ALLEN & OVERY

# Employment Reorganisation Roadmap

## Russia

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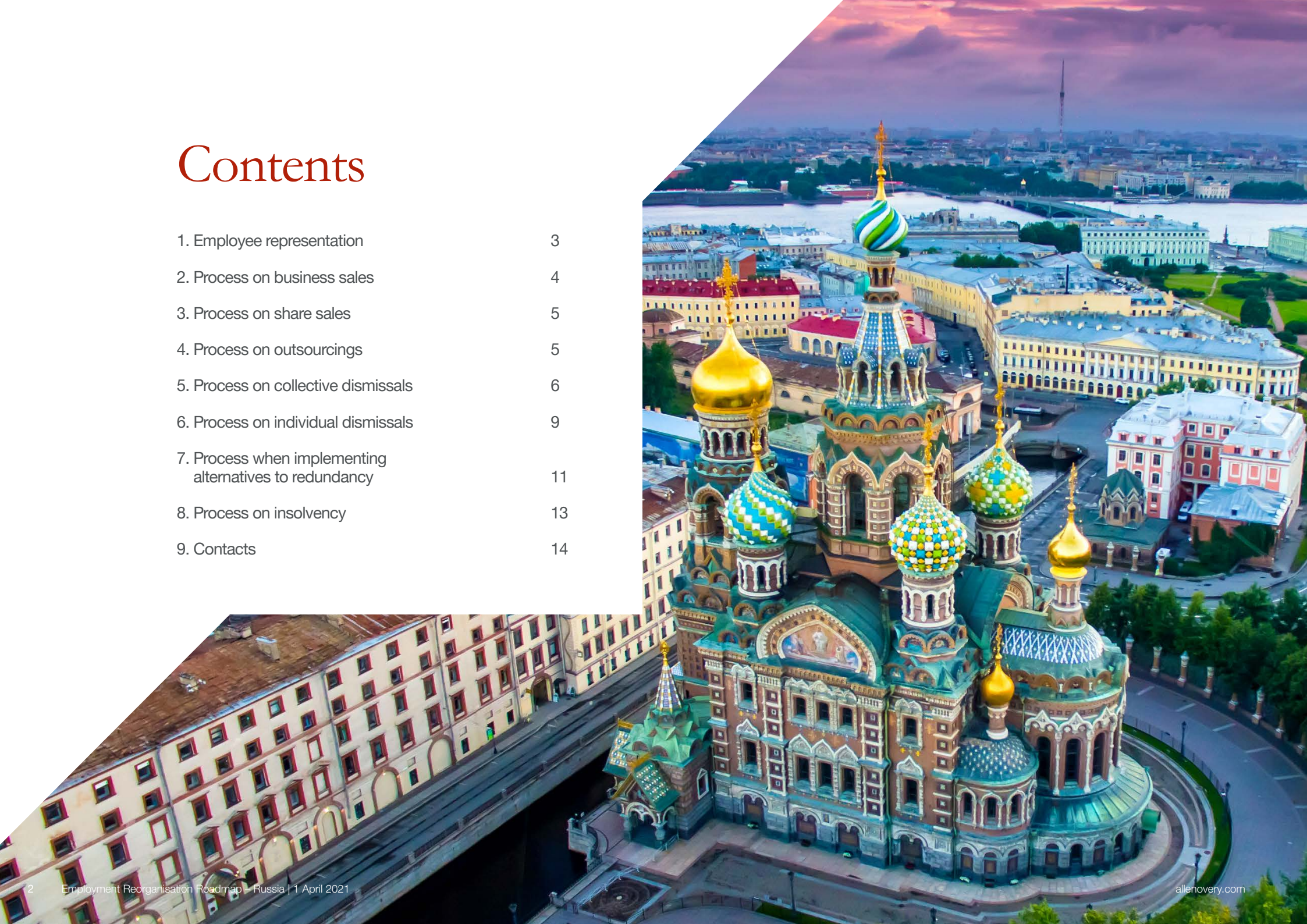
# Contents





# 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 primary trade union organisation and its associations (non-unionised employees may also authorise a primary trade union to represent their interests in relationships with the employer on the terms set out by the primary trade union), and

– other representatives (a representative body) elected by employees, where employees are not unionised or where a primary trade union represents fewer than half of the employees.

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

Employees are not entitled to board-level representation, unless a collective agreement provides otherwise. However, employee representatives have the right to give their prior opinion and to be informed about specific matters. For example, the Russian Labour Code (RLC) entitles them to obtain information from management in relation to a proposed reorganisation or winding-up of the company, to make appropriate proposals to management, including those relating to introduction of new internal regulations (local normative acts) and to participate in management meetings when these proposals are considered.

# 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. Employees involved in the business may choose either to transfer their employment to the buyer or to reject the transfer. Under the RLC, any transfer to another employment requires the explicit written consent of relevant employees. If a business is transferred, the employment contracts of employees who consent to be transferred are terminated with the seller and new employment contracts are concluded with the buyer.

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

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

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

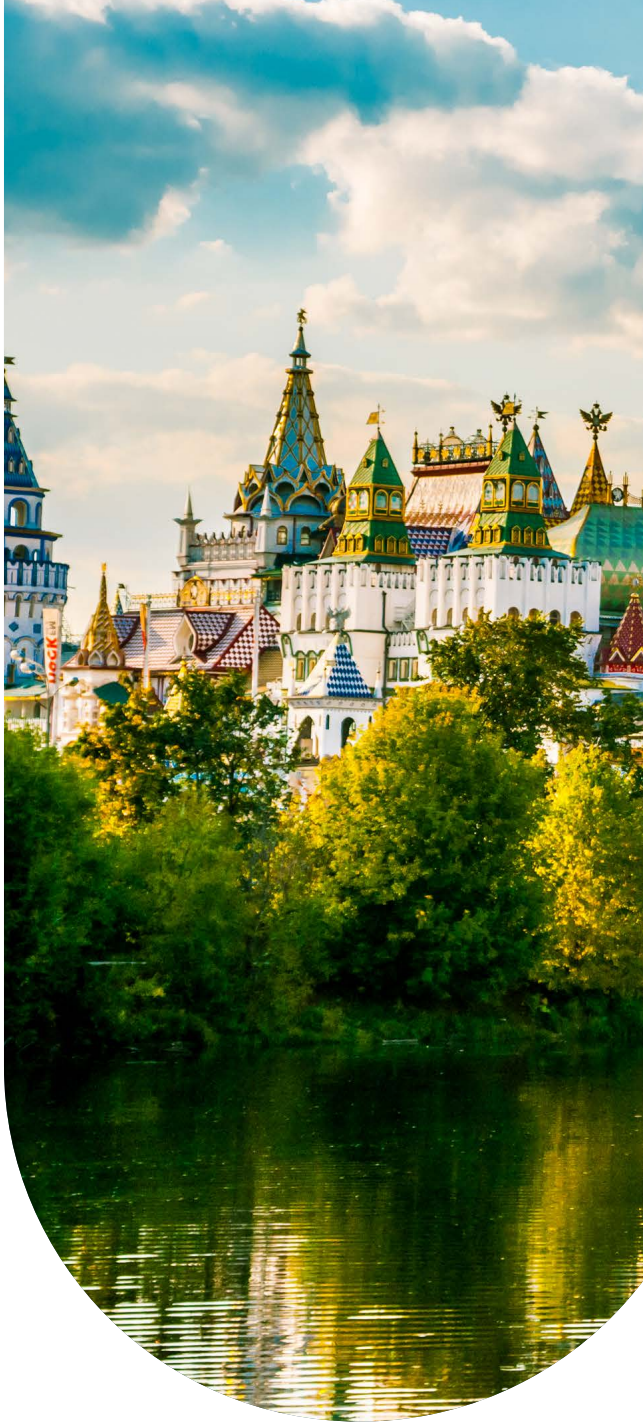
There is no automatic transfer of employees on a business sale.

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

There is no obligation to inform/consult employee representatives in relation to a proposed business sale, unless a collective agreement provides otherwise.

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

If the seller/buyer does not obtain employee consent to the transfer, the employees will not transfer with the business from seller to buyer. In this case, procedural obligations and severance rights may be triggered if the seller has to terminate the employment of 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 is no obligation to inform/consult employee representatives on a share sale, provided there are no changes contemplated regarding employees and/or operations.

**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 there are no changes contemplated regarding employees and/or operations.

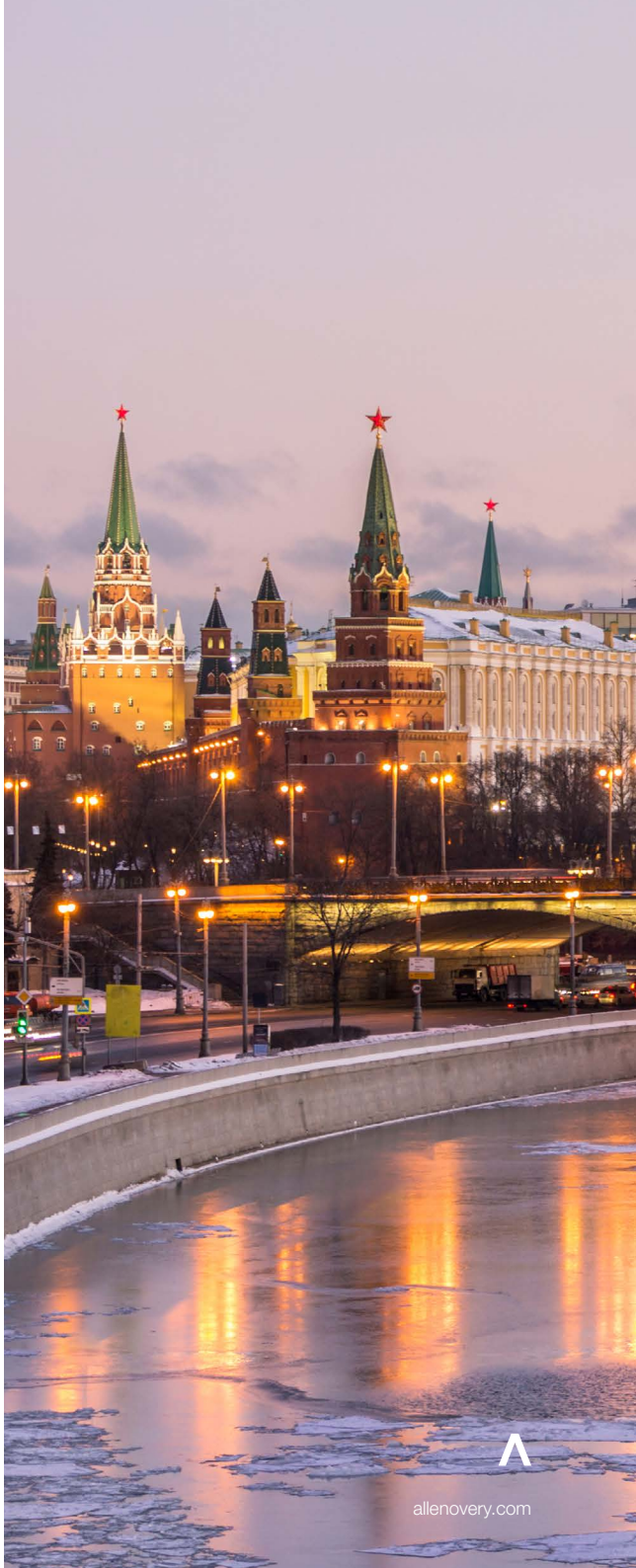
# 4. Process on outsourcings

**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 transfer to a new supplier/service provider if they consent to the transfer of their employment.

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

There is no obligation to inform/consult employee representatives in these scenarios. There is no obligation to inform/consult employees save where necessary to seek their consent to a transfer of their employment.



# 5. Process on collective dismissals

**5.1. Is a "collective dismissal" (or "mass layoff") defined by law?**

A "collective dismissal" is not defined in the RLC. However, applicable industrial and/or territorial collective agreements will specify what constitutes a collective dismissal.

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

An employer must give the relevant trade union three months' written notice of a proposed collective dismissal.

If the employer is going to dismiss the members of the trade union, it must also ask the trade union to provide its opinion regarding the dismissal. In this case the employer must send the trade union a draft order and documents indicating the grounds for its proposals.

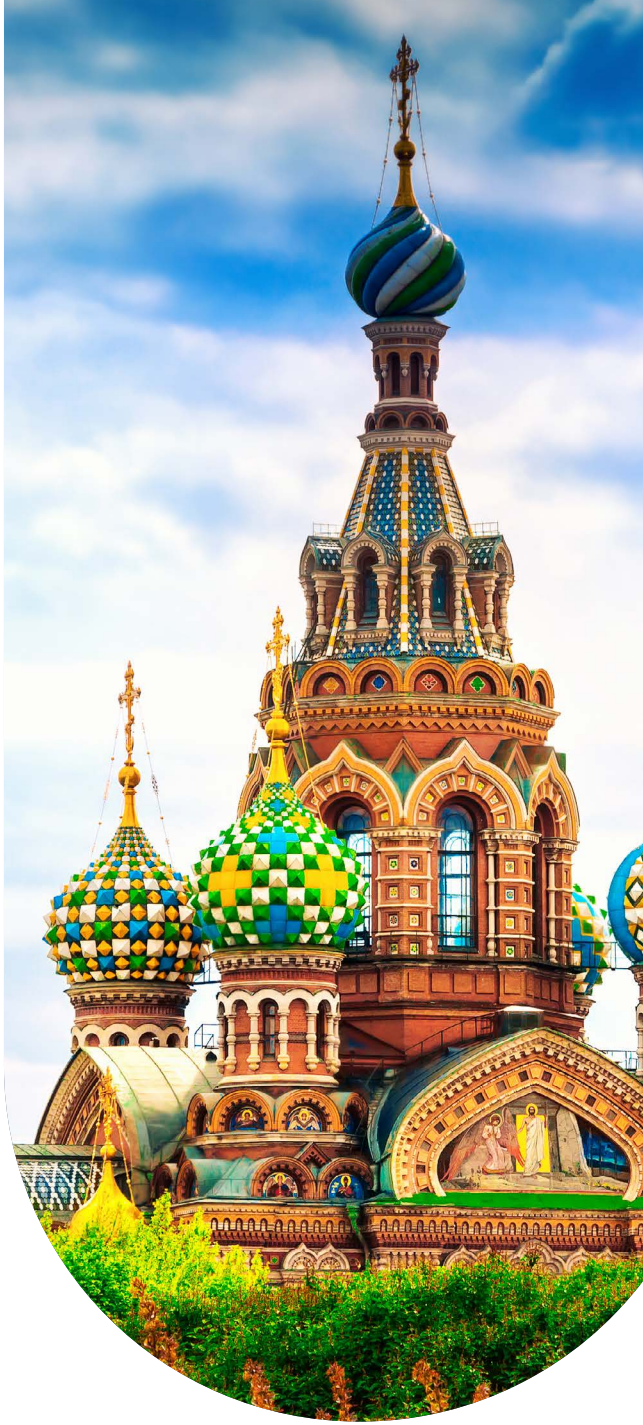
The trade union must notify any objection to the employer's proposals within seven business days of receiving the draft order and supporting documents. If the trade union fails to comply with this seven-day time limit and/or does not provide its opinion, or provides an unsubstantiated opinion, the employer may make a decision without taking the position of the trade union into account.

If the union contests the proposals, consultation will take place within the next three business days. Consultation entails negotiations between the trade union and employees.

The RLC does not stipulate any formal procedure for consultation, thus leaving the organisation of the process to the parties. The results of consultation are recorded in writing. If the employer and the trade union do not reach agreement on the matter within ten business days from when the employer originally sent documents to the trade union, the employer can make a final decision on whether or not to proceed.

Termination of employment must occur no later than 30 days after receipt of the motivated trade union's opinion. Failure to comply with this requirement may result in an employee challenging the termination of employment on the grounds of illegality.

Collective agreements may contain other procedures.



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

The employer must give the local employment centre three months' written notice of its proposals, specifying the position, profession, area of specialisation and qualification(s) of each employee to be dismissed as well as the terms of payment to employees.

In addition, as a temporary measure enacted due to the Covid-19 pandemic, employers must publish information about future dismissals on the website "Work in Russia" (this measure will be in force until 31 March 2021 unless it is extended).

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

The dismissal procedure is initiated when the employer notifies the trade union and the local employment centre. Therefore, it is up to the employer to decide when it should notify the trade union and the local employment centre.

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

An employer may be subject to a fine of RUB30,000 to RUB50,000. Russian law does not provide for criminal sanctions for employers who breach collective dismissal procedures.

The employer's decision to dismiss can be appealed to the state labour inspectorate, which will make a decision within ten days of receiving the complaint, and/or to a court. The inspectorate or court (as the case may be) could issue an injunction against the employer, preventing it from implementing the dismissals, if it finds the proposed action to be unlawful.

In addition, a dismissal may be considered unlawful, for example, in cases where the employer fails to observe the notice period and the procedure for consultation with the trade union, or fails to provide documents relating to the proposed collective dismissal to the trade union. Breach of consultation procedures may also result in successful unfair dismissal claims (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?**

The obligations to inform and consult with the trade union and the local employment centre will also arise in the case of multiple dismissals although the employer will need to send the notifications to these organisations at least two months (rather than three months in the case of a collective dismissal) before the dismissal of employees.

The employer will also need to publish information about future dismissals on the website "Work in Russia" in the case of multiple dismissals (this measure will be in force until 31 March 2021 unless it is extended).

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

If the employer and the trade union do not reach agreement within the prescribed period, the employer has a right to make a final decision regarding the dismissals, although the trade union may challenge this decision at the state labour inspectorate.

# 6. Process on individual dismissals

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

An employee must be warned personally (and must sign an acknowledgement of notice) at least two months before a dismissal. With employee consent, the employer can pay two months' salary in lieu of this two-month period.

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

Dismissal must be justifiable on redundancy grounds. Before making an employee redundant, the employer must consider whether they can be redeployed within the enterprise. When determining which employees are to be made redundant, there is a preferential right for certain employees to remain assuming equal productivity and skill. Preferential treatment is given to "family bread winners", those who have been injured on the job, invalids from combat operations in defence of the Fatherland and some others. Collective agreements may include other preferential rights.

An employee must be warned personally (and must sign an acknowledgement of the warning) at least two months before a dismissal. Although the issue is not addressed by the RLC, it is likely that this two-month warning period cannot commence until the trade union is notified about future dismissals (see answer to **5.2**).

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

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

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

A severance payment equals the employee's average monthly salary for the preceding year (the Salary).

If the employee fails to find a job within two months following the termination of their employment, the employer must make a severance payment equal to twice the Salary; however, in this case, the first severance payment is set off against that amount.

If the local employment service is unable to find alternative employment for the employee within three months following termination of employment, the employee may have the right to claim a further payment equal to the Salary, in which case the maximum severance payment equals three times the Salary.

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

Failure to follow the procedure may lead to invalidation of such wrongful termination by the court, to reinstatement of the dismissed employee and to an obligation for the employer to compensate the employee by paying the amount of their average salary for the entire period of so called "forced leave". In addition, if it is shown that the employee was unlawfully dismissed (on no lawful ground, or if the dismissal/transfer procedure has not been observed), the court may order the employer to compensate the employee with moral damages. The amount of moral damages is determined by the court in each particular case but, in practice, is quite low.

An employer may also be subject to a fine of RUB30,000 to RUB50,000.

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

Dismissal is not allowed during a period of temporary incapacity of the employee for work or during a period of leave. The RLC gives additional dismissal protection to certain categories of employees, including those with children and trade union members.

# 7. Process when implementing alternatives to redundancy

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

As a general rule, the employer may change the terms of employment only with the consent of the employees via an addendum to the employment agreement.

Nevertheless, in certain cases where there are certain organisational or technical changes in the company (eg structural reorganisation or technological changes), the employer may unilaterally change the terms of employment of its employees with two months' prior notice.

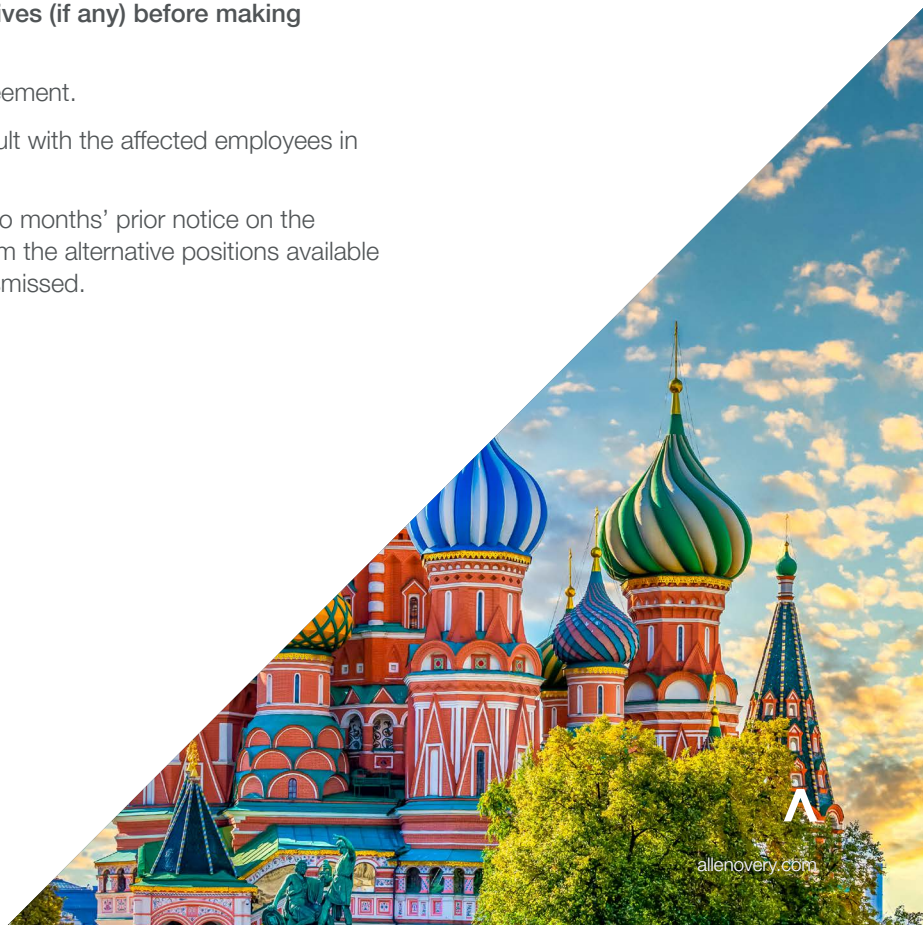
In accordance with court practice, a decrease in sales or poor financial performance is not a valid ground per se for unilateral changes to employment terms.

**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 statutory obligations for collective consultation unless otherwise provided for by a collective agreement.

If there are no legal grounds allowing the employer to unilaterally change the employment terms, it must consult with the affected employees in order to receive their consent on the proposed changes.

If there are legal grounds allowing the employer to unilaterally change the employment terms, it must serve two months' prior notice on the affected employees. If these employees do not agree with the proposed change, the employer must offer them the alternative positions available in the same area. If there are no such positions, or if employees refuse to take these positions, they will be dismissed.



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

There are no additional restrictions related to a change of employment terms that is proposed in connection with or following a business transfer.

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

The court will regard the amended terms of employment as invalid and will declare that the initial employment terms apply. In addition, the court may order the employer to compensate the employee with moral damages. The amount of moral damages is determined by the court in each particular case but, in practice, is quite low.

If the employee is dismissed because they did not agree with the new employment terms unilaterally enacted by the employer, and such unilateral amendment is recognised as unlawful, the dismissal of the employee will be invalid (see answer to **6.5**).

An employer may also be subject to a fine of RUB30,000 to RUB50,000.

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

The RLC does not contain any provisions that specifically promote alternatives to redundancy. The employer is free to choose whether to implement the redundancy or to try to enact alternative measures (eg a reduction in salaries or working time) with the employees' consent.

# 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)?**

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 or the sale triggers a collective dismissal of employees. However, if the sale of an insolvent business takes place, employees are not automatically transferred by law, and their explicit written consent is required in order to transfer their employment to the buyer (see **section 2 – Process on business sales**).

Note that the Law on Insolvency (LOI) is not very specific about the rights of employee representatives on the sale of an insolvent business. For instance, it mentions the right of the employee representatives to participate in the meetings of creditors of the insolvent company (without a voting right) and specifically in the first such meeting, as well as in the bankruptcy court proceedings.

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

The buyer of an insolvent business does not inherit employees and/or employee liabilities, unless the business being sold is a "city-forming enterprise" and the state and/or local authorities request it to do so.

A "city-forming enterprise" under the LOI is an "enterprise" (which has a specific definition under Russian law) employing more than 25% of the working population in a particular location, usually a city. On the sale of such an enterprise, the state and/or the local (municipal) authorities may require the buyer to employ at least 50% of the employees for a period not exceeding three years from the date that the relevant sale and purchase agreement comes into force. The same rules apply to any company employing more than 5,000 employees.

**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 (see **section 5 – Process on collective dismissals** for more information).

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