

ALLEN & OVERY

# Employment Reorganisation Roadmap

Saudi Arabia

1 April 2021



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# 1. Employee representation

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

Trade unions are not permitted in Saudi Arabia. However, in 2013 the Ministry of Labour (as the Ministry of Human Resources and Social Development (MHRSD) was then known) was reported to be creating a workers union to represent employees in businesses employing at least 100 staff. We are not aware of any further developments in relation to this initiative.

## 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?

The position depends on whether there is an asset sale that falls short of a change in business ownership, or a change in business ownership.

If an asset sale takes place but ownership of the business does not change, employees are not automatically transferred to the buyer of the relevant asset(s) by law. In that situation, the transfer of employees must be agreed separately between the buyer and seller and employees will only transfer to the buyer if the buyer offers them employment and they accept. If employees do consent to transfer with the business, their period of employment with the seller will not count as a period of employment with the buyer unless otherwise agreed by the buyer. If an employee refuses to transfer, they may request the termination of their contract, and the seller will be responsible for paying their severance and other outstanding entitlements.

However, if the ownership of a business is transferred to a new owner, or a change takes place in its legal form, through a merger, partition or otherwise, the employees' contracts remain in force and their services are deemed continuous. The seller/predecessor and the buyer/successor are jointly and severally liable for employees' rights accrued for the period prior to the change.

Where the ownership of a sole proprietorship changes, the parties may agree to transfer all the employees' accrued rights to the buyer/successor with the written consent of each employee. If an employee refuses to consent, they may request the termination of their contract and collect severance and other outstanding entitlements from the seller/predecessor.

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

Where the business is not a sole proprietorship, all employees transfer and there is no test to apply. Employees are not automatically transferred to a buyer by operation of law on the sale of a sole proprietorship; in this case, it is for the buyer, the seller and the employees to agree who will transfer.

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

An employee can resign on a business sale where the business is not a sole proprietorship. In this situation they would be entitled to severance pay, but this would be reduced to reflect the fact that they have resigned and have not had their employment terminated.

An employee can request termination if the business is a sole proprietorship. In this situation they would be entitled to full severance pay because technically their employment has been terminated (albeit at their request, pursuant to their statutory right) and they have not resigned.



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

There are no requirements to inform/consult employee representatives in relation to a business sale. There is no obligation to inform/consult employees save to the extent necessary to seek their consent to a transfer of their employment to the buyer where the relevant business is a sole proprietorship.

#### **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 of their employment, or if the buyer does not wish to employ any or all of the seller's employees (in each case where the relevant business is a sole proprietorship), the employees will not transfer with the business from the seller to the buyer. Procedural obligations and severance rights may then be triggered if the seller has to terminate the employment of those employees (see ).



## 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. Procedural obligations and severance rights may be triggered if the employees refuse an offer of employment and the outgoing supplier/service provider has to dismiss those employees (see [Article 11 of the Labour Law](#)).

### 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?

Under Saudi Labour Law, collective redundancies of Saudi nationals are prohibited unless a business is either closing down entirely, or is terminating a particular activity. There are no specific regulations regarding collective dismissals, save for a ministerial regulation which sets notification requirements in relation to the dismissal of Saudi nationals (see answer to ). As to individual redundancy dismissals, please see .

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

There are no obligations to inform or consult employee representatives on a collective dismissal.

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

Employers with 50 or more employees must notify the competent authorities where they plan to dismiss a group of Saudi nationals (for reasons attributable to the employer rather than to employees) at a rate exceeding the greater of:

- an aggregate of 1% of the total number of workers at the company, or
- an aggregate of ten workers within a year of the last dismissal process.

In such a case, the employer must submit a notice of collective redundancy to the labour office before proceeding with the dismissals. The notice must include the employer’s financial records, the names of the Saudi employees who will be dismissed, certain information about the non-Saudi employees whose positions within the company are at the same grade/level as the Saudi employees who will be dismissed, and the measures that the employer has taken to avoid such dismissals.

The labour office will consider and evaluate such documentation and issue the employer with its opinion on the collective redundancy proposal within 45 days of the notice.



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

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

Notice of the collective redundancy of Saudi nationals must be submitted to the labour office before employees are dismissed (see answer to [5.3](#)).

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

Where an employer breaches the notification requirements or disregards a negative opinion from the labour office (see answer to [5.4](#)), the MHRSD's services will be suspended in respect of that employer, until the breach is remedied. Suspension may be from 30 days up to 720 days, depending on the severity of the breach. Suspension of services means that employers are restricted from obtaining new work visas and limited in their ability to influence the transfer of sponsorship of expat employees to and from the company.

There are otherwise no specific penalties for non-compliance with information and consultation obligations as no such obligations arise. Please see the answer to [6.5](#) 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 that do not qualify as a collective dismissal as defined by law.

#### **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?

For indefinite term employment contracts, the notice period is a minimum of 60 days.

For fixed term contracts, the notice period is as agreed in the employment contract.

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

An employer may only terminate employment for a “valid” reason (to be specified in the written notice). The Saudi Labour Law does not confirm what constitutes a “valid” reason for termination. In the event of dispute, the Commission for Settlement of Labour Disputes (CSLD) has authority to decide on the validity of the termination reason. There are no specific procedural requirements relating to a redundancy, other than the requirement to give minimum notice and pay severance.

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

There is no special dismissal protection due to a business transfer. However, termination is only permitted for a valid reason, and the transfer of a business does not constitute a valid reason. Hence, if the buyer/successor employer does not hire the employee, the employee could bring a claim for arbitrary dismissal.





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

On the expiry of specific-term contracts or on the termination of an indefinite contract by employers, employees are entitled to a minimum “end-of-service award” of half a month’s wages for each of the first five years of service and one month’s wages for each year thereafter. The end-of-service award is calculated on the basis of the last wage, and the employee shall be entitled to an end-of-service award for portions of the year in proportion to the time spent in their job. The term “wage” includes certain benefits in addition to base salary, including cash allowances, as well as some benefits provided-in-kind. (Employees are entitled to a proportion of this award if they resign, until they have completed at least ten years’ service when they receive the full entitlement.)

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

An employee is entitled to compensation for non-compliance with individual dismissal procedure.

For indefinite term contracts, compensation is half a month’s wage for every year of service. For fixed term contracts, compensation would be the remaining wages of the employment contract term.

For both types of employment contracts, the compensation amount must be a minimum of two months’ wages.

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

Termination of employment is prohibited in two cases:

- where an employee is on maternity leave (note that it is also prohibited for the employee to be notified of such termination during their maternity leave), and
- where an employee is on sick leave, unless they have used all their sick leave and annual leave balance.

# 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 and the employee's written consent must be provided.

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

There is no obligation to inform or consult employees save to the extent necessary to seek their consent to changes.

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

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

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

If the employer seeks to make unilateral changes to the contract, the employee may, depending on the circumstances, treat this as a breach entitling them to terminate their employment without notice for a "valid reason" (the employer's failure to meet its essential contractual or statutory obligations towards the employee). In this case, they may still claim a full end-of-service award, regardless of their length of service.

There are otherwise no specific penalties in cases where an employer makes changes without obtaining the employee's consent. In the event of a dispute, the penalty would be a matter of discretion for the CSLD.

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

The employer and employee may simultaneously agree to reduce working hours and salary (ie part-time working).

During the Covid-19 pandemic, the government adopted various measures to support employers. In the period from April 2020 to January 2021, employers could benefit from subsidies, subject to certain conditions, if they chose: (i) to unilaterally reduce employee salaries by up to 40% for a period of up to six months with a commensurate reduction in working hours; (ii) to require employees to take part of their paid annual leave entitlement; or (iii) to require employees to take exceptional unpaid leave with their consent. There were also restrictions on the ability to dismiss employees for a force majeure reason in this period. On 13 January 2021, the MHRSD repealed these provisions.



# 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 rules apply as in the case of the sale of a solvent business. There is no obligation to inform/consult employee representatives in relation to the sale of an insolvent business. However, employees are not automatically transferred by law where the business is a sole proprietorship, and their consent may be required in order to transfer them with that business (see [answer to 7.1](#) for further information).

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

The same rules apply as on the acquisition of a solvent business; the position depends on whether there is only an asset sale (falling short of a full business transfer) or a change in business ownership (see answer to [7.2](#)).

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

Other than as noted in the answer to [7.3](#), 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 [answer to 7.4](#) for further information).



# 9. Contacts



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