA Piper and is based in the Frankfurt office.

**Keiji Nasuda.** Keiji is an attorney and associate of the Japanese Employment practice group of DLA Piper and is based in the Tokyo office.

**Stephan Nitzl.** Stephan is an attorney, partner and head of the Austrian Employment practice group of DLA Piper Weiss-Tessbach and is based in the Vienna office.

**Kristine Friis Nolsø.** Kristine is an attorney of the Employment practice group of Horten and is based in Copenhagen.

**Emil Ödling.** Emil is an attorney and senior associate of the Swedish Intellectual Property and Technology practice group of DLA Piper and is based in the Stockholm office.

**Aadil Patel.** Aadil is an attorney, director and national practice head of the Employment practice group of Cliffe Dekker Hofmeyr and is based in Johannesburg.

**Richard Press.** Richard is an attorney and partner of the Canadian Employment practice group of DLA Piper and is based in the Vancouver office.

**Thiago Ramos Barbosa.** Thiago is an attorney of the Employment practice group of Campos Mello Advogados and is based in São Paulo.

**María Ríos.** María is an attorney and partner of the Mexican Corporate practice group of DLA Piper and is based in the Mexico City office.

**Anne Roux-Fouillet.** Anne is an attorney and senior associate of the Employment practice group of Schellenberg Wittmer and is based in Geneva.

**Petr Samec.** Petr is an attorney and senior associate of the Czech Corporate and Employment practice group of DLA Piper and is based in the Prague office.

**Dr. Christian Stuppig.** Christian is an attorney and senior associate of the Austrian Employment practice group of DLA Piper Weiss-Tessbach and is based in the Vienna office.

**Johan Sundberg.** Johan is an attorney and partner of the Swedish Employment practice group of DLA Piper and is based in the Stockholm office.

**Alan Wang.** Alan is an attorney and associate of the Chinese Employment practice group of DLA Piper and is based in the Shanghai office.

**Melek Onaran Yüksel, LL.M.** (Georgetown University). Melek is an attorney and partner of the Employment practice group of YükselKarkınKüçük Attorney Partnership and is based in Istanbul.