

ALLEN & OVERY

Employment Reorganisation Roadmap

Hungary

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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 works council (in companies with 50+ employees)
- the employees' representative (in companies with 15-50 employees), and/or
- trade union representatives.

2.2. Is there a system of employee participation rights?

Participation rights of employees in management are, in general, exercised through works councils. In certain cases, the works council has a right to co-decision, to provide its prior opinion or to be informed on specific matters.

One-third of the members of the supervisory board of companies must be employees in the case of companies with 200 or more employees (calculated on an annual average basis). The management and the works council may agree that the employees will not participate in the supervisory board.



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 sale of a business or undertaking (or part of one) to the buyer where certain conditions are met. This applies where there is the transfer of a separate economic unit (such as a separate business unit, plant, shop, division, workplace, or any section of these if it operates separately) to an organisation or person with the objective of them operating or reinitiating the relevant business activity.

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

All employees employed as part of the transferring business unit will transfer to the buyer. Whether an employee is part of the business unit is a question of fact, having regard to factors such as the employee's job description, the work that they actually do for the business unit and the amount of time that they spend working for it.

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

An employee can terminate their employment with notice within 30 days after the transfer of a business. The employees may give notice on account of a substantial change in their working conditions to their detriment and if, as a result of the transfer of their employment, maintaining the employment would entail unreasonable disadvantage or would be impossible. The employees are then treated as dismissed and entitled to severance after three years of service at the employer.

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

Information must be given to the works council or employees' representative at least 15 days prior to the planned date of the business transfer. Consultation must take place on any measures envisaged.

In the case of companies with fewer than 15 employees, the employees must be notified directly.

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

If the employer fails to comply with information/consultation requirements, the works council may initiate proceedings before the court. The court may then declare that the employer has failed to comply with information/consultation procedures.



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, provided that no measure is contemplated in relation to the share sale which may affect a large number of employees of the target company.

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, provided that no measure is contemplated in relation to the indirect share sale which may affect a large number of employees of the target company.

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 business unit (eg comprise assets and/or employees necessary and sufficient to conduct a separate business) and must be transferred with the objective of the supplier/transferee pursuing substantially the same business.

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

Obligations to inform/consult apply in each case as they do on a business sale ().



5. Process on collective dismissals

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

A collective dismissal arises where dismissals are to be implemented within a 30-day period affecting:

- at least ten employees in an undertaking with 21-99 employees
- at least 10% of employees in an undertaking with 100-299 employees, or
- 30+ employees in an undertaking with 300+ employees.

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

An employer must initiate consultation with the works council or the employees’ representative about the proposed dismissals “with a view to reaching an agreement” at least 15 days prior to making its decision on a collective dismissal. Information must be delivered at least seven days prior to the commencement of consultation.

The relevant employees and the works council/employees’ representative (as well as the labour authorities) must again be notified when the decision has been made on the collective dismissals after the consultation process. Notices of dismissal cannot be given to the employees until at least 30 days after the date on which these final notifications are made.

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

The employer must inform the competent labour authorities at the same time as informing the works council/employees’ representative of the proposed dismissals. The labour authorities must again be notified when the decision has been made on the collective dismissals after the consultation process.

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?

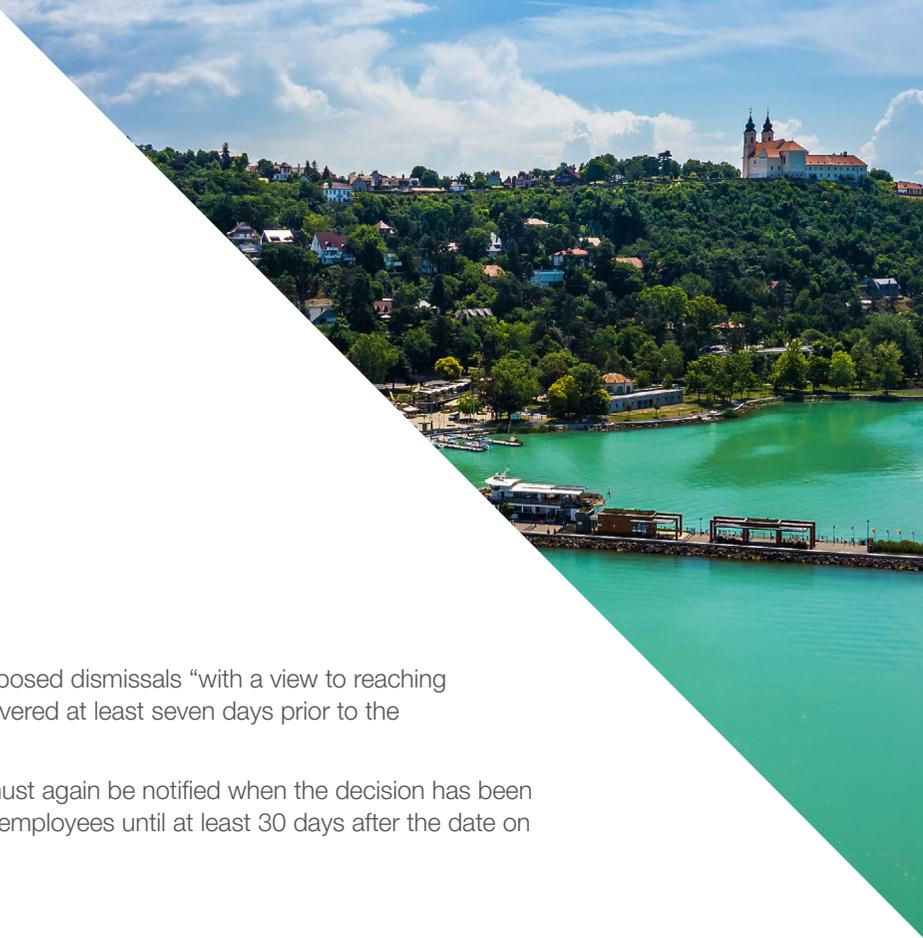
Failure to notify employees or the authorities, or breach of the agreement reached as a result of the consultation procedure, renders dismissals invalid.

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 no such obligations.

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 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?

The minimum notice entitlement depends on length of service. This ranges from 30 days (for those with less than three years' service) to a maximum of 90 days (for those with 20+ years' service). Notice periods may be extended by up to a maximum of six months by contract or for a longer period by collective agreement.

In the case of executive employees, the statutory notice period may be excluded by agreement between the employer and the employee.

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

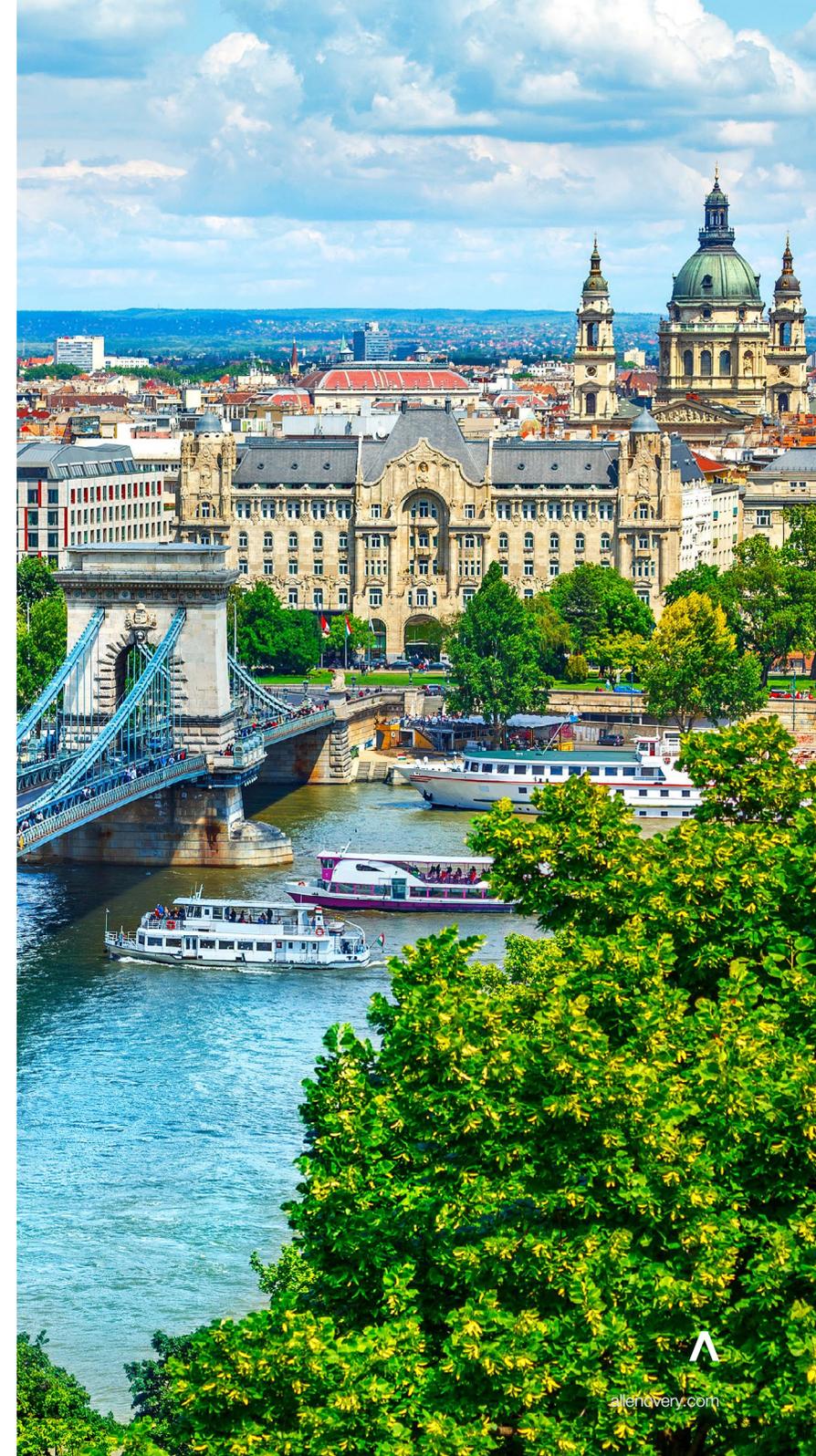
The ordinary dismissal rules apply; there are no special rules applicable in relation to redundancy. The termination must be reasoned and justified, and there are strict formalities for serving notice.

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

The ordinary dismissal rules apply; there are no special rules applicable in relation to a business transfer. The termination must be reasoned and justified (but the transfer of the business alone is not a valid reason), and there are strict formalities for serving notice. The 15-day notice to be given to the works council or the employees prior to the business transfer must set out any anticipated effects on employees, including planned dismissals (as to obligations to inform/consult on a business transfer).

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

Entitlements under the ordinary dismissal rules apply. The minimum severance payment depends on length of service. This ranges from one month's "absence fee" (in the case of three or more years' service) to a maximum of six months' "absence fee" (in the case of 25+ years' service). The "absence fee" is generally equal to base salary.



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. The employee may either seek damages for losses suffered (in addition to any unpaid severance which is due) or an amount equal to the “absence fee” payable during the relevant notice period. Damages for lost income are capped at an amount equal to 12 months’ absence fee.

In certain special circumstances, the court may order the reinstatement of the employee (at the employee’s request).

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

Notice of termination cannot be validly served on certain protected employees, notably:

- during an employee’s pregnancy
- during an employee’s maternity leave
- during unpaid leave of absence taken to care for a child
- during any period of actual voluntary reserve military service, or
- in the case of women who are receiving treatment related to a human reproduction procedure, for up to six months from the beginning of such treatment.



7. Process when implementing alternatives to redundancy

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

Changes to terms of the employment agreement can be made with express employee consent.

Terms that are not regulated in an agreement between the employer and employee (eg a discretionary bonus policy) may be unilaterally changed by the employer without the employee's 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 should consult (discuss, negotiate and agree) proposed changes of the terms of the employment agreement individually, as such changes cannot be made without the affected employee's consent.

The employer must consult (discuss, negotiate and agree) collectively with the representatives of the trade union(s) operating at the employer regarding any change to the terms of a collective agreement. If a works council operates at the employer, the employer must consult with it regarding any proposed changes affecting a large number of 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.

A termination of employment may not be justified by reason of a business transfer alone.

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

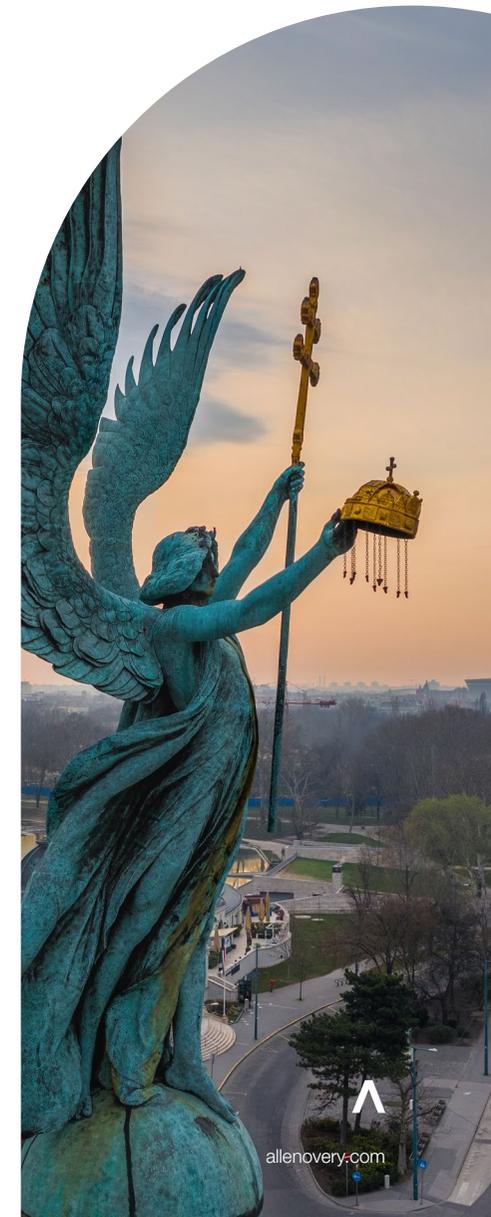
Non-compliance with these procedures will result in an amendment to the employment agreement being found to be null and void.

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

A government decree allowed for a deviation from the Hungarian Labour Code in support of short-time working until 8 February 2021.

Under the Labour Code, in the event that an employer fails to provide employment as contracted during the scheduled working time ("downtime"), the employee is entitled to their base wage, unless this is due to unavoidable external reasons.

New legislation was expected that would promote flexible working and working from home arrangements. The bill is not yet available.



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 in the case of the sale of a solvent business in terms of individual notice to transferring employees 15 days prior to the transfer date (). Other information and consultation obligations do not apply in insolvency proceedings.

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

Under Hungarian transfer of undertakings regulations, employees and employee liabilities normally transfer to the buyer of an insolvent business. This is the case when the seller is subject to bankruptcy proceedings (*“csődeljárás”* which, in Hungary, are court-approved proceedings the purpose of which is to rescue the company) or a voluntary dissolution procedure.

However, in the case of insolvent liquidation (*“felszámolási eljárás”*), employees and employee liabilities do not transfer automatically to the buyer. They remain with the seller to allow for the winding-up of the insolvent transferor entity.

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 in the case of collective dismissals in a solvent business ().



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