ALLEN & OVERY

Employment Reorganisation Roadmap

Thailand

1 April 2021

allenovery.com

Contents

1. Employee representation

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

Trade union representatives (where a union is validly established and registered with the Registrar of the Department of Labour Protection and Welfare) are the main form of employee representation involved in restructurings.

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation, unless a collective agreement 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 in the case of a business sale. The transfer of employees must be agreed separately between a buyer and seller, and employees must consent to the transfer of their employment to the buyer (see answer to **2.4**).

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 are no obligations to inform/consult employee representatives in relation to a proposed business sale, unless a collective agreement provides otherwise. However, from an industrial relations perspective, it is good practice to inform any trade union about the proposed business sale.

If the parties agree that employees will be transferred to the buyer, the consent of each employee is required by law. There is no prescribed process for obtaining such consent, but it is prudent for the employee's written consent to be obtained, which could accompany their written acceptance of a new employment contract with the buyer.

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

There are no obligations to inform/consult employee representatives on a business sale, unless a collective agreement provides otherwise.

Unless the parties obtain an employee's consent to transfer their employment to the buyer, they will not transfer and will remain employed by the seller. In this case, procedural obligations and severance rights may be triggered if the seller has to dismiss those employees (see **section 6 – Process on individual dismissals**).

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 are no requirements to inform/consult employee representatives on a direct share sale, unless a collective agreement provides otherwise.

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 are no requirements to inform/consult employee representatives on an indirect share sale, unless a collective agreement provides otherwise.

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?

Employees are not automatically transferred by operation of law in any of these scenarios. The transfer of employees must be agreed separately in the outsourcing arrangement. Employees will only be transferred to a new supplier/service provider if it offers them employment and they accept.

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

There is no obligation to inform or consult employee representatives in these scenarios, unless a collective agreement provides otherwise. There is no obligation to inform and consult employees, unless a collective agreement provides otherwise, and save to the extent necessary to seek their consent to a transfer of their employment to the new supplier/service provider.

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. As to individual redundancy dismissals, please see **section 6 – Process on individual dismissals**.

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. However, the employer must act reasonably in implementing each dismissal.

Specific notification requirements apply if an employer wishes to dismiss employees due to the restructuring of the work unit, the production process, or the distribution or provision of services, as a result of an introduction or change of machinery or technology (a Technology Implemented Reason) (see answers to **6.1** and **6.2**).

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. However, the employer must act reasonably in implementing each dismissal.

Specific notification requirements apply if an employer wishes to dismiss employees due to a Technology Implemented Reason (see answers to **6.1** and **6.2**).

5.4. When are these obligations triggered?

There are no specific obligations for collective dismissals.

However, if an employer wishes to dismiss employees due to a Technology Implemented Reason, specific notification requirements apply in advance of dismissal (see answers to **6.1** and **6.2**).

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

There are no specific penalties for collective dismissals as there are no specific regulations regarding collective dismissals. Please see answer to **6.5** as to penalties for non-compliance with individual dismissal requirements.

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?

Specific notification requirements apply if an employer wishes to dismiss employees due to a Technology Implemented Reason (see answers to **6.1** and **6.2**).

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

There is no duty on the employer to inform or consult or to reach an agreement with employee representatives.

6. Process on individual dismissals

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

An employer can terminate an indefinite employment contract by giving notice at, or before, any time remuneration is paid. The termination will normally take effect at the time remuneration is next paid, but parties are under no obligation to give more than three months' notice. An employer may elect to make a payment instead of giving notice.

If the proposed dismissals are due to a Technology Implemented Reason, the employer must give employees and the Labour Inspector at least 60 days' advance notice. The employer must confirm the grounds for dismissal, the proposed termination date and the names of employees affected. The employer may make a payment equal to the last 60 days' wages in lieu of giving 60 days' notice.

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

An employer must dismiss an employee on grounds which are reasonable and appropriate. If the fairness of a dismissal is challenged by an employee, the labour court will consider whether or not the dismissal was reasonable and appropriate on a case-by-case basis.

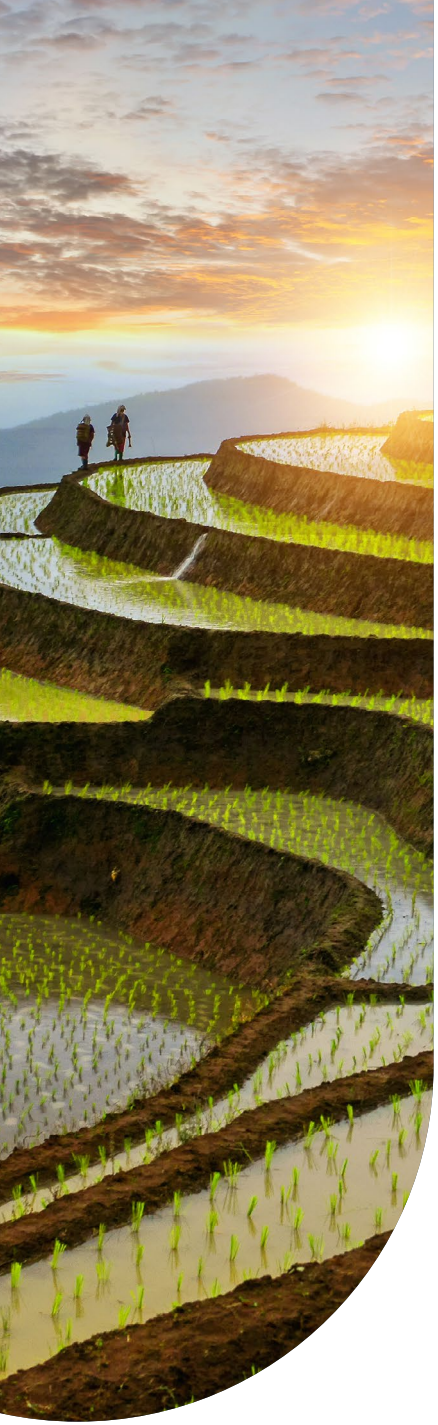
A dismissal may be considered an unfair labour practice (and consequently unfair) if the dismissal is made:

– while employee demands for changes to their terms are being considered, negotiated or mediated, or

– while a collective agreement is in effect.

In these circumstances, an employer is not allowed to dismiss or transfer the employees, their representatives, committee members or members of the labour union or federation, other than in "exceptional circumstances". A restructuring is not an "exceptional circumstance" by law, and individual circumstances would be considered on a case-by-case basis. However, from previous Supreme Court cases, the restructuring could be an "exceptional circumstance" if the employer suffers losses and it is necessary for the employer to downsize the business and make the employee(s) redundant.

There are no statutory requirements for the employer to consult with the trade union about dismissals. However, if the proposed dismissals are due to a Technology Implemented Reason, the employer must, at least 60 days in advance of the date of termination of employment, inform the employees and the Labour Inspector of the grounds for dismissal, the proposed termination date and the names of affected employees (see answer to **6.1**).



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

There is no special dismissal protection by law for the dismissals following or in connection with a business transfer.

However, based on appellate court cases on the termination of employment following a partial business transfer, the termination could be considered unfair if other business of the employer is still operating and the employer does not provide any options for the affected employees to work in other positions or departments before dismissing them.

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

Yes. The minimum severance payment for an employee who has worked for a continuous period of 120 days is as follows:

– 120 days' but less than one year's service – 30 days of wages or salary

– one but less than three years' service – 90 days of wages or salary

– three but less than six years' service – 180 days of wages or salary

– six but less than ten years' service – 240 days of wages or salary

– ten but less than 20 years' service – 300 days of wages or salary, and

– 20 years' service or more – 400 days of wages or salary.

Additional severance entitlements are triggered in certain cases, eg:

– Employees are entitled to terminate their employment contracts and to receive 100% of normal severance pay as special compensation, if they do not want to be relocated to a new office of the employer (provided the relocation has an important effect on the normal way of life of the employee or their family and the employees have given 30 days' notice of the relocation).

– If dismissals are due to a Technology Implemented Reason, the employer must (in addition to normal severance pay and any payment in lieu of the 60 days' notice requirement) pay additional compensation to employees who have been employed for at least six years. This compensation is an amount equal to 15 days' wages for each year of employment, subject to a maximum amount of 360 days' wages. A year of employment for this purpose is a period of work of more than 180 days.

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

If the labour court finds the dismissal to be an unfair labour practice, it may impose penalties on the employer. Penalties for the employer comprise a fine not exceeding Baht 100,000 and/or imprisonment for directors not exceeding six months.

In addition, the employee may have claims against the employer for unfair dismissal. If the labour court considers that an employee has been unfairly dismissed, the court may order reinstatement at the level of remuneration applying at the time of dismissal, or order payment of compensation. There is no specific formula for the calculation of compensation. The court will consider various factors including the age of the employee, the length of service, the hardship for the employee at the time of dismissal and the cause of the dismissal.

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

Special protection applies to certain categories of employees, for example, to female employees and employees who are members of a labour union or of an employees' committee (if any). An employer is prohibited from dismissing an employee on the grounds of pregnancy. An employer may face criminal charges if it dismisses an employee on the grounds that they are a member of a labour union, or takes any action which may restrict their ability to continue working with the employer on the ground that they are members of a labour union.

An employer must also obtain consent from the Labour Court to dismiss an employee who is a member of an employees' committee, to reduce their wages, or to punish and/or deny them the opportunity to perform their duties.

In addition, a dismissal may be considered an unfair labour practice (see answers to **6.2**, **6.3** and **6.5**).

7. Process when implementing alternatives to redundancy

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

Any detrimental change to employment terms or working conditions would require the affected employees' consent. There is no prescribed process for obtaining the consent. To be prudent, the employer should obtain a written consent from each affected employee.

An employer may make changes to terms of employment which are beneficial to employees without 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?

There are no requirements to consult individually or collectively with affected employees or their representatives in relation to changes to employment terms, unless a collective agreement provides otherwise or unless it is necessary to seek employee consent to detrimental changes.

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

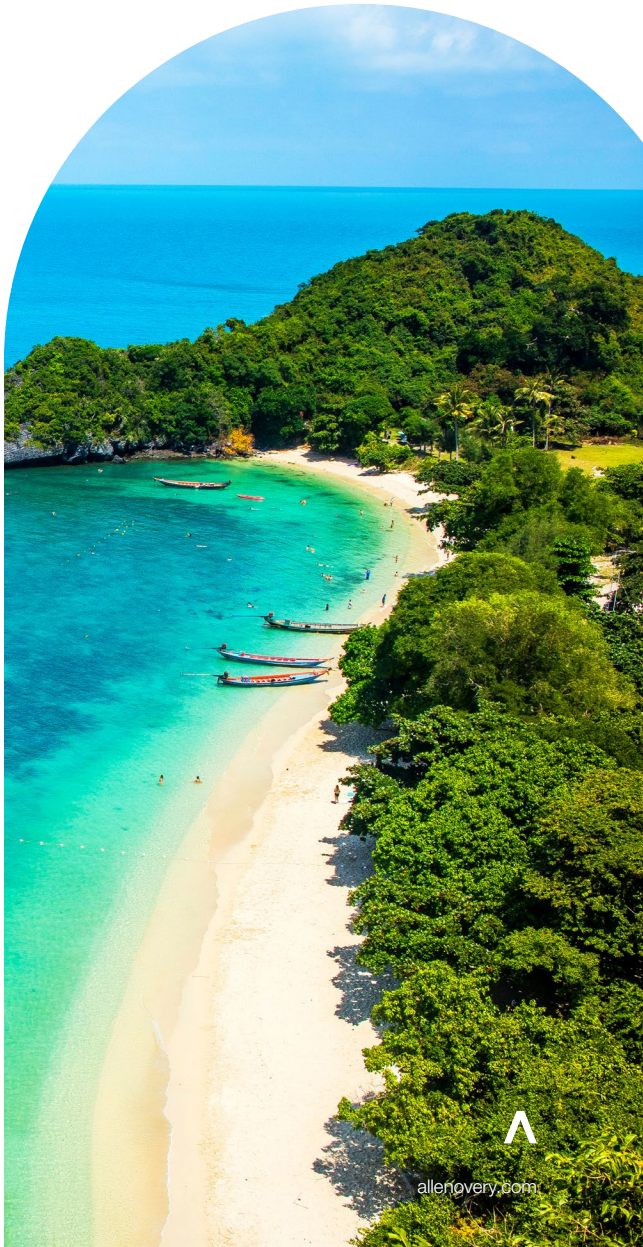
No additional restrictions apply if changes are proposed in connection with or following a business transfer.

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

If the employer fails to obtain consent from the affected employees for any detrimental change in employment terms or working conditions, it will be liable for a fine not exceeding Baht 1,000 per each affected employee.

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

Thai law does not promote alternatives to redundancy. However, alternatives can be agreed between an employer and the relevant employees.



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 in the case of 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 a collective agreement provides otherwise, though it is good practice to inform any trade union about the proposed sale from an industrial relations perspective.

Although there is no statutory obligation to consult employees about the business sale, the consent of each employee to a change in employer is required by law. There is no prescribed process for obtaining the consent.

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

The position depends upon whether there is a transfer of the employees from the seller to the buyer.

The consent of each employee to a change in employer is required by law. There is no prescribed process for obtaining this consent. 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 can potentially affect the buyer's employee liabilities following the sale since employee entitlements such as severance are calculated based on an employee's length of continuous employment.

If the seller has to dismiss employees because they refuse to consent to the transfer of their employment to the buyer, or because the seller company is closing down and no employees will transfer to the buyer, procedural obligations and severance rights will be triggered. Please see **section 6 – Process on individual dismissals** for further information.

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. However, the employer must act reasonably in implementing each dismissal. These duties still arise in relation to dismissals in an insolvent business, and the same penalties apply although there are no specific penalties for collective dismissals (see **section 6 – Process on individual dismissals** for further information).

9. Contacts

Noparat Kaewsringarm
Partner
Tel +662 263 7689
noparat.kaewsringarm@allenovery.com

Patcharanon Bumroongsook
Associate
Tel +662 263 7649
patcharanon.bumroongsook@allenovery.com

For more information, please contact:

Thailand

Allen & Overy (Thailand) Co., Ltd.
23rd Floor, Sindhorn Tower III
130-132 Wireless Road
Lumpini
Pathumwan
Bangkok
10330

Tel +66 2 263 7600

GLOBAL PRESENCE

ROW
CS2104_CDD-63701_Thailand

allenovery.com