

ALLEN & OVERY

# Employment Reorganisation Roadmap

Czech Republic

1 April 2021



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# 1. Employee representation

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

The main forms of employee representation involved in restructurings are:

- trade union representatives
- the works council, and
- the representative concerned with occupational safety and health protection at work.

## 1.2. Is there a system of employee participation rights?

A compulsory system of employee participation in the supervisory board of joint stock companies applies. Where a joint stock company has more than 500 employees, one third of the members of the supervisory board are elected by the employees. The articles of association of a joint stock company may allow a higher number of members of the supervisory board to be elected by the employees. The articles may also allow employees to elect members of the supervisory board even if a joint stock company has fewer than 500 employees.

A special system of employee participation rights also applies in state enterprises. One third of the members of the supervisory board are employees elected by the other employees.



## 2. Process on business sales

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

Employees are automatically transferred on the transfer of certain activities of an employer' (or of part of them). A business sale is considered by law to qualify as a transfer of activities.

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

Employees employed by the seller immediately before the transfer and who are assigned to the business or undertaking (or part) will transfer to the buyer. Whether an employee is "assigned" depends on factors such as the percentage of time they spend working in the business or undertaking, the strength of their connection with it, and whether they work for it only temporarily.

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

An employee may decide to terminate their employment as a result of the transfer (see answer to 6.3). The objection does not affect the validity of the transfer.

An employee is also entitled to terminate their employment (either by mutual agreement or notice served by the employee) on the ground that working conditions have substantially deteriorated. In such a case the employee will be entitled to a severance payment (see answer to 6.4).

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

Information must be given to employee representatives early enough (and in any case not later than 30 days before the effective date of the transfer) to enable consultation on any envisaged measures to take place before a business transfer. Consultation on measures must be "with a view to reaching an agreement" on them.

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

Failure to inform/consult the trade union or works council may result in a fine for the employer of up to CZK200,000 (approximately EUR7,700). There is a general right to strike, but no precedent on whether employees can exercise this right where there has been a failure to inform/consult.



## 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 of a Czech company, provided that no changes are contemplated regarding employees and operations. However, if as a result of the share sale there are any substantial changes concerning the employer, such as changes to internal organisation, structural changes or rationalisation measures, then the obligation to inform/consult will arise.

### **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 (ie a sale of a foreign parent company with a Czech subsidiary), provided that no changes are contemplated regarding employees and operations. However, if as a result of the share sale there are any substantial changes concerning the employer, such as changes to internal organisation, structural changes or rationalisation measures, then the obligation to inform/consult will arise.



# 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?

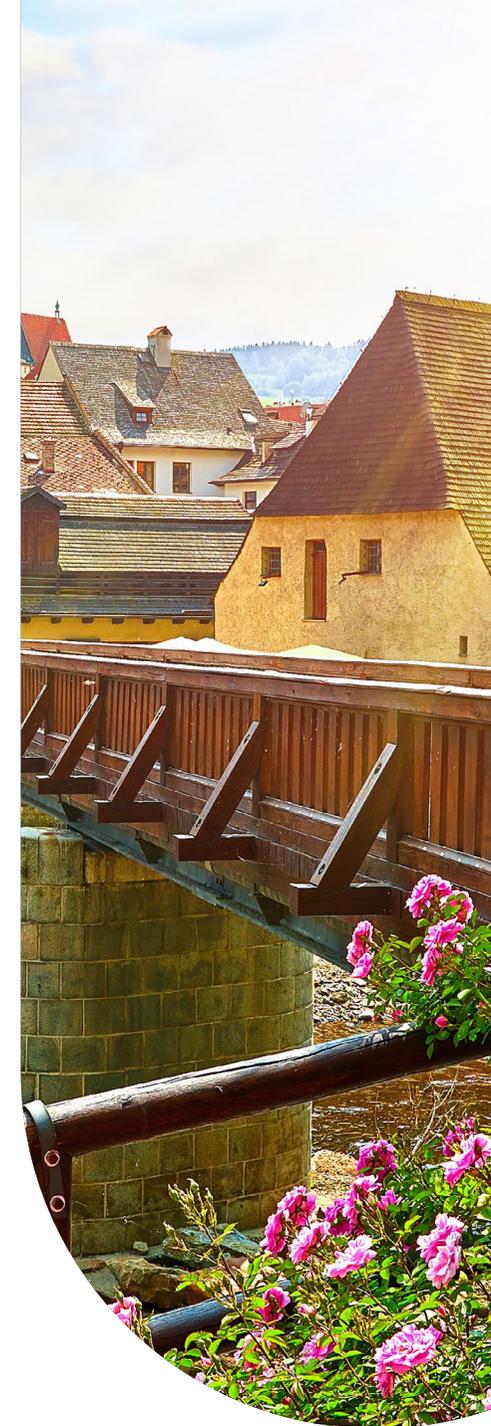
These scenarios may constitute a transfer of activities (or part of them) pursuant to the Czech Labour Code and involve an automatic transfer of employees provided that:

- the activity transferred is performed in the same or a similar way, and to the same or a similar extent, after the transfer
- the activity transferred does not consist wholly or mainly of the supply of goods
- immediately prior to the transfer, a group of employees was intentionally set up by the employer solely or predominantly to conduct the activity being transferred
- the activity being transferred is not intended to be short term or of a one-off nature, and
- assets are transferred, or the right to use assets, if such assets are essential for the performance of the activity being transferred, or a substantial number of employees used by the current employer to perform the activity being transferred are taken over by the new employer where the activity depends substantially on employees rather than assets.

Generally, a change of supplier should not constitute a transfer of activities (or part of them) pursuant to the Czech Labour Code and therefore should not involve an automatic transfer of employees. However, an initial outsourcing of processes/services and insourcing of processes/services may involve an automatic transfer of employees provided that the above conditions are met.

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

Provided that the scenario constitutes a transfer of activities (or part of them) pursuant to the Czech Labour Code (see answer to 4.2), information must be given to employee representatives early enough (and in any case not later than 30 days before the effective date of the transfer) to enable consultation on any envisaged measures to take place before a business transfer. Consultation on measures must be “with a view to reaching an agreement” on them.



# 5. Process on collective dismissals

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

A collective dismissal arises where dismissals are proposed within a 30 day period affecting:

- at least ten employees in an undertaking with 20-100 employees
- at least 10% of employees in an undertaking with 101-300 employees, or
- 30+ employees in an undertaking with 301+ employees.

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

An employer must consult employee representatives “with a view to reaching an agreement” over a minimum 30 day period before notices of dismissal are given.

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

The employer must inform the competent labour office in writing of its intention to collectively dismiss its employees. It must also deliver a report on the outcome of negotiations to that labour office (copied to employee representatives).

Please note that these obligations do not affect the employer’s general notification obligations in relation to dismissals, such as to notify the competent social security office of the termination of the employment.



#### **5.4. When are these obligations triggered?**

The employer must consult for collective dismissals and notify the authorities arises when dismissals are “proposed” before it takes a final decision on the collective dismissals.

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

Penalties are similar to those applicable on business sales (see answer to **2.5**). Breach of the information and consultation obligations may render dismissals ineffective. Employees may seek damages for loss.

#### **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 are generally no obligations to inform/consult employee representatives on multiple dismissals which do not qualify as a collective dismissal. However, where such dismissals constitute a structural or other substantial change to the business of the employer, obligations to inform/consult will arise.

Please note that general notification obligations of the employer in relation to dismissals (such as to notify the competent social security office of the termination of the employment) will still apply.

#### **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 reach 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?

The minimum notice entitlement is two months, unless provided otherwise.

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

A dismissal must be justifiable on statutory grounds (ie a dissolution or relocation of an employer, or a redundancy of an employee following the employer's decision regarding a change of its activities or its technical equipment, a reduction in the number of employees to increase efficiency, or other organisational changes). The relevant trade union must be consulted in advance of a dismissal.

Please note that notice of termination cannot be validly served on certain categories of protected employees (see answer to 6.6).

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

An employee must not be dismissed solely on grounds of the business transfer.

If an employee terminates their employment on grounds of the business transfer within 15 days of being informed about the business transfer in line with the requirements of the Czech Labour Code (**see section 2 – Process on business sales**), the employment will terminate on the day preceding the effective date of the business transfer.

If the employer has not fulfilled its information obligations on the business transfer and the effective date of the business transfer has not been reached, the employee may terminate their employment on grounds of the business transfer. The termination will take effect from the day preceding the effective date of the business transfer. If the effective date has already passed, the employee may still terminate their employment within two months following the effective date of the business transfer with a notice period of 15 days.

An employee is also entitled to terminate their employment (either by mutual agreement or notice served by the employee) on the ground that working conditions have deteriorated substantially as a result of the business transfer. In this case the employee will be entitled to a severance payment (please see answer to 6.4).





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

The statutory severance payment in the case of termination of employment for organisational reasons is:

- one times average monthly earnings for employees employed less than one year
- two times average monthly earnings for employees employed at least one year but less than two years, or
- three times average monthly earnings for employees employed at least two years.

The amount of statutory severance pay can be increased in an individual employment agreement, collective agreement or internal regulations.

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

If the procedure is not followed, a court may find the dismissal unlawful. Provided that the employee has made a written request for reinstatement to the employer without undue delay following the unlawful dismissal, the court will order:

- the reinstatement of the employee and
- compensation of their average monthly earnings for the period starting from the employee's request for reinstatement until the reinstatement itself, or until a valid termination of employment. Upon the employer's request and in justifiable cases, the court may reduce the compensation to six times the average monthly earnings.

Non-compliance with individual dismissal procedure may result in a fine for the employer of up to CZK2,000,000 (approximately EUR77,000).

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

Notice of termination (depending on the ground for termination) cannot be validly served on certain protected employees (eg an employee on sick leave, maternity leave or parental leave, a pregnant employee, or an employee temporarily released to perform a public function) during certain protected periods.

# 7. Process when implementing alternatives to redundancy

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

Generally, no change to the employment agreement may be made without the employee's consent (unless the law provides otherwise). However, certain employment terms (mainly variations to non-core terms) may be included in internal regulations which may generally be changed without express employee consent. Please note, however, that certain internal regulations may be changed only with the express consent of the employee representative.

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

Given that express employee consent is required in certain cases, employers should consult affected employees about the proposed changes individually.

Furthermore, employers must generally inform/consult employee representatives on fundamental changes to the working conditions of their affected employees.

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

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

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

Non-compliance may result in the changes being invalid and a fine for the employer of up to CZK200,000 (approximately EUR7,700).

Employees could also bring claims or litigate based on a breach of law.



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

If employees cannot perform work due to certain restrictions affecting the employer, they may be transferred to other work or given reduced pay (60%, 80% or 100% of pay depending on the nature of the restrictions).

Although the ability to work from home (“home office” work) is not codified in detail by Czech law, it is generally allowed. Please note that the conditions for home office work should, as a minimum, be included in the internal regulations of the employer or agreed on with individual employees. Unless these conditions are expressly agreed with an employee, an employer may not force the employee to work from home.

The Czech Labour Code expressly permits short-time work (reduced hours but without reduced pay) or part-time working (reduced hours and reduced pay). Short-time working may be introduced by an employer either by an internal regulation or a collective agreement. Part-time working requires the express consent of the affected employee.

As an emergency measure in response to the Covid-19 pandemic, the government created the “Antivirus” Scheme which is currently extended until 30 April 2021. The Scheme reimburses employers for a proportion of the wage costs and includes:

- compensation of payments to employees in quarantine
- compensation of payments to employees of businesses subject to mandatory closure
- support for reduced working hours, and
- support payable to employees taking care of children.

The government is deciding whether to substitute the “Antivirus” Scheme with the “*Kurzarbeit*” Scheme which would provide compensation to employees in scenarios where their employer is not able to assign work to them (for example, due to unforeseen circumstances such as the Covid-19 pandemic). As a result, the wage costs would not be borne in full by the employer but would be borne partly by the state too.



# 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 obligations apply as for the sale of a solvent business (see section 2 – Process on business sales).

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

Under Czech transfer of undertakings regulations, employees transfer to the buyer of an insolvent business where this is sold as a going concern by the insolvency administrator, in the context of bankruptcy or reorganisation proceedings (which are court-approved and for the purpose of rescuing the company). Note, however, that employee liabilities incurred prior to the business transfer do not transfer to the buyer (unless otherwise agreed).

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

The same obligations apply as for collective dismissals in a solvent business (see section 5 – Process on collective dismissals).



# 9. Contacts



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