ALLEN & OVERY

Employment Reorganisation Roadmap

France

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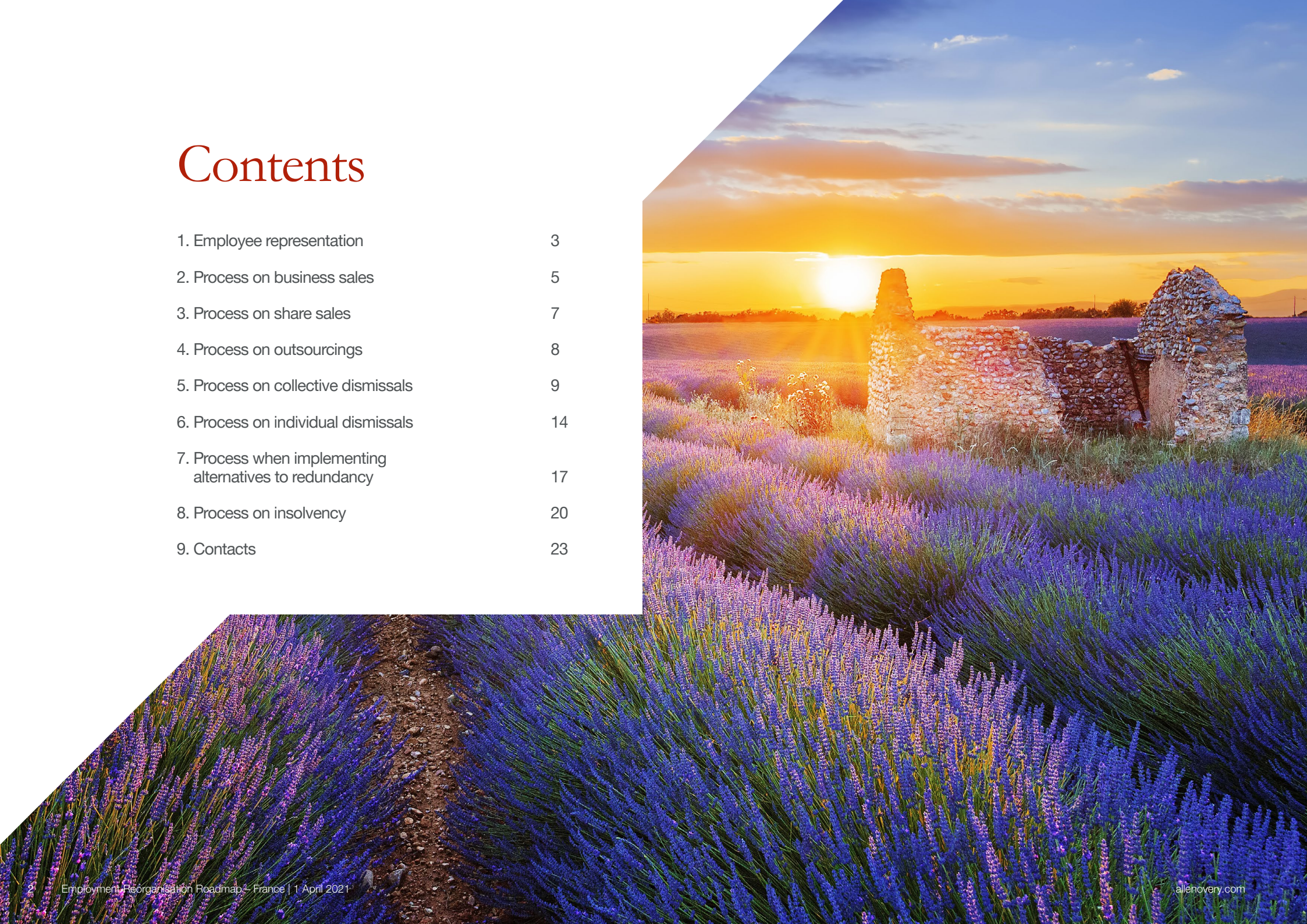


1. Employee representation

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

The main forms of employee representation involved in restructurings are:

– the Social & Economic Committee (*Comité Social et Économique* or CSE), a single committee which replaces the three separate bodies that previously represented employees at the workplace (the employee delegates, works council and health and safety committee). This must be elected when the company reaches the threshold of 11 employees for 12 consecutive months and must be consulted about all restructuring projects, regardless of their nature - the CSE is normally set up at company level, but in cases where the company has at least 50 employees and at least two different workplaces, separate CSEs should be set up at both the company and each workplace; and

– the Group Committee – the French Labour Code provides for a consultation procedure with the Group Committee in the case of a takeover bid for a dominant company in the group.

1.2. Is there a system of employee participation rights?

Employee representation at board level (ie at the level of the management board or supervisory board, depending on the company's structure) is compulsory in French companies (*sociétés anonymes or sociétés en commandite par actions*) with at least 1,000 or more employees in France or 5,000 employees worldwide (including subsidiaries) in their headcount for two consecutive fiscal years.

Companies which have as their main activity the acquisition and management of subsidiaries and shareholdings are exempted from the obligation to set up employee representation if:

– they are not required to set up a CSE

– the governing bodies of their subsidiaries include employees, and

– their shares are not admitted to trading on a regulated market and at least 80% of their shares are held, directly or indirectly, by a natural or legal person acting alone or in concert with others.

The company's statutes must provide for a mechanism to select one or two employee representative board members (depending on the number of board members). Representatives may be selected by way of election or may be appointed by different employee representative bodies, subject to the structure of the company and the mechanism chosen.

Certain companies that are not subject to compulsory employee representation may continue to provide voluntarily in their statutes for the possibility to appoint employee representatives elected for this purpose as board members. If the company is a listed company and the employees hold 3% of the company's share capital, at least one representative of the employee shareholders must be appointed to the management or supervisory board.

The CSE is also entitled to nominate between one and four representatives among its members (depending on the particular circumstances of the company) to attend management or supervisory board meetings (although these CSE representatives are not full board members). Furthermore, in state-controlled companies and in a certain number of privatised companies, employee board representation is compulsory.

2. Process on business sales

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

Under section L 1224-1 of the French Labour Code, where an “autonomous” business (or part of a business) is transferred, in particular as a result of a sale, employment contracts of the employees in the business are automatically transferred to the buyer.

Elements which are necessary to define an “autonomous” business are that: (i) there must be an economic activity with its own specific objectives; (ii) the activity must have tangible and/or intangible assets (eg trademarks and customers) and employees; (iii) the assets and the employees must be dedicated to the specific economic activity; and (iv) the business must be continued after the transfer.

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 working mainly for the business (or a part of it) will transfer to the buyer. Whether an employee works mainly for the business (or a part of it) is a question of fact, having regard to factors such as the percentage of time they spend working in it, the strength of their connection with it, and whether they work for it only temporarily. The French Supreme Court ruled on 30 September 2020 that employees partly dedicated to the transferred business would, under certain circumstances, transfer only in relation to the part of the duties that they perform for the transferred business (ie the employees would have two part-time contracts, one with their current employer and one with the new owner).

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

Employees cannot object to the automatic transfer of their employment contract. They can, however, challenge the automatic transfer of their employment contract on the basis that they are not working mainly for the transferred business and claim damages against the seller and buyer jointly and severally.

The transfer of employment contracts of protected employees (ie employee representatives) can only occur after authorisation by the labour authorities if the transfer is in relation to part of a company’s business.

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

The seller/buyer must inform and consult their CSE, if it has the prerogatives of the former works council, before any decision is taken to proceed with a business sale (ie before any binding agreement in relation to the sale is signed). Prior to the first consultation meeting, the employer must provide the CSE with a memorandum which provides details of the buyer and sets out the reasons for the business sale and the consequences for employees.

Unless otherwise agreed with the members of the CSE, the maximum consultation timelines are as follows:

– one month

– two months if the CSE appoints one or several experts during the consultation procedure, or

– three months if the CSE appoints one or several experts during the consultation procedure and consultation takes place both at the level of the central CSE and at the level of the workplace CSE.

Once these time limits are reached, provided the employer has given sufficient information and responses to the CSE's questions, the CSE will be considered to have been properly informed and consulted and to have rendered a negative opinion on the project. The employer can then proceed with the project; it is not bound by the opinion, as the CSE has a consultative role only.

Specific obligations to inform the CSE apply in merger control situations. The labour authorities' prior authorisation is required for the transfer of a protected employee (eg an employee representative) on a transfer of part of a business.

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

A failure to comply with obligations to inform/consult is a criminal offence known as "*délit d'entrave*" (obstruction to the proper functioning of the staff representative body) and is punishable by a fine of EUR7,500 for the legal representative of the company and EUR37,500 for the employer. The CSE can also file summary proceedings for the transaction/relevant decision to be suspended until it has been duly informed and consulted.

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)?

The seller/buyer and the target company must inform and consult their CSEs on a direct share sale. The timing requirements and penalties are similar to those on business sales (see **section 2 – Process on business sales**).

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)?

On an indirect change of control of a company, prior consultation with the CSE of that company is not legally required, unless at least one of the following conditions is met:

– it is common practice within the group to consult with that company's CSE on an indirect change of control

– the sale of a direct or indirect holding company would have an effect on the organisation, management or general running of the company (among other matters)

– the transaction has a direct financial impact on the calculation of company employees' profit share under profit-sharing arrangements

– there is a redundancy plan affecting company employees currently being discussed or implemented, or planned to be disclosed in the short term

– the transaction is comprised only of French entities or the French business is a substantial part of the transaction

– the financing structure of the transaction may have an impact on the company's general operations, in particular if the target company gives guarantees and security, or contributes to the servicing of interest and capital payments, in respect of the acquisition debtor, or

– the parent company of a French subsidiary being sold (which could be a foreign parent company) has no "substance" (ie the parent company is purely a holding company without operational activities and without employee representatives).

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 automatically transferred in any of these scenarios where certain conditions are met. The processes/services transferred must be considered a separate economic entity which is similar to the "autonomous" business concept used for business sales (see **section 2 – Process on business sales**).

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

The parties to the outsourcing arrangement should inform and consult their CSE about it. The timing requirements and penalties are similar to those applying to a business (see **section 2 – Process on business sales**).

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 two or more employees.

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

Consultation obligations depend on whether the dismissals involve:

– between two and nine employees, or

– ten or more employees in an undertaking with 50+ employees.

Procedure for dismissal of between two and nine employees within the same period of 30 days: The CSE, which has limited powers in companies with fewer than 50 employees and more extensive powers in companies with 50+ employees, must be informed and consulted about the collective dismissals. In companies with fewer than 50 employees, the employer must organise at least one meeting and subsequently provide minutes to the labour authorities. In companies with 50+ employees, the CSE must also be informed and consulted about the restructuring leading to the collective dismissals, and give its opinion on it within one month. A preliminary meeting must be held with each employee, and notices of dismissal cannot be given for at least seven days. The labour authorities must be informed of the dismissals within eight days of the dismissal being notified.

Procedure for dismissal of ten or more employees within the same period of 30 days (in a company with fewer than 50 employees): The CSE (which has limited powers) must be informed and consulted about the collective dismissals. The employer must hold at least two meetings a maximum of 14 days apart. As well as being required to provide the labour authorities with the relevant documents, the employer must follow a specific procedure to notify the labour authorities, which must start no earlier than the day following the first consultation meeting. The labour authorities have 21 days as from the notification date to check that the dismissal procedure and related measures are legally compliant. Notices of dismissal cannot be given until at least 30 days after the authorities have been notified of the project (and not before responses are provided to any comments made by the labour authorities).

Procedure for dismissal of ten or more employees within the same period of 30 days (in a company with 50+ employees): A social plan (*"plan de sauvegarde de l'emploi"*) should be set up. This should be done either by: (i) negotiating a majority collective agreement with the trade unions; or (ii) drawing up a "unilateral document" (see below). The employer must inform the labour authorities if it starts negotiations with the trade unions, follow a specific notification procedure (starting on the day following the first CSE consultation meeting) and also provide relevant documents to the authorities. During the procedure, the labour authorities may provide comments and/or suggestions concerning the procedure or content of the collective redundancy plan to which the employer must respond. Employee representatives may also request that the authorities order the employer to provide specific information or to comply with its legal obligations. Key requirements are:

– **Social plan by majority collective bargaining agreement**: If the employer starts negotiations with the trade unions, any resulting collective agreement must be signed by one or several trade unions that have obtained at least 50% of votes during previous professional elections. The agreement must provide details of the contents of the social plan (measures aimed at avoiding or mitigating the effects of redundancies, including redeployment measures) and can also contain provisions concerning the CSE's consultation procedure and other specific details concerning the redundancies. The trade union representatives may be assisted by an independent expert paid for by the company. The CSE must be informed and consulted on the planned restructuring project, its implementation and the consequences of planned terminations in terms of health, safety or working conditions, but not on the content of the majority collective agreement; it is not competent to suggest modifications to the content of the social plan or other specific details concerning the redundancies (if provided for in the collective agreement). The legal time limits (see below) for CSE consultation apply unless the collective agreement provides otherwise. Once the CSE consultation procedure is completed and its opinion (positive or negative) is obtained, the collective agreement is sent to the labour authorities. The labour authorities have 15 days to check that the agreement and the procedure are legally compliant. If they validate the agreement (or do not refuse to validate it within the 15-day period), the employer can then dismiss the employees by implementing the measures in the social plan.

– **Social plan by issuance of a unilateral document**: If the employer does not start negotiations (or negotiations fail), it must draft a "unilateral document" which sets out the content of the social plan and other specific details concerning the redundancies. A unilateral document is also required if the collective agreement negotiated does not cover all relevant elements. The CSE must be informed and consulted about the unilateral document and also about the restructuring leading to the collective dismissals and the consequences of planned terminations in terms of health, safety or working conditions. Once the works council consultation procedure is completed and its opinion (positive or negative) is obtained, the final document is sent to the labour authorities. The labour authorities have 21 days to check that the document and the procedure are legally compliant (taking into account, among other matters, the financial situation of the company and the group and the measures proposed with respect to the scale of the collective redundancy project). If the labour authorities approve the document (or do not refuse approval of it within the 21-day period), the employer can then dismiss the employees by implementing the social plan measures in the unilateral document.

– **Consultation timeline**: The CSE must hold at least two meetings, a minimum of 15 days apart, and may appoint an expert to assist it with its analysis of the project. Specific time periods apply for the exchange of information and questions between the employer and expert, which must render its report 15 days before the end of the maximum period for consultation. The CSE has a maximum period of two, three or four months to give its opinion, depending on the number of dismissals envisaged (10-99 dismissals, 100-249 dismissals or 250+ dismissals respectively), at the end of which it may be deemed to have been properly consulted. These timelines commence from the date of the first consultation meeting with the CSE.

Site closures: In the event of a site closure, employers that are required to implement redeployment leave (see **section 6 – Process on individual dismissals**) must search for a prospective buyer and inform and consult the CSE in this respect before a definite closure and during the redundancy consultation procedure (Florange Act). In the event of a breach of this obligation, the labour authorities may request the reimbursement of some of the financial aid granted to the employer. A reimbursement request can only be made for aid granted during the two-year period preceding the CSE's meeting on the restructuring project, and the labour authorities must take into account the employer's ability to repay such aid without causing, or increasing the number of, dismissals. More importantly, where a social plan needs to be set up, the labour authorities will not validate the majority collective bargaining agreement nor approve the unilateral document if there has been a breach of this obligation.

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

Please see the answer to **5.2** as to duties to inform/consult the labour authorities and their involvement in the collective dismissal procedure.

5.4. When are these obligations triggered?

The obligation to consult for collective dismissals/notify the authorities arises when dismissals are "proposed" – this must occur before any decision to dismiss has been taken.

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

Dismissal of between two and nine employees and dismissal of ten or more employees in a company with fewer than 50 employees: Employee representatives may apply for a court order to request the suspension of the employer's decision to implement the dismissals until all procedural requirements are fulfilled.

Dismissal of ten or more employees in a company with 50+ employees: If dismissals are carried out without the labour authorities' approval/validation, or the administrative tribunal cancels an approval/validation decision on the grounds that no collective redundancy plan has been put in place or that the plan is insufficient, the dismissals are considered to be null and void and the employee may be reinstated or may receive compensation of at least their salary over the last six months.

Other obligations: Non-compliance with information and consultation obligations towards employee representatives or with notification obligations towards the labour authorities is a criminal offence (délit d'entrave) which may result in fines (EUR7,500 for a company manager and EUR37,500 for the company for certain offences). Employees may also be entitled to compensation if, among other circumstances, their dismissal is deemed void, unfair, or certain elements of the procedure are not followed (see answer to **6.5**).

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?

Whenever a redundancy procedure is considered for at least two employees, it is considered to be a "collective" redundancy, requiring consultation with the CSE and information to be provided to the labour authorities. The procedures differ according to the number of redundancies being considered, the number of employees within the company and the reference period over which the redundancies will be implemented.

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

In the context of a procedure for the dismissal of ten or more employees within the same 30-day period in a company with 50+ employees, if the negotiations with trade unions fail, the employer must draft a unilateral document which
sets out the content of the social plan and other specific details concerning the redundancies (see answer to **5.2** for further information.)

With regard to consultation with the CSE, once the time limits are reached, and provided the employer has given sufficient information and responses to the CSE's questions, the CSE may be considered to have been properly informed and consulted and to have rendered a negative opinion on the project. The employer may then proceed with the project (subject to the labour authorities' approval in some cases – see answer to **5.2**). The employer is not bound by the CSE's opinion as it has a consultative role only.

6. Process on individual dismissals

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

The legal minimum notice entitlement depends on length of service:

– less than six months' service – no statutory set duration (depends on the applicable collective bargaining agreement, the company's collective agreement or the company's custom and practice)

– six months to two years' service – one month

– more than two years' service – two months

Notice is generally enhanced by collective agreements which often provide one month for blue-collar workers, two months for supervisors and three months for executives.

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

There must be a legitimate "economic dismissal" (this applies to both individual and collective dismissals). The economic grounds must be legitimate, ie real (exact, precise and objective) and serious (so that the continuation of the employee's contract is no longer possible), such as substantiated economic difficulties or the need to safeguard the company's competitiveness. If no criteria are provided in the applicable collective agreement, legal selection criteria must be used. There are strict obligations to consider redeployment within the employer and its group prior to notification of dismissal. For an individual dismissal, a preliminary meeting must be held with each employee. Notices of dismissal cannot be given for at least seven business days (15 business days for an executive employee), and local labour authorities must be informed within eight days of dismissal notification.

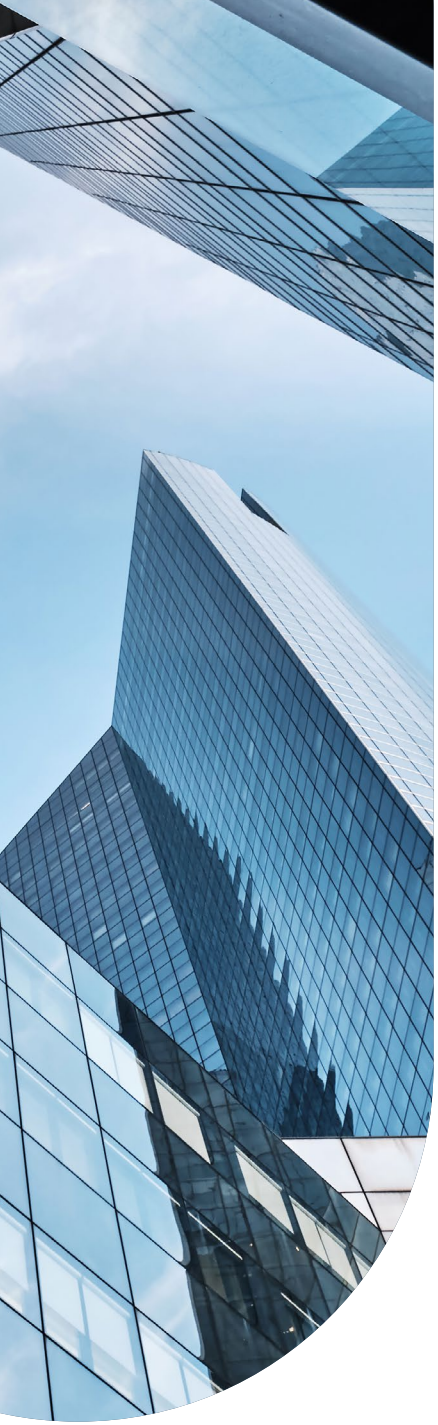
In the case of large companies or groups of companies (ie those with 1,000+ employees in France, or 1,000+ employees in total with a head office in France or 1,000+ employees in the European Union and at least 150 employees in at least two Member States), a redeployment leave programme (*congé de reclassement*) must be proposed to the employee. When offered the redeployment leave programme, the employee has eight calendar days to accept or refuse it. The redeployment leave programme lasts between four to 12 months but can last less than four months, subject to the employee's express approval. The duration can be increased to 24 months when the redeployment leave programme is used for professional retraining by the employee. During this redeployment leave, the employee is entitled to 100% of their salary during the redeployment period corresponding to the notice period and to at least 65% of their salary during the redeployment period after the notice period. As long as the employee is entitled to redeployment leave, their employment agreement is not treated as terminated.

If the company is not required to propose a redeployment leave programme, it must offer a "contract for professional security" (*contrat de sécurisation professionnelle* (CSP)) to the employees being made redundant. This programme, which is administered by the French Unemployment Agency (*Pôle Emploi*), provides employees with additional training and helps them to find a new job for a maximum period of 12 months. When offered the CSP, the employee to be made redundant has 21 calendar days in which to accept or refuse it. If accepted, the employment contract will be terminated amicably at the end of the 21-day period and the salary in respect of the notice period (subject to a three-month limit) will be paid directly to the unemployment authorities if the employee has more than one year's service. If the employee has less than one year's service, the notice period payment must be made directly to the employee. Employees who accept the CSP do not work during the notice period as the employment contract automatically terminates at the end of the 21-day period. Employees will then receive an allowance from the unemployment authorities for a maximum 12-month period (generally 75% of previous salary if the employee has more than one year's service and 57% if the employee has less than one year's service). Redeployment leave or CSP (as appropriate) must be offered to all employees dismissed for economic reasons, ie in an individual or a collective dismissal situation.

A specific procedure must be followed in order to dismiss protected employees, and the labour authorities' prior authorisation is required.

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

Dismissals can occur before or after the transfer provided that they are justified by a "real and serious cause" (ie for personal or economic reasons). Failing this, the dismissals implemented prior to the transfer (in particular, to avoid the automatic transfer of contracts) or by reason of the transfer will be deemed null and void and will be subject to compensation (entirely at the buyer's expense, unless otherwise agreed between the parties in the sale documentation). In practice, dismissals are rarely implemented prior to a business transfer on account of this risk.



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

In the case of an economic dismissal, the minimum severance payment for employees with at least one year of service is based on length of service:

– 1/4 of a month's salary per year of service for up to ten years' service, and

– an additional 1/3 of a month's salary per year of service as from 11 years' service.

Payments are often enhanced by a collective agreement or collective redundancy plan.

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

An employee may be entitled to damages if a court finds the dismissal unfair or if certain elements of procedure are not followed:

– **Unfair dismissal**: if the dismissal is not justified by a real and serious cause, and the employee's reinstatement in the workforce is not proposed or is refused, the employee will be granted an indemnity, the amount of which is set according to a legal scale (taking into account the employee's seniority and the number of employees within the company). However, this scale is no longer applicable when the dismissal is considered illegal (eg for discriminatory reasons or due to circumstances of harassment). In this case, the employee will be awarded compensation, the amount of which cannot be less than their wages for the last six months; and

– **Irregular dismissal**: where an irregularity has been committed during the proceedings but the dismissal is based on a "real and serious cause", the court will grant the employee, at the employer's expense, compensation not exceeding one month's salary.

In addition, the employer could be ordered by the courts to reimburse the unemployment authorities for unemployment benefits that have been paid to the employee from the date of dismissal to the date of the court's judgment (up to a maximum amount of six months' benefits). If certain elements of the procedure are not followed, this may constitute a criminal offence.

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

Staff representatives (including CSE members and trade union delegates) enjoy special protection in relation to the termination of their employment contracts.

In such a case, it will be necessary to consult the CSE, and then obtain the authorisation of the labour authorities to ensure that the termination is lawful, that it is carried out properly and, in particular, that the reasons for it are stated and are unrelated to the staff representative's office.

7. Process when implementing alternatives to redundancy

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

There is a distinction between the conditions for amending the so-called “essential elements” of the employment contract (such as working time, compensation, job title) which require the express agreement of the employee, and the “non-essential elements” which are subject to the employer’s power of direction and which do not require the employee’s express agreement (such as the employee’s duties, within certain limits).

Where the proposed change affects an essential element of the employment contract (as defined by law), the employer must obtain the express, clear and explicit consent of the employee.

Employers may also wish to enter into a “collective performance agreement”, negotiated with their trade unions or, under certain conditions, staff representatives. A collective performance agreement will enable the employer to change the employee’s working time, compensation and geographical/professional mobility rights. The provisions of the collective agreement would automatically replace those of the employees’ employment contract. To do so, employers must inform their employees of the contents of the collective performance agreement, and they must be given one month to decide whether to accept or refuse such change. If they refuse, the relevant employees would be dismissed, and their dismissal would be considered lawful and based on a real and serious cause.

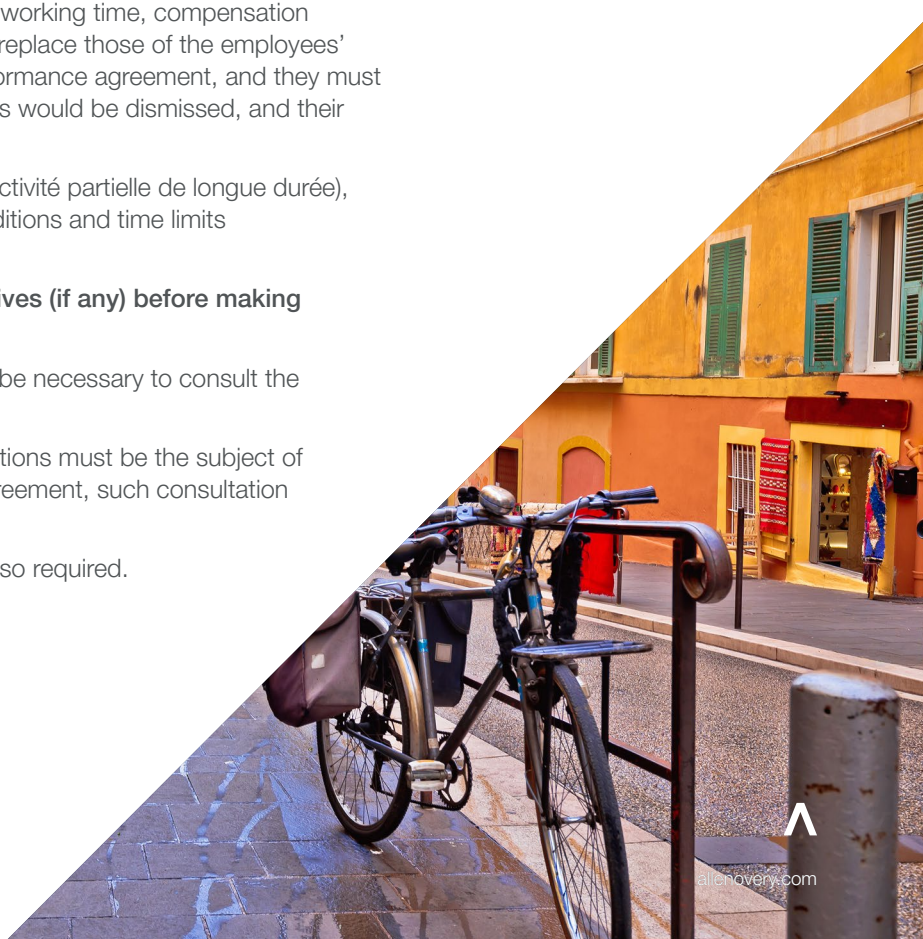
In the context of Covid-19, companies that face a lasting downturn may also apply for “long-term furlough” (activité partielle de longue durée), a scheme under which employees’ working time may be unilaterally decreased by up to 40%, subject to conditions and time limits (see answer to **7.5** for further information).

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

Where the express agreement of the employee is required for changes to his/her employment contract, it will be necessary to consult the employee, but there is no need to consult the employee representatives.

On the other hand, where changes are based on economic grounds and are not of a one-off nature, modifications must be the subject of consultation with the CSE before any decision is taken. As an exception, unless otherwise provided for by agreement, such consultation is not compulsory in the case of individual modifications for economic reasons.

With respect to collective performance agreements and long-term furlough, prior consultation of the CSE is also required.



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

The continuation of the employment contract on the terms applicable with the previous employer does not affect the new employer's right to make changes to the contract.

However, the purpose of the proposed change must not be to avoid the application of the rules on business transfers.

In this case, the proposed changes, as well as any dismissal if the employee refuses to accept the changes, would be ineffective. Moreover, the employer is likely to be held liable in the event of fraud, particularly in the event of collusion with the former employer (eg in the event that the seller dismisses an employee who is then hired by the buyer, in order to avoid the transfer of seniority and acquired benefits).

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

Where a change in the employment contract does not comply with the relevant requirements, such as the need to obtain the express agreement of the employee or, in some cases, to consult the CSE or to seek its opinion, the proposed measure is ineffective.

The change is deemed never to have been made, while a dismissal grounded on an employee's refusal of the changes would be considered unjustified, and subject to the relevant financial consequences (see answer to **6.5**).

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

French law offers the possibility for employers to agree a mutual termination of the employment contract, so that the end of the working relationship is negotiated. In this way, parties can freely agree on the conditions under which the employment relationship is terminated. Should mutual terminations be envisaged on a collective basis, companies must enter into a collective agreement with their trade unions and inform their CSE. Once the collective agreement has been signed and filed with the labour authorities, employees may apply for individual mutual termination. Such an agreement usually provides for enhanced indemnification for employees.

In addition, and in particular when the employer encounters economic difficulties, furlough allows the employer to temporarily reduce the volume of hours usually worked by its employees. In this case, the employer pays the employee only for the work actually performed, while the hours not worked are compensated and partially reimbursed by the State.

In the context of Covid-19, furlough has been extended. Companies that face a lasting downturn may apply for "long-term furlough" (*activité partielle de longue durée*) for a maximum period of 24 months within a 36-month period, consecutive or not. Companies must: (i) sign a collective agreement or apply the terms of an industry-level agreement; and (ii) file an application request with the labour authorities electronically. Under this scheme, employees' working time may be unilaterally decreased by up to 40%, and they will receive from their employer an hourly allowance equal to 70% of their gross salary, while the company will receive an indemnification from the State of 60% of the employee's gross salary.

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)?

French law provides that employee representatives must be informed and consulted in respect of specific circumstances that arise during the different types of insolvency proceedings, including in respect of the sale of an insolvent business. There is no specific defence available for failure to inform/consult on the sale of a business in an insolvency situation. Employee representatives also have the right to provide their opinion before the commercial tribunal at certain specific stages of insolvency proceedings.

Note: As the rules in respect of different types of insolvency/restructuring proceedings differ in France, "insolvency proceedings" for the purposes of this question mean rehabilitation proceedings (*redressement judiciaire*) and liquidation proceedings (*liquidation judiciaire*) as these concern companies which are insolvent (ie cannot make required payments). There are other types of proceedings in France which allow restructuring under the court's supervision (*sauvegarde judiciaire or safeguard proceedings*), but which apply to companies that are still solvent although they may face difficulties that they may not be able to overcome (and which may lead to insolvency). The specific rules for each of these types of proceedings should be checked.

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

Employees: The provisions of French law which provide for the automatic transfer of employees when an autonomous economic entity is transferred and retains its identity after the transfer (article L. 1224-1 of the French Labour Code and related case law) apply in the context of insolvency proceedings irrespective of whether these are terminal (eg liquidation proceedings (*liquidation judiciaire*)) or non-terminal (eg rehabilitation proceedings (*redressement judiciaire*)). A buyer of an insolvent business or part of an insolvent business would therefore inherit employees working for the business prior to transfer, except for those employees who have been dismissed prior to the transfer, as long as the dismissals have been carried out with the approval of the insolvency judge or provided for in, and carried out in accordance with, the terms of a court-approved rehabilitation plan or liquidation, and authorisation of the labour authorities has been obtained for protected employees.

Liabilities: Article L. 1224-2 of the French Labour Code provides that a buyer of a business is normally required to inherit employee liabilities that arose prior to the transfer (although employees may also bring a claim in respect of these liabilities against the transferor). The transferor is then required to reimburse the buyer for these liabilities unless otherwise agreed between the parties. However article L. 1224-2 specifically states that this rule concerning the transfer of liabilities does not apply to business transfers that occur in the context of insolvency proceedings (no distinction is made between terminal and non-terminal proceedings) and the buyer therefore inherits only those liabilities that arise post-transfer.

Note: For the purposes of this question “insolvency proceedings” mean rehabilitation proceedings (*redressement judiciaire*) and liquidation proceedings (*liquidation judiciaire*) (see answer to **8.1** for further information).

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

The French Labour Code provides for a slightly simplified information and consultation procedure with employee representatives (and information and approval/validation procedure with the labour authorities) where collective dismissals are implemented in a business which is subject to insolvency proceedings. The exact procedure to be followed depends on the type of proceedings, the stage at which the dismissals are carried out in the proceedings and the number of employees to be made redundant. It is important to note that, depending on the stage of the particular proceedings, the dismissals must be authorised by the insolvency judge or provided for and carried out in accordance with the terms of the court-approved rehabilitation plan or liquidation.

There is no specific defence available for failure to inform/consult on collective dismissals in an insolvency situation.

Note: For the purposes of this question "insolvency proceedings" mean rehabilitation proceedings (*redressement judiciaire*) and liquidation proceedings (*liquidation judiciaire*) (see answer to **8.1** for further information).

9. Contacts

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