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Employment Reorganisation Roadmap

Slovakia

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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:

– trade union representatives

– the works council (in companies with 50+ employees)

– the employees' trustee (in companies with 3-49 employees), and/or

– the representative concerned with health and safety at work.

1.2. Is there a system of employee participation rights?

Participation rights of employees are, in general, exercised through the works councils/ employees' trustee or trade union bodies. In certain cases, the works council/employees' trustee or the trade union(s) have a right to co-decision, to provide their prior opinion (right to be consulted), to control or to be informed on specific matters.

One third of the members of the supervisory board of a joint stock company must be elected by employees in the case of companies with 50 or more employees (as of the election day). This right of employees cannot be excluded in the articles of association of the company nor in any other agreement with the employees. However, the articles of association may provide for:

– a lower number of employees (ie below 50) to trigger the compulsory election of one third of the members of the supervisory board by the employees, and

– an increase in the number of employee representatives on the supervisory board up to the number of members elected by the general meeting of the company.

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, undertaking, task or activity (or part of one) of their employer to a buyer where there is a transfer of a stable economic entity that retains its identity after the transfer. Whether this test is met depends on various factors, in particular whether customers, assets and employees have transferred, and how similar the activities are before and 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 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?

If the transfer results in a substantial change of employees' working conditions to their detriment, the affected employees who do not agree with such change may object to the transfer. Their employment will terminate by operation of law on the transfer date. The employees will be entitled to the statutory severance payment (see answer to **6.4**).

Employees have no other right to object to the transfer. If they terminate their employment, this would be treated as a resignation rather than a dismissal and they would have no entitlement to severance.

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

Information must be given to employee representatives or, if there are no employee representatives, directly to the employees in writing at least one month prior to a business transfer. Consultation applies only to employee representatives. Consultation with employee representatives must be "with a view to reaching an agreement". If certain measures are envisaged in relation to the employees, the consultation must commence at least one month before any such measures are implemented.

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

Failure to inform/consult employee representatives may result in the Labour Inspectorate imposing a fine:

– on the employer of up to EUR100,000, and

– on the management employees responsible and board members of up to four times their average monthly salary (including bonuses).

If there has been a breach of management obligations, the employer may claim damages from the management employees responsible (generally full damages in the case of wilful action on their part and up to four times their average monthly salary (including bonuses) in the case of their negligence). It may also claim damages from board members (generally full damages).

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 on a direct share sale, provided there are no changes contemplated regarding employees, social policy and/or operations. However, if as a result of the share sale there are any changes concerning the employees, such as changes to the internal organisation of the employer, 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 on an indirect share sale, provided there are no changes contemplated regarding employees, social policy and/or operations. However, if as a result of the indirect share sale there are any changes concerning the employees, such as changes to the internal organisation of the employer, 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?

Employees are automatically transferred on a service provision change in any of these scenarios where certain conditions are met. The change of service provider must involve "an organised grouping of employees... which has as its principal purpose the carrying out of the activities concerned on behalf of the client" and the activities carried on after the change must be "fundamentally or essentially the same" as those carried on before it.

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

Obligations to inform/consult apply in relation to a service provision change as they do on a business sale (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 to be implemented within a 30 day period affecting:

– 10 or more employees in an undertaking with 20-99 employees

– at least 10% of employees in an undertaking with 100-299 employees, or

– 30 or more employees in an undertaking with 300 or more employees.

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

An employer must notify employee representatives or, if there are no employee representatives, the affected employees directly, in writing of the proposed dismissals and provide them with certain information. Furthermore, at least one month prior to the date contemplated for the proposed dismissals, employee representatives or (in the absence of employee representatives) the affected employees must be consulted about the proposed dismissals "with a view to reaching an agreement".

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

The employer must inform the competent local authority for labour, social affairs and family (LSFA) at the same time as informing the employee representatives or, if there are no employee representatives, at the same time as informing the affected employees. The LSFA must also be notified of the outcome of the consultations. Notices of dismissal cannot be given, and the agreements on employment termination cannot be entered into, until at least one month following notification of the outcome of consultation to the LSFA and to employee representatives/employees. The LSFA may reduce this one month period as appropriate. In addition, employee representatives must be consulted about each dismissal notice, otherwise the dismissal notice is invalid.

5.4. When are these obligations triggered?

The obligation to consult for collective dismissals and 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 inform/consult employee representatives may render a dismissal invalid and may result in the Labour Inspectorate imposing a fine:

– on the employer of up to EUR100,000, and

– on the management employees responsible and board members of up to four times their average monthly salary (including bonuses).

In addition, any employer failing to fulfil the duty to inform/consult will be obliged to pay the dismissed employees compensation of two months' average earnings.

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, but employee representatives (if operating within the business) must be consulted about each dismissal notice, otherwise the dismissal notice is invalid (see answer to **6.2**).

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

There is no duty on the employer to 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 legal minimum notice entitlement depends on length of service:

– less than one year's service – one month, or

– one or more years' service – two months.

Where notice of termination is served due to the winding-up or relocation of the employer, or due to redundancies, the minimum notice entitlement is:

– less than one year's service – one month

– one or more years' service – two months, or

– five or more years' service – three months.

Notice periods may be enhanced by contract or collective agreement.

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

Dismissal must be justifiable for a statutory reason (the employer's winding-up or relocation, or the redundancy of an employee due to organisational changes determined by a written resolution of the employer). Employee representatives must be consulted about each dismissal notice, otherwise the dismissal notice is invalid. If an employee is made redundant due to organisational changes, the same work position can only be created for a new employee after two months – this is a strict test. Alternative employment opportunities in the employing company at the agreed place of work (including part-time opportunities) must be considered before a decision is made. If there is an alternative working position, this has to be offered to the employee. There are strict formalities for serving notice.

An employer cannot serve notice of termination on certain protected employees (eg employees on sick leave, maternity/parental leave or pregnant employees).

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

Slovak law does not allow dismissals if the sole or principal reason for them is the business transfer itself. Such dismissals will be invalid.

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

As a general rule, an employee is entitled to a severance payment in a restructuring scenario only if the employment is terminated on notice of termination by the employer or by mutual agreement due to:

– the employer, or part of its business, being wound-up or relocated, or

– the employee's redundancy is triggered by organisational or operational changes.

The minimum severance payment is:

In the case of termination upon notice:

– two or more years' service – one month's average earnings

– five or more years' service – two months' average earnings

– ten or more years' service – three months' average earnings, and

– 20 or more years' service – four months' average earnings.

In the case of termination by mutual agreement:

– less than two years' service – one month's average earnings

– two or more years' service – two months' average earnings

– five or more years' service – three months' average earnings

– ten or more years' service – four months' average earnings, and

– 20 or more years' service – five months' average earnings.

Minimum severance may be enhanced by contract or collective agreement.

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. If following the dismissal the employee serves on the employer a written request for reinstatement, the court may:

– declare the dismissal unlawful and order reinstatement of the employee (unless the court considers that reinstatement cannot be fairly required of the employer), and

– order compensation based on the employee's monthly salary for the period starting from the employee's request for reinstatement until the reinstatement itself, or until the court's declaration of termination of employment. The maximum period for which the employee may be compensated is 36 months. In certain circumstances the salary compensation period can be reduced to 12 months.

Failure to inform/consult employee representatives may also result in the Labour Inspectorate imposing a fine:

– on the employer of up to EUR100,000, and

– on the management employees responsible and board members of up to four times their average monthly salary (including bonuses).

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

An employer cannot serve notice of termination on certain protected employees (eg those on sick leave, maternity/parental leave or pregnant employees).

An employer can serve notice of termination on an employee with a disability only with the prior consent of the competent LSFA, otherwise the dismissal is invalid.

7. Process when implementing alternatives to redundancy

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

Any change to the employment terms in the employment agreement requires the employee's consent.

Any change to the employment terms stipulated by an internal regulation issued by the employer (eg a bonus scheme) can be altered without express employee consent, provided the employer has retained full discretion to change such terms.

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

Affected employees should be consulted individually regarding any change to the employment terms within the employment agreement.

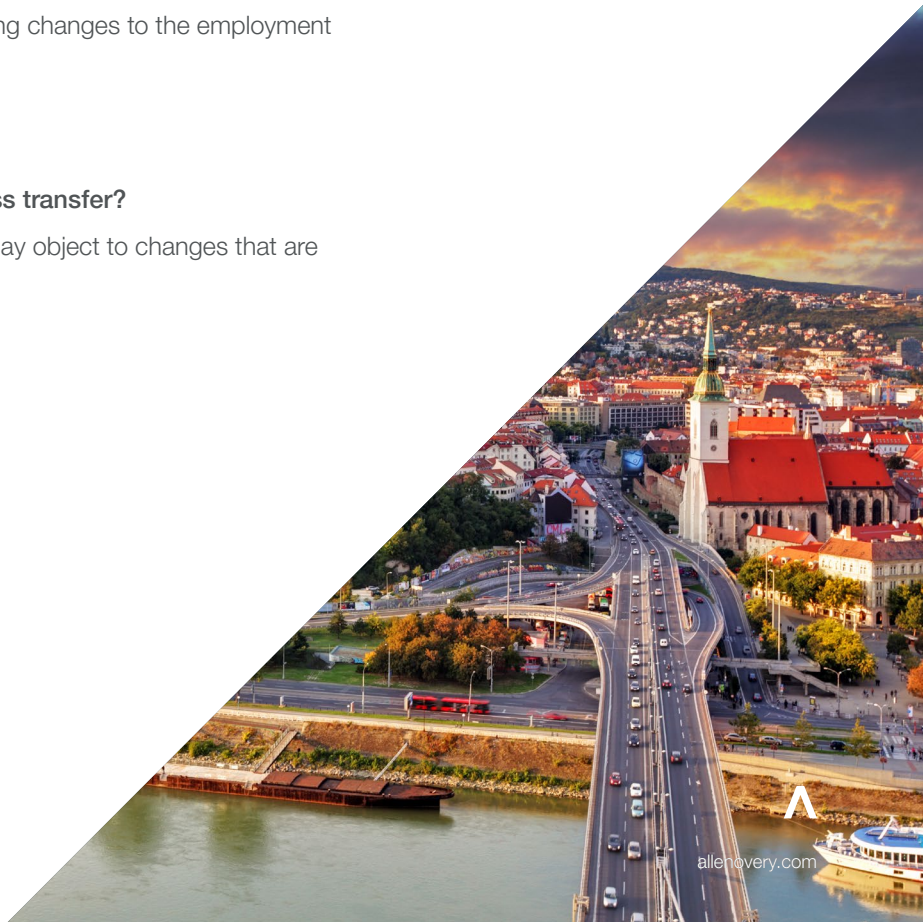
The employer is obliged to consult with employee representatives (if they operate within the business) regarding changes to the employment terms, if those form part of:

– any planned measures, mainly if there is a threat to employment, and

– any decisions which may lead to fundamental changes in the organisation of work or in contractual terms.

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, save that employees may object to changes that are substantial and to their detriment, in which case their employment will terminate (see answer to **2.3**).



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

Failure to comply with these procedures may result in the Labour Inspectorate imposing a fine:

– on the employer of up to EUR100,000, and

– on the management employees responsible and board members of up to four times their average monthly salary (including bonuses).

If there has been a breach of management obligations, the employer may claim damages from the management employees responsible (generally full damages in the case of wilful action on their part and up to four times their average monthly salary (including bonuses) in the case of their negligence). It may also claim damages from board members (generally full damages).

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

Employers and employee representatives can reach a written agreement to identify serious operational reasons (eg a sudden temporary decrease in sales of or demand for products) for which the employer does not assign work to the employees and pays them compensation for salary of an amount of at least 60% of their average earnings. This measure cannot be implemented by employers with no employee representatives. As a temporary measure applicable to all employers during the Covid-19 pandemic (regardless of whether they have employee representatives or not), employers unable to provide work for employees are entitled to send them home and to pay 80% of their average earnings.

Employers and employees can agree on other job protection measures (eg on paid or unpaid leave).

As an emergency measure in response to the Covid-19 pandemic, the government has adopted certain measures to support employers affected by the pandemic with the aim of maintaining job positions. Employers which have closed down or restricted their operations due to Covid-19 or sent their employees home with no work, or have continued to operate but suffered a decrease in turnover due to Covid-19, can apply for a state subsidy towards the salary compensation paid out to their employees. The amount of the subsidy per employee is capped. The eligible period to apply for the state subsidy has been extended until 30 June 2021 and may be extended further based on the pandemic situation.

In February 2021, the government introduced a draft of a new law on a system of reduced working hours, which must be passed by the National Council. It is anticipated that the new law will take effect from the beginning of 2022.

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 position depends upon whether the business is subject to bankruptcy (*konkurzné konanie*) or reorganisation proceedings (*reštrukturalizácia*).

In the case of a business subject to reorganisation proceedings, the same obligations apply as in the sale of a solvent business (see **section 2 – Process on business sales**).

In the case of bankruptcy proceedings the employer or the insolvency trustee is obliged to inform the employee representatives or the employees directly (if the employee representatives are not present) in writing about the employer's insolvency within ten days from the date of the insolvency. Employers with employee representatives have a general obligation to consult with a view to reaching an agreement on any changes that may lead to a limitation or termination of their activities. This consultation should be in an appropriate form and take place within an appropriate timescale. Information/consultation duties as described in the answer to **2.4** do not apply.

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

The position depends upon whether the business is subject to bankruptcy (*konkurzné konanie*) or reorganisation proceedings (*reštrukturalizácia*).

The provisions of the Slovak transfer of undertakings regulations relating to the automatic transfer of employees and accrued liabilities are disapplied for a business subject to bankruptcy proceedings. This means that the buyer of a business will inherit neither employees nor employee liabilities.

In the case of a business subject to reorganisation, employees and employee liabilities transfer to the buyer in line with the Slovak transfer of undertakings regulations (see **section 2 – Process on business sales**).

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

In general, the same obligations apply as in the case of collective dismissals in a solvent business (see **section 5 – Process on collective dismissals**). In the case of bankruptcy proceedings, the one month period following consultation in which the employer is prevented from serving dismissal notices or from reaching agreement with employees to terminate their employment does not apply.

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