

ALLEN & OVERY

Employment Reorganisation Roadmap

Hong Kong

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1. Employee representation

1.1 What are the main forms of employee representation involved in restructurings?

Trade union representatives are sometimes involved in restructurings if a trade union is recognised by the employer (though this is not very common).

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation, unless the employment contract provides otherwise.



2. Process on business sales

2.1 Are employees automatically transferred to a buyer by operation of law on a business sale?

There is no automatic transfer of employees on a business sale. To effect a transfer of employment on a business sale, a termination and re-hire process is necessary, and employee consent is required (see [Section 1](#)).

2.2. If so, in broad terms, what is the legal test for identifying which employees transfer?

There is no automatic transfer of employees on a business sale.

2.3. Can employees object to the automatic transfer of their employment and what are the consequences of an objection?

There is no automatic transfer of employees on a business sale.

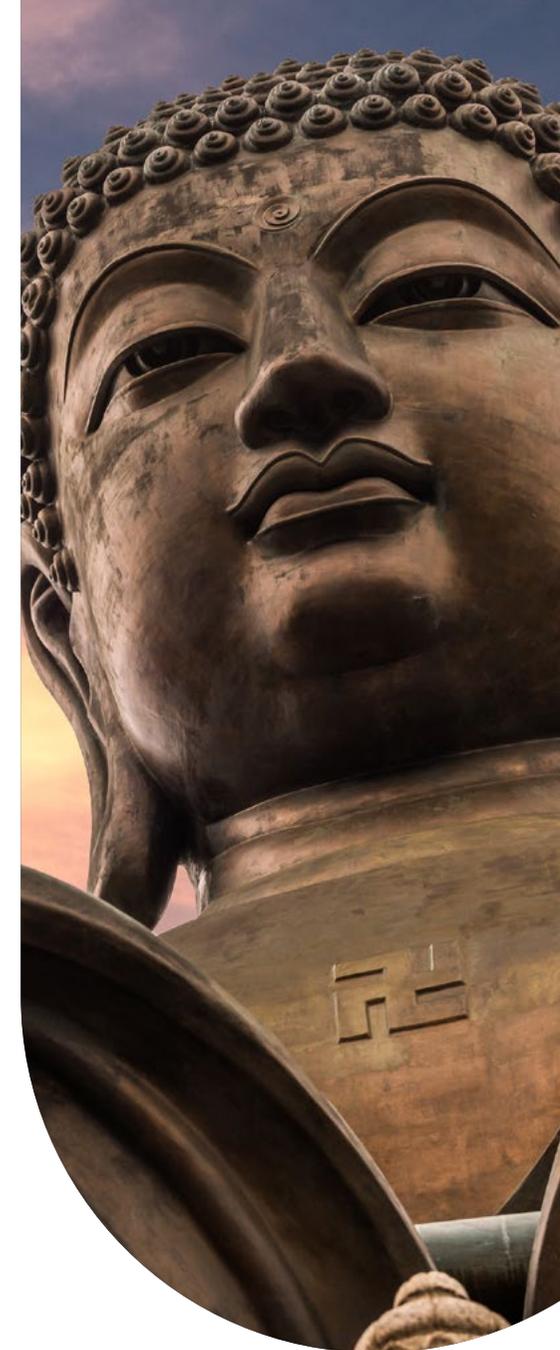
2.4. Do obligations to inform and consult employees or employee representatives arise on a business sale?

There is generally no requirement to inform/consult employee representatives in relation to a business sale, unless provided for in an agreement with the relevant employee.

However, if a business sale takes place, employees are not automatically transferred by law. If a seller wishes to transfer its employees to a buyer (as part of a transfer of assets or otherwise), it must terminate the relevant employees' contracts. The buyer must then make an offer of employment to the employees, to take effect on or before the transfer. The employees' consent to the offer is required if the seller seeks to transfer them with the business.

There is a specific procedure to be followed in order to avoid triggering severance payments in this scenario, including requirements that:

- the buyer makes a written offer of employment not less than seven days before the date of expiry of the employee's notice period (or, if a payment in lieu of notice is made, not less than seven days before the date of termination of employment)
- the offer is made on terms no less favourable than the terms which the employee has enjoyed with the seller, and
- there is continuity between the two employments.



2.5. What are the penalties for non-compliance with information and consultation obligations on a business sale?

There is no mandatory information or consultation process in respect of a corporate restructuring or business sale and therefore no specific penalties for non-compliance. However, if the seller or buyer (as applicable) does not give notice of termination (or payment in lieu of notice) or make a new offer of employment, the employees will not transfer with the business from the seller to the buyer. Procedural obligations and severance rights may then be triggered if the seller has to terminate the employment of those employees (see [here](#)).

Note that whenever any business is transferred, the buyer is (notwithstanding any agreement to the contrary) liable for all debts and obligations (including liabilities relating to employees) of the business unless a notice of transfer is given in accordance with the Transfer of Business (Protection of Creditors) Ordinance (Chapter 49, Laws of Hong Kong).



3. Process on share sales

3.1. Do obligations to inform and consult employee representatives arise on a direct share sale (ie on the sale of the company itself)?

There is no obligation to inform/consult employee representatives on a direct share sale, unless provided for in an agreement with the relevant employee, which is very rare.

3.2. Do obligations to inform and consult employee representatives arise on an indirect share sale (on the sale of a company's direct or indirect holding company)?

There is no obligation to inform/consult employee representatives on an indirect share sale, unless provided for in an agreement with the relevant employee, which is very rare.

4. Process on outsourcings

4.1. Are employees transferred by operation of law in the following scenarios: (i) on an initial outsourcing of processes/services; (ii) on a change of supplier; or (iii) on an insourcing of processes/services?

If an initial outsourcing of processes or services, a change of supplier or an insourcing of processes or services takes place, employees are not automatically transferred by law. If the employer wishes to transfer its employees to the supplier or service provider, it must terminate the relevant employees' contracts. The supplier or service provider must then make an offer of employment to the employees. The employees' consent to the offer is required.

4.2. Do obligations to inform and consult employees or employee representatives apply in any of these scenarios?

There is no obligation to inform/consult employee representatives in relation to an initial outsourcing of processes or services, a change of supplier or an insourcing of processes or services, unless provided for in an agreement with the relevant employee, which is very rare, or unless necessary to seek their consent to an offer of employment.



5. Process on collective dismissals

5.1. Is a “collective dismissal” (or “mass layoff”) defined by law?

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. Rules on individual dismissals would, however, have to be observed. As to individual redundancy dismissals, please see

5.2. Do obligations to inform and consult employee representatives arise on a collective dismissal?

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see

5.3. Do obligations to inform and consult the competent authorities arise on a collective dismissal?

There is no requirement to inform /consult any authorities in the case of collective dismissals.

5.4. When are these obligations triggered?

Not applicable, as no specific obligations arise in respect of collective dismissals.

5.5. What are the penalties for non-compliance with information and consultation obligations on a collective dismissal?

There are no specific penalties as no specific obligations arise in respect of collective dismissals. Please [see here](#) for the penalties for non-compliance with individual dismissal procedure.

5.6. Do obligations to inform and consult employee representatives and/or competent authorities arise in the context of multiple dismissals, which do not qualify as a collective dismissal, as defined by law?

There is no concept of multiple dismissals, nor any specific regulations regarding multiple dismissals. Rules on individual dismissals would, however, have to be observed. As to individual redundancy dismissals, please see

5.7. Does an employer have options/alternatives when it has been unable to reach agreement with employee representatives during the negotiation period?

There are no specific requirements for employers to consider options or alternatives in the case of collective or multiple dismissals.



6. Process on individual dismissals

6.1. Are employees entitled to a minimum period of notice on dismissal on redundancy or economic grounds?

The minimum notice entitlement is as follows:

- if the employee is on probation, no notice is required during the first month
- after the first month of probation the notice period is as agreed between the parties (but not less than seven days), and
- if the employment contract does not specify a notice period and is not for a fixed term, the notice period is one month if the employee is paid on a monthly basis.

6.2. Does any special procedure apply when proposing to implement an individual dismissal on redundancy or economic grounds?

Generally, notice of termination or payment in lieu of notice must be given to the employee. Employers are not required to follow any other particular procedure before dismissing employees, nor to give reasons for the dismissal (although note that there is protection against dismissal without a “valid reason” –). The employment contract and any legally binding staff handbook should be checked in case they contain any special provisions.

In a limited number of cases the dismissal of employees is prohibited. These extend to employees on maternity or sick leave (among others). An employer who unilaterally dismisses these employees commits an offence.





6.3. Does special dismissal protection apply where dismissals are to be implemented following or in connection with a business transfer?

No special dismissal protection applies for dismissals implemented following, or in connection with, a business transfer.

6.4. Are employees entitled to a minimum severance payment on dismissal for redundancy or economic grounds?

Employees with at least two years' continuous service and whose employment is terminated by reason of redundancy are entitled to minimum severance pay. The amount is calculated as two thirds of the employee's last monthly wages (capped at HKD22,500) for each year of service and pro-rated for an incomplete year. This is currently subject to a maximum payment of HKD390,000.

The employer may elect to set off the amount of severance against any gratuities paid to employees based on their length of service or any retirement benefits attributable to the employer's contributions under a relevant retirement or provident fund paid to the employees. Employees with at least five years' continuous service who are dismissed are entitled to a long-service payment. However, no long-service payment is required if the employee is entitled to a severance payment.

6.5. What are the penalties for non-compliance with individual dismissal procedure?

If notice of termination or payment in lieu of notice is not given, the employer may be liable for wrongful termination. Damages equal to the payment in lieu of notice may be payable.

There is no concept of unfair dismissal, but there is protection against "dismissal without a valid reason" for employees with at least two years' service. Redundancy is one of the permitted "valid reasons" for dismissal. If dismissal is not by reason of redundancy and there is no other valid reason for it, the employee may be awarded "terminal payments" which may include a payment equal to a pro-rated long-service payment even if the employee has not been employed for the requisite five years.

Specific remedies are available to employees who are dismissed in prohibited situations, and the employer may be committing an offence.

6.6. Is there any special legal protection or does any special treatment apply for particular groups of workers?

In a limited number of cases the unilateral dismissal of employees is prohibited. These extend to employees on maternity or statutory sick leave (among others).

7. Process when implementing alternatives to redundancy

7.1. Can changes to employment terms be made with or without express employee consent?

Changes to employment terms require express employee consent.

7.2. Must an employer consult individually or collectively with affected employees or their representatives (if any) before making changes to employment terms?

An employer is required to consult the affected employees before making changes to employment terms since employee consent is required.

There is no obligation to consult employee representatives before making changes to employment terms, unless provided for in an agreement with the relevant employee (which is very rare).

7.3. Do additional restrictions apply if changes are proposed in connection with or following a business transfer?

There are no additional restrictions if changes are proposed in connection with or following a business transfer.

7.4. What are the penalties for non-compliance with these procedures?

If no prior consultation is undertaken with the affected employee, the employer may be liable for unreasonable variation of employment terms and conditions without a valid reason. The employee may seek an order for reinstatement of employment terms or monetary damages equal to payment in lieu of notice. Further, the employee may be awarded “terminal payments” which may include a payment equal to pro-rated severance even if the employee has not been employed for the requisite two years.

7.5. Do national laws promote or permit any alternatives to redundancy (eg layoff or short-time working)?

Alternatives to redundancy are permitted as long as they are agreed by the parties.



8. Process on insolvency

8.1. Do obligations to inform and consult employee representatives arise on the sale of an insolvent business (whether share sale or business sale)?

The same rules apply as for the sale of a solvent business. There is generally no requirement to inform or consult employee representatives in relation to the sale of an insolvent business, unless provided for in an agreement with the relevant employee.

However, if the sale of an insolvent business takes place, employees are not automatically transferred by law, and employee consent is required in order to transfer them with the business. (Please see [here](#) for further information.)

8.2. Does the buyer of an insolvent business inherit employees and/or employee liabilities by operation of law?

On the sale of an insolvent business, employees and employee liabilities are not automatically transferred by law. This is the position whatever the type of insolvency proceedings. Employee consent is required in order for employees to transfer with the business. (Please see [here](#) for further information.) However, if employees do consent to transfer with the business, their period of employment with the seller will count as a period of employment with the buyer. This could affect the buyer's employee liabilities following the sale, since employee entitlements such as severance and long-service payments are calculated based on an employee's length of continuous employment. Whether employee liabilities are transferred is subject to negotiation between the parties. The buyer will typically want to leave such employee liabilities behind with the seller and be solely responsible for liabilities arising after completion of the sale.

8.3. Do obligations to inform and consult employee representatives arise where collective dismissals are to be implemented in an insolvent business?

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. Rules on individual dismissals would, however, need to be observed in an insolvency situation (see [here](#) for further information).



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