

ALLEN & OVERY

Employment Reorganisation Roadmap

United Arab Emirates (DIFC)

1 April 2021



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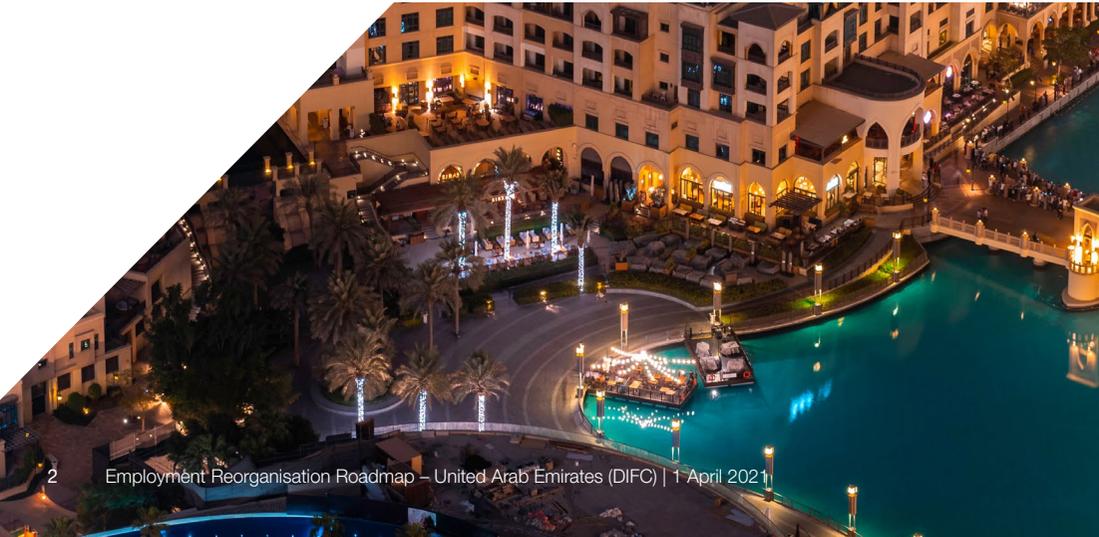
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1. Employee representation

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

There are no trade unions or employee works councils in the DIFC (or UAE). UAE law currently prohibits the formation of trade unions.

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation.



2. Process on business sales

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

If a business sale takes place, employees are not automatically transferred to a buyer by law. The transfer of employees must be agreed separately between a buyer and seller. Employees will only transfer to a buyer if the buyer offers them employment and they accept. If their employment terminates with the seller and they are rehired by the buyer, employees will be entitled to receive severance pay from the seller in accordance with article 19 of the DIFC Employment Law 2019 (as amended) (see answer to).

However, if there is a transfer of the DIFC business by a court approved “scheme of arrangement” process under Part 9 of the DIFC Regulatory Law, all assets and liabilities which are intended to be transferred (including employees) will transfer automatically unless excluded under the terms of the scheme.

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

Employees are not automatically transferred to a buyer by operation of law 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 in the case of a business sale. An employee may resign on account of a change in their working conditions, in which case the employee will be entitled to receive severance pay from the seller in accordance with article 19 of the DIFC Employment Law 2019 (as amended).

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

There is no obligation to inform or consult employee representatives in relation to a proposed business sale. There is no obligation to inform or consult employees save to the extent necessary to seek their consent to a transfer of their employment to the buyer.

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

There is no obligation to inform or consult employee representatives on a business sale.



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 or consult employee representatives on a direct share sale.

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 or consult employee representatives on an indirect share sale.

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 it offers them employment and they accept. If their employment terminates with the outgoing supplier/service provider and they are rehired by the incoming one, employees will be entitled to receive severance pay from the outgoing supplier/service provider in accordance with article 19 of the DIFC Employment Law 2019 (as amended) (see answer to).

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

There is no obligation to inform or consult employee representatives in these scenarios. There is no obligation to inform or consult employees save to the extent necessary to seek their consent to a transfer of their employment to the new supplier/service provider.



5. Process on collective dismissals

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see

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

There is no requirement to inform and consult the DIFC Authority. However, in practice, all DIFC licensed firms have a general obligation to keep the DIFC Authority informed of any material change affecting their business.

5.4. When are these obligations triggered?

There is no requirement to inform or consult regarding collective dismissals.

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

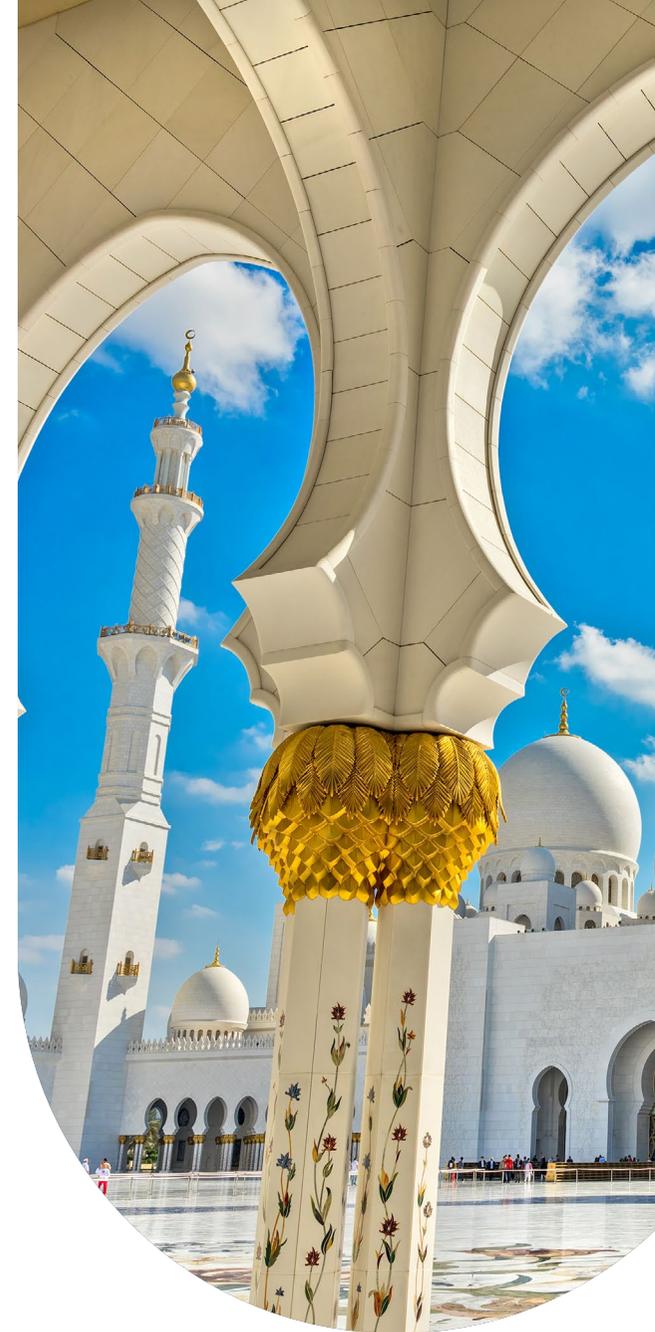
There are no specific penalties as there are no specific regulations regarding collective dismissals. Please see the answer to as to penalties for non-compliance with individual dismissal requirements.

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 is no obligation to inform or consult employee representatives and/or the competent authorities in the context of multiple dismissals.

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 inform or consult or 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?

As a matter of law, the minimum notice entitlement depends on length of service:

- Less than three months' service – seven days
- Three to five years' service – 30 days, or
- Five or more years' service – 90 days.

However, these statutory time periods do not prevent an employer and employee from agreeing to a longer or shorter notice period of notice, nor from waiving notice or from accepting a payment in lieu of notice.

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

There are no specific procedural requirements relating to a redundancy, other than the requirement to give minimum notice and pay severance. An employee may request a written statement of reasons for dismissal if they have been continuously employed for at least one year.

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

There are no specific procedural requirements relating to dismissals following a business transfer, other than the requirement to give minimum notice.

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

Employees who are not UAE or Gulf Cooperation Council (GCC) nationals (GCC member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE) must be given the option to choose between participating in the employer's pension scheme (if it has established one) or receiving severance. The minimum severance payment for an employee with one or more years' service is:

- 21 days' basic wage per year of service for up to five years' service, and
- 30 days' basic wage for each additional year of service up to a total maximum of two years' wages.





The daily rate for the employee's basic wage will be calculated based on the number of days in the year. The employee's "basic wage" is defined as the employee's wage excluding any portion thereof received in-kind or as allowance for housing, travel, currency exchange (cashier), children's education, social and entertainment or any other type of allowance, bonus or commission payment, or overtime pay. The basic wage must be calculated taking into consideration the total number of calendar days in a year. Where termination occurs prior to the end of any full year of employment, severance is calculated on a proportionate basis.

The employer must pay the employee's severance entitlement (and other outstanding amounts) within 14 days of termination of employment.

Where an employee is a UAE or GCC national, an employer must enrol the employee in its UAE pension scheme in accordance with Federal Law requirements, but the employee will have no severance entitlement.

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

If the employer fails to pay the employee severance (or other outstanding amounts) within 14 days of termination of their employment, it must pay the employee a penalty equivalent to the last daily wage for each day that the payment is in arrears. The onus is on the employee to file a claim if the employer has not complied with the individual dismissal procedure. All employee complaints should be raised, in the first instance, with the Small Claims Tribunal (SCT). The SCT has jurisdiction to hear claims where the amount of the claim or the value of the subject matter of the claim does not exceed AED100,000, or where the claim pertains to the employment or former employment of a party, and all parties to the claim elect in writing that it be heard by the SCT. Under the SCT rules of procedure, after the filing of a claim, the parties concerned are required to attend a consultation before the SCT Judge whose role is to seek to mediate the dispute and broker a settlement, failing which the matter will be fixed for a hearing.

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

There is no special legal protection that applies for particular groups of workers.

7. Process when implementing alternatives to redundancy

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

Changes to the employment terms should generally be agreed with the employee. The employment agreement may, however, contain an express right for an employer to vary terms 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?

Unless the employment agreement contains an express right for the employer to vary terms without the employee's consent (see answer to 7.1), it must consult individually with the affected employees before making changes to the employment terms.

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

There are no additional restrictions that apply if changes are proposed in connection with or following a business transfer.

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

Subject to the terms of the employment agreement, the changes cannot be made without the employee's consent (see answer to 7.1). If an employee is arbitrarily dismissed (for a reason irrelevant to the employee), they will be entitled to a compensatory payment in addition to the severance payment (see answers to and).

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

DIFC law does not promote alternatives to redundancy. However, these can be agreed between an employer and the relevant employees.



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)?

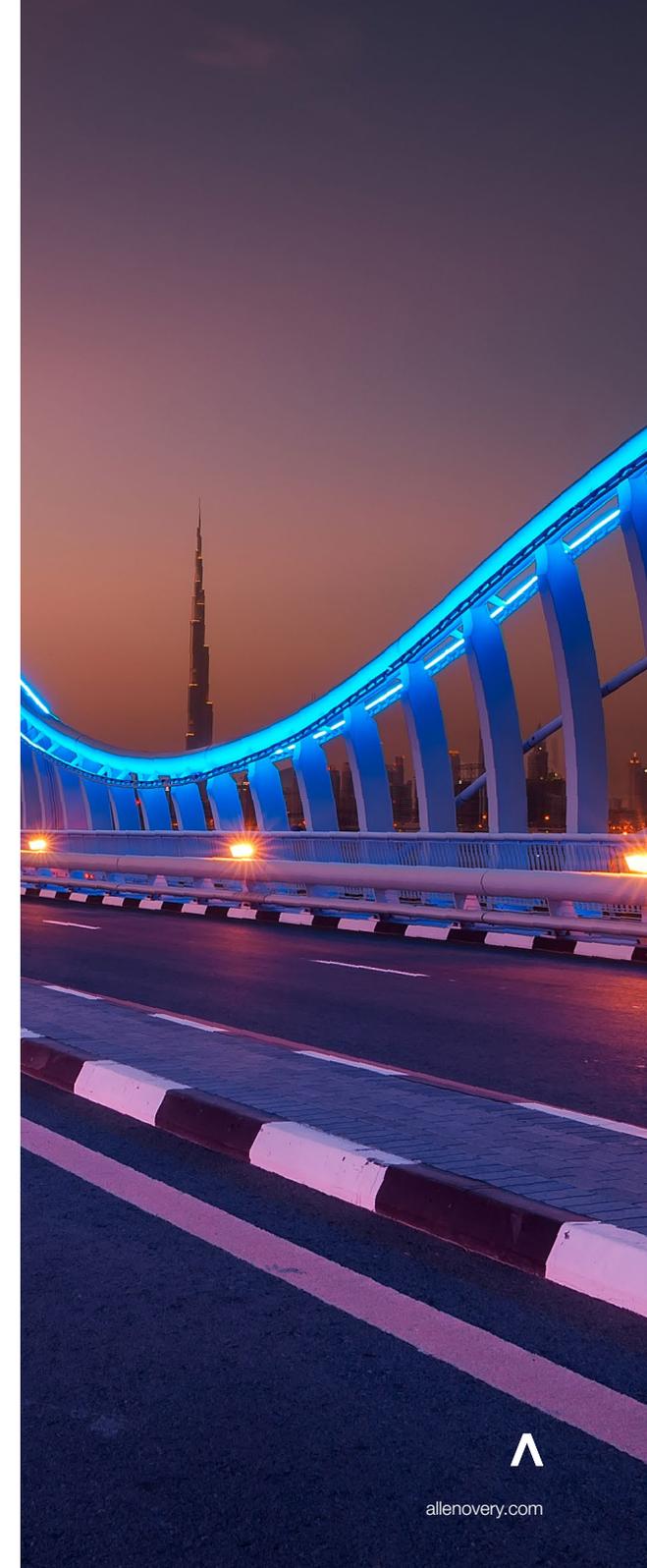
Insolvency in the DIFC (and UAE) is extremely rare and there are no real precedents dealing with what happens to employees on the sale of an insolvent business. There is, however, no obligation to inform or consult employee representatives on the sale of a solvent business, and this is also likely to be the position on the sale of an insolvent business (see [here](#) for further information).

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

Insolvency in the DIFC (and UAE) is extremely rare and there are no real precedents dealing with what happens to employees on the sale of an insolvent business. However, the position is likely to be the same as on the sale of a solvent business. Employees would not be automatically transferred by law. They would only transfer to the buyer if they are offered, and accept, employment.

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

There is no concept of collective dismissals, nor any specific regulations, regarding collective dismissals. Rules on individual dismissals would, however, need to be observed in an insolvency situation (see [here](#) for further information).



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