

**LEX MUNDI**  
PUBLICATION



# **Lex Mundi Labor and Employment Holding Company Share Purchases: Pre-Signing/Pre-Closing Information and Consultation Requirements Survey**

**The Lex Mundi Holding Company Share Purchases: Pre-Signing/Pre-Closing Information  
and Consultation Requirements Survey was prepared by the Lex Mundi Labor and  
Employment Practice Group**



### About Lex Mundi

Lex Mundi is the world's leading association of independent law firms. Lex Mundi facilitates the exchange of information regarding the local and global practice and development of law and improves the ability of its members to serve their respective clients. Lex Mundi has member law firms in 99 countries. Lex Mundi firms have adopted uniform standards of client service and are comprehensively and periodically reviewed to ensure continued adherence to Lex Mundi's standards of excellence.

The worldwide coverage of Lex Mundi's membership provides Lex Mundi the unique ability to conduct and facilitate surveys of local law and procedure on a global scale. Lex Mundi member firms cooperated with the World Bank, Harvard University and Yale University to complete the most comprehensive comparative study of litigation ever undertaken. Lex Mundi member firms are currently working with the same organizations on a comparative study of the rights of minority shareholders.

About this Survey

This Lex Mundi multi-jurisdictional survey sets out the obligations for the Employer Companies with respect to information and consultation of employees, trade unions, works councils or other employee representative bodies in relation to the contemplated sale of all shares in the Holding to the Buyer. Each Lex Mundi member firm was asked to respond to a series of questions, regarding their jurisdiction.

The descriptions set forth below are intended only as a general overview of the law as of March 2008. No summary can be complete, and the following is not intended to constitute legal advice as to any specific case or factual circumstance. Readers requiring legal advice on any of the specific case or circumstance should consult with counsel admitted in the relevant jurisdiction.

The lead editors for this survey are Claus Juel Hansen, the Chair of Lex Mundi's Labor and Employment Law Group and a partner of Kroman Reumert; Denmark and Barry Waters, Chair-elect of the Lex Mundi Labor and Employment Law Group and a partner of Murtha Cullina LLP; New Haven, Connecticut. The survey's coordinator is Jami de Lou, Lex Mundi's Practice Group Coordinator.

This multi-jurisdictional survey will be updated from time to time. For the most up to date information, please go the Lex Mundi web site ([www.lexmundi.com](http://www.lexmundi.com)) and access the Labor and Employment Non-competition Survey from the Labor and Employment Law Group web page or from the Publication and Resources page. If you need assistance, please contact the Lex Mundi office 1.713.626.9393.

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**1. List the necessary pre-signing information requirements.**

If the share transaction is only at the holding level, no change would exist in the Employer Companies and therefore no modification would exist therein. Thus, no employee information would be statutorily required to be provided. If personal information is nevertheless provided, data protection limitations should be considered (employee consent)

**2. List the necessary pre-signing consultation requirements.**

If the transaction is at the holding level and thus no modification exists in the Employer Company-employee relationship, no consultation is required.

**3. List the necessary pre-closing information requirements.**

Please refer to our responses above, in connection with the lack of statutory requirement to provide any information prior to closing, as no modification would exist in the labor relationship (but only in the ownership of the Employer Company).

**4. List the necessary pre-closing consultation requirements.**

Please refer to our responses above, in connection with the lack of statutory requirement to make any consultation prior to closing, as no modification would exist in the labor relationship (but only in the ownership of the Employer Company).

**5. Please describe any language requirements.**

There is no statutory requirement that transfer or any other labor document must be in Spanish. However, if any of such documents needs to be then filed in court or administrative body, a Spanish version will be required. If the document was made other than in Spanish, there would be a risk of a mistranslation. Bi-lingual documents are acceptable.

- 6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No

**(LIC) - Penkov, Markov & Partners**

**Bulgaria**

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**1. List the necessary pre-signing information requirements.**

Before the transfer the Buyer and the Seller have to present the following information before the Trade unions or the employee's representatives:

1. Information about the transfer
2. The reason for the transfer
3. The possible legal, economic and social implications of the transfer
4. The measures envisaged in relation to the employees

**2. List the necessary pre-signing consultation requirements.**

Where the Buyer and the Seller envisaged the measures in relation to the employees, they are obliged to consult the Trade unions or the employee's representatives on such measures and to make efforts to reach an agreement therewith.

**3. List the necessary pre-closing information requirements.**

See the information about pre-signing requirements.

**4. List the necessary pre-closing consultation requirements.**

See the information about pre-signing requirements.

**5. Please describe any language requirements.**

There are not language requirements.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes. The information described about pre-signing requirements has to be submitted at least two months before the transfer.

**Blake, Cassels & Graydon LLP**  
**Canada, Ontario**

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**1. List the necessary pre-signing information requirements.**

None.

**2. List the necessary pre-signing consultation requirements.**

None.

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

None.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Not applicable.

**Blake, Cassels & Graydon LLP**

**Canada, Quebec**

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**1. List the necessary pre-signing information requirements.**

None.

**2. List the necessary pre-signing consultation requirements.**

None.

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

Written information to be remitted to employees must be provided in French, unless the employee has requested the use of another language and the employer has agreed to such request.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Dr. K. Chrysostomides & Co.**

**Cyprus**

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**1. List the necessary pre-signing information requirements.**

A legal transfer of a business implies a change in the identity of the owner and that the business must be transferred as a going concern. Share transfers do not constitute a legal transfer. Consequently, there is no obligation on the Employer to inform or to consult with his or her employees' representative bodies on the contemplated share transfer.

**2. List the necessary pre-signing consultation requirements.**

None. Same as above

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

Not applicable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**Denmark**

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**1. List the necessary pre-signing information requirements.**

None.

**2. List the necessary pre-signing consultation requirements.**

None.

**3. List the necessary pre-closing information requirements.**

Inform the employees of the sale and inform the employees/their representatives of the development in the Employer Company and the expected development in its activities, the Employer Company's financial situation and expectations, the employment situation in the Employer Company and decisions affecting the working conditions and the employment

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

None. However, the information must be provided in a language that is understandable to the employees, i.e. Danish or possibly English.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes. Information must be provided within reasonable time before closing.

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**1. List the necessary pre-signing information requirements.**

There are none but an English employer could supply information about the share sale voluntarily to its employees and any employee representatives or unions.

**2. List the necessary pre-signing consultation requirements.**

There are none an English employer could consult with other parties voluntarily about the share sale.

**3. List the necessary pre-closing information requirements.**

There are none.

**4. List the necessary pre-closing consultation requirements.**

There are none.

**5. Please describe any language requirements.**

There are none.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**Estonia**

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**1. List the necessary pre-signing information requirements.**

The information requirements are only in case the employees of the "Employer Company" are influenced with the sale but pursuant to the description it is clear that no changes in the "Employer Companies" will take place.

**2. List the necessary pre-signing consultation requirements.**

The consultation requirements are only in case the employees of the "Employer Company" are influenced with the sale but pursuant to the description it is clear that no changes in the "Employer Companies" will take place.

**3. List the necessary pre-closing information requirements.**

The information requirements are only in case the employees of the "Employer Company" are influenced with the sale but pursuant to the description it is clear that no changes in the "Employer Companies" will take place.

**4. List the necessary pre-closing consultation requirements.**

The consultation requirements are only in case the employees of the "Employer Company" are influenced with the sale but pursuant to the description it is clear that no changes in the "Employer Companies" will take place.

**5. Please describe any language requirements.**

The overall rule is that all the information about the employment relationship must be available in Estonia.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**France**

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**1. List the necessary pre-signing information requirements.**

The information procedure is to be held at the level of the company undergoing the operation. Therefore, unless the operation is to have an effect on the identity of activity, management or working conditions of the employees in the Employer Companies, no information of the works council or any other body of the Employer Companies is necessary.

**2. List the necessary pre-signing consultation requirements.**

Same goes for the consultation procedure.

**3. List the necessary pre-closing information requirements.**

See above.

**4. List the necessary pre-closing consultation requirements.**

See above.

**5. Please describe any language requirements.**

Not applicable..

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**Germany**

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**1. List the necessary pre-signing information requirements.**

Generally there are none. However, it is common practice to inform the employees and the works council in accordance with the principle of working together in a spirit of mutual trust. The economic committee (Wirtschaftsausschuss) should be informed according to § 106 Sec. 3 No. 10 BetrVG when the Buyer will affect the employing company's personnel matters.

**2. List the necessary pre-signing consultation requirements.**

There are none.

**3. List the necessary pre-closing information requirements.**

See above Sec. 6

**4. List the necessary pre-closing consultation requirements.**

There are none.

**5. Please describe any language requirements.**

There are none.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes, reasonable time before closing/signing depending on the circumstances of the individual case.

**Nagy és Trócsányi**

**Hungary**

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**1. List the necessary pre-signing information requirements.**

Pursuant to the Hungarian Labor Code, there are only pre-closing information requirements.

**2. List the necessary pre-signing consultation requirements.**

Pursuant to the Hungarian Labor Code, there are only pre-closing consultation requirements.

**3. List the necessary pre-closing information requirements.**

The predecessor and the successor employer should, 15 days prior to the date of succession, inform the local trade union branch or the workers' council, or if there is no workers' council, the committee formed by the representatives of the employees on the proposed date, the reasons and other consequences of the legal succession.

**4. List the necessary pre-closing consultation requirements.**

In the meantime, the employers should initiate talks about the principles of their actions, the ways and means avoiding detrimental consequences as well as the means for mitigating such consequences.

**5. Please describe any language requirements.**

There are no language requirements; however, the employees should understand the used language.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes, the employers should fulfill their information obligation 15 days prior the legal succession. [Please note if the employer violates the rights of the workers' council or the trade union, the workers' council or the trade union affected may seek remedy.]

**Abdullah Kh. Al-Ayoub & Associates**

**Kuwait**

**Anupama Nair**

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**1. List the necessary pre-signing information requirements.**

In view of the background provided, there are no pre-signing information requirements as the employer companies will be considered as separate legal entities and be governed according to the laws of their respective jurisdictions.

**2. List the necessary pre-signing consultation requirements.**

The employer companies will be considered as separate legal entities. There is no requirement of pre-signing consultation with the employer companies by the seller before selling the shares in the holding company. There is also no pre-signing consultation requirement with the employees of the employer companies as well.

**3. List the necessary pre-closing information requirements.**

There are no pre-closing information requirements as per the laws of Kuwait.

**4. List the necessary pre-closing consultation requirements.**

There are no pre-closing consultation requirements as per the laws of Kuwait.

**5. Please describe any language requirements.**

Not applicable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Not applicable.

**Houthoff Buruma**

**Netherlands**

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**1. List the necessary pre-signing information requirements.**

A. Requirements under article 23 of the Dutch Works Council Act ("Wet op de Ondernemingsraden)

B. Requirements under articles 3, 4 and 8 of the Merger Code ("SER-Besluit Fusiegedragsregels 2000")

C. Requirements under a collective labor agreement (if any).

**2. List the necessary pre-signing consultation requirements.**

A. Requirements under article 25 of the Dutch Works Council Act ("Wet op de Ondernemingsraden)

B. Requirements under article 4 of the Merger Code ("SER-Besluit Fusiegedragsregels 2000")

C. Requirements under a collective labor agreement (if any).

**3. List the necessary pre-closing information requirements.**

Nothing required in employment law matters.

**4. List the necessary pre-closing consultation requirements.**

Nothing required in employment law matters.

**5. Please describe any language requirements.**

The official documentation regarding information and consultation should be in Dutch. If a multinational is involved the documentation is mostly bilingual.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes. Both the information and consultation procedure must be carried out time. If the works council uses its right to appeal a one month standstill applies after the decision has been taken by the company.

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**Philippines**

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**1. List the necessary pre-signing information requirements.**

1. Information on the Holding Company (from its incorporation papers and latest SEC filings)
2. Shares invested in related entities, affiliates; business activities of those entities (foreign equity restrictions)
3. Obligations of successor-employer
4. Mode of acquiring the Philippine entity - merger/consolidation, share purchase, asset purchase

**2. List the necessary pre-signing consultation requirements.**

1. Divest shares in affiliates and related entities
2. Status and settlement of pending labor disputes
3. Termination of employees - redundancy, retrenchment, closure of establishment
4. Size, compensation, benefits (by contract, by practice) of employees
5. Agreements with service contractors
6. Consultation with union
7. Provisions in CBA

**3. List the necessary pre-closing information requirements.**

1. Successor - employer liability
2. Employment severance program, separation packages
3. Status of retirement plan, stock option plan
4. Status of pending litigation, labor disputes
5. Status of service agreements
6. DOLE reportorial requirements.

**4. List the necessary pre-closing consultation requirements.**

1. Obligation of successor-employer to absorb employees & maintain their compensation package and benefits

2. Employment severance - voluntary separation, retrenchment, closure of establishment
3. Dissolution of retirement plan, stock option plans
4. Settle obligations arising from pending litigation, labor disputes, and service agreements

**5. Please describe any language requirements.**

The official languages of the Philippines are English and Filipino. All documents executed in a foreign language should have an English translation. Since most legal documents are in English, it would be helpful to have documents executed in any of the Philippine dialects translated in English.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes. 1. All terminations of employment for authorized cause (under Art. 283, Labor Code) require service of written notice on the Department of Labor and Employment (DOLE) and the employee one month before the termination. 2. Inform the Bureau of Internal Revenue of the intended notations of the Retirement Plan.

**Maclay Murray & Spens LLP**

**Scotland**

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**1. List the necessary pre-signing information requirements.**

The information requirements set out in the Transfer of Undertakings (Protection of Employment) Regs 2006 which apply to a transfer of a business via an asset transfer do not apply to transfer via this type of share sale. Information as to developments in activities & economic situation may be required if a EWC or NWC (under the ICE Regs '04) exists

**2. List the necessary pre-signing consultation requirements.**

As above, the detailed consultation requirements in the TUPE Regs 2006 do not apply to a share sale without more. Again, consultation with an EWC or NWC may need to take place where these exist. This is more likely where negotiated agreements have been reached as an alternative to relying on the standard provisions in the relevant legislation.

**3. List the necessary pre-closing information requirements.**

See answer 1 above.

**4. List the necessary pre-closing consultation requirements.**

See answer 3 above.

**5. Please describe any language requirements.**

Not applicable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Not applicable.

**Vinge KB, Advokatfirman**

**Sweden**

**Fredrik Dahl**

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**1. List the necessary pre-signing information requirements.**

Normally there are no information requirements in the Employer Company.

**2. List the necessary pre-signing consultation requirements.**

Normally there are no consultation requirements in the Employer Company. Should however the SPA between Seller and Buyer contain a regulation which will have a material effect on the employment conditions in the Employer Company (such as redundancies etc), the Employer Company will have to call for consultations prior to the signing of the SPA.

**3. List the necessary pre-closing information requirements.**

Normally there are none.

**4. List the necessary pre-closing consultation requirements.**

Normally there are none.

**5. Please describe any language requirements.**

Information and consultation shall be made in English.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**Switzerland**

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**1. List the necessary pre-signing information requirements.**

None, as this transaction is not considered as a transfer of business in an information and consultation of employees' perspective since there is no change of employer.

**2. List the necessary pre-signing consultation requirements.**

None.

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

None.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

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**Turkey**

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**1. List the necessary pre-signing information requirements.**

Not applicable.

**2. List the necessary pre-signing consultation requirements.**

Not applicable.

**3. List the necessary pre-closing information requirements.**

Not applicable.

**4. List the necessary pre-closing consultation requirements.**

Not applicable.

**5. Please describe any language requirements.**

Not applicable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Guyer & Regules**

**Uruguay**

**Leonardo Slinger**

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**1. List the necessary pre-signing information requirements.**

None.

**2. List the necessary pre-signing consultation requirements.**

None

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

(Did not answer)

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Murtha Cullina LLP**

**U.S.A., Federal**

**Barry Waters**

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**1. List the necessary pre-signing information requirements.**

None.

**2. List the necessary pre-signing consultation requirements.**

None.

**3. List the necessary pre-closing information requirements.**

In general, employers are covered by the WARN Act if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week. Covered plant closings are shutdowns of employment sites resulting in employment loss for 50 or more employees during any 30 day period. Covered mass layoffs are layoffs resulting in employment loss for 500 or more employees or for 50-499 employees if they make up at least 33 percent of the employer's active work force, during any 30 day period.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

None.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

Yes. The Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. § 2101 et seq., requires employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs.

**Maynard, Cooper & Gale, P.C.**

**U.S.A., Alabama**

**Stephen E. Brown**

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**1. List the necessary pre-signing information requirements.**

None provided the Employer Companies are remaining intact and not closing or significantly reducing their respective work forces.

**2. List the necessary pre-signing consultation requirements.**

None

**3. List the necessary pre-closing information requirements.**

None.

**4. List the necessary pre-closing consultation requirements.**

None.

**5. Please describe any language requirements.**

None.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Rose Law Firm**

**U.S.A., Arkansas**

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**1. List the necessary pre-signing information requirements.**

(Did not answer)

**2. List the necessary pre-signing consultation requirements.**

(Did not answer)

**3. List the necessary pre-closing information requirements.**

(Did not answer)

**4. List the necessary pre-closing consultation requirements.**

(Did not answer)

**5. Please describe any language requirements.**

There are no specific language requirements that Courts consider in determining whether a covenant not to compete is considered enforceable. However, if the covenant as drafted by the parties is unenforceable, Arkansas Courts will not alter a covenant not to compete to make it enforceable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Womble Carlyle Sandridge & Rice, PLLC**  
**U.S.A., North Carolina**

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**1. List the necessary pre-signing information requirements.**

Not applicable.

**2. List the necessary pre-signing consultation requirements.**

Not applicable.

**3. List the necessary pre-closing information requirements.**

Not applicable.

**4. List the necessary pre-closing consultation requirements.**

Not applicable.

**5. Please describe any language requirements.**

Not applicable.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Eckert Seamans Cherin & Mellott, LLC**

**U.S.A., Pennsylvania**

**Paul M. Yenerall**

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**1. List the necessary pre-signing information requirements.**

None under the Nat. Lab. Rel. Act. As a stock sale, the employing entities do not change, only the identity of the shareholders. The subsidiaries' obligations to employees and their unions are unchanged. Since the sale results in no change in conditions of employment there is no bargaining obligation and thus no obligation to inform the union(s)

**2. List the necessary pre-signing consultation requirements.**

There are none, for the same reason as above. There is no obligation to bargain about the sale and thus no obligation to consult.

**3. List the necessary pre-closing information requirements.**

(Did not answer)

**4. List the necessary pre-closing consultation requirements.**

(Did not answer)

**5. Please describe any language requirements.**

(Did not answer)

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.

**Bass, Berry & Sims PLC**

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**1. List the necessary pre-signing information requirements.**

Assuming that the operations of the employer companies will continue, there is no pre-signing obligation to provide information about the transaction to employees, labor unions or any government agency.

**2. List the necessary pre-signing consultation requirements.**

There is no pre-signing consultation or bargaining obligations.

**3. List the necessary pre-closing information requirements.**

Again assuming that the operations will continue, there is no pre-closing obligation to provide information to the listed persons/organizations.

**4. List the necessary pre-closing consultation requirements.**

There are no pre-closing consultation/ bargaining obligations.

**5. Please describe any language requirements.**

There is no legally required language for the acquisition agreement pertaining to employees. A good acquisition agreement would include certain disclosures regarding existing labor agreements, pending claims by employees or labor organizations representing employees of the Employer Companies etc.

**6. Are there any deadlines for the necessary requirements? Please describe the deadline requirements.**

No.