ALLEN & OVERY

Employment Reorganisation Roadmap

Italy

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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, and/or

– the works council (*rappresentanze sindacali unitarie* (RSU)) (in companies with 16+ employees).

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?

Employees are automatically transferred on the sale of a business undertaking (or part of one) to a buyer where there is a transfer of a stable economic entity that retains its identity after the transfer.

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

All employees employed by the seller before the transfer, and who are assigned to the business or undertaking (or part of it) as designated by the employer, are entitled to be transferred to the buyer. If a seller employs 16+ employees, employees who do not transfer to the buyer have priority rights in any recruitment by the buyer in the one year period following the transfer.

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

An employee whose working conditions undergo a significant detrimental change as a consequence of the transfer within three months following the transfer may resign for just cause and receive a payment in lieu of notice. Furthermore, employees can object within a 60 day period following the transfer date and claim before an Employment Court that the transfer is invalid. They may ask the Court to declare that the transfer of their employment relationship is null and void and that their employment with the seller continues, and may also seek damages.

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

If a seller has 16+ employees, information must be provided to the RSU and trade unions at least 25 days before a transfer agreement is signed or at least 25 days before any prior "binding understanding" is reached in relation to a business transfer. Consultation must begin within seven days of a request by the representatives and they must make a request within seven days of receiving information. The consultation process is considered terminated if no agreement is reached within ten days of the first meeting. The transfer may then proceed. Certain national collective bargaining agreements, if applied by the employer, may provide for different terms and/or additional negotiation steps.

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

The trade union may apply for an injunction for anti-union behaviour (ie to prevent any action of the employer which limits the union's rights). However, court precedents state that failure to inform/consult trade unions does not prevent the transfer from taking effect.

Failure to comply with an injunction is a criminal offence which may result in imprisonment for the directors concerned.

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. In some industry sectors, such as banking, the national collective bargaining agreement requires the employer to inform employee representatives on share sales.

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.

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 by operation of law where such scenarios give rise to a transfer of a stable economic entity that retains its identity after the transfer. Furthermore, certain national collective bargaining agreements may provide for specific employee rights in these scenarios.

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

Obligations to inform/consult apply as they do on a business sale (see **section 2 – Process on business sales**). Furthermore, certain national collective bargaining agreements may provide for specific obligations to inform and consult trade unions/RSU in these scenarios.

5. Process on collective dismissals

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

A collective dismissal arises where five or more dismissals are proposed within a 120 day period (extendable by agreement with the trade union) by an employer with 16+ employees.

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

An employer must inform trade unions about the proposed dismissals and meet them within seven days to review the reasons for the dismissals, how they can be avoided etc. If the unions do not seek consultation within this seven day period, the employer can proceed with the dismissals; if they do, consultation must be completed over a maximum 45 day period (which can be extended by a further 30 day period on request by the parties, with the mediation of the local labour office, if agreement is not reached). The consultation period is therefore usually up to 75 (45 + 30) days; the term is halved if there are no more than ten proposed dismissals.

Some national collective bargaining agreements (eg in the banking or insurance sectors) require the employer to inform employee representatives (if any) before starting the legal consultation process with the trade unions. This can lengthen the whole process.

Selection criteria must be applied when choosing the employees to be dismissed. If selection criteria cannot be agreed with trade unions, statutory criteria apply. These statutory criteria are:

– length of service

– family responsibilities, and

– economic, production-related and organisational needs of the employer.

In addition to the above, companies planning to close or outsource their business activities will have to carry out an additional and preventive procedure involving information-sharing and consultation with trade unions if the following requirements are met: (i) the company employs more than 250 employees; and (ii) a collective dismissal of more than 50 employees is triggered.

This preventive procedure – which does not apply to companies in economic crisis, as defined by Law Decree 144/2022 – may last a maximum of 180 days, which, in the event no agreement is reached, must be added to the 75-day mandatory collective dismissal consultation period described above.

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

The employer must inform the local/regional labour office (or, if there are plants in different regions, the Minister of Work and Social Security – in which case the process may take longer) at the same time as informing the trade unions. The labour office will mediate in negotiations if no agreement is reached.

5.4. When are these obligations triggered?

The obligation to consult about collective dismissals and notify the authorities arises when there is an intention to carry out at least five redundancies in a timeframe of 120 days, which must be 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?

Penalties are similar to those applicable on business sales (see answer to **2.5**). A breach of consultation procedures is considered to be anti-union behaviour, which renders the dismissals unlawful and may entitle employees to reinstatement. Non-compliance with selection criteria may result in successful unfair dismissal claims.

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?

Provided there is no collective dismissal process (because the employer intends to dismiss fewer than five employees), certain information and/or consultation obligations may arise depending on the date of hiring of employees and number of employees hired by the employer (see **section 5 – Process on individual dismissals** for further information).

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

Even if no agreement is reached with employee representatives at the end of the collective dismissal consultation process, the employer can proceed to dismiss the affected employees as employee representatives have no right of veto.

6. Process on individual dismissals

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

Notice periods are determined by the national collective bargaining agreement applied by an employer and depend on the seniority and length of service of each employee.

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

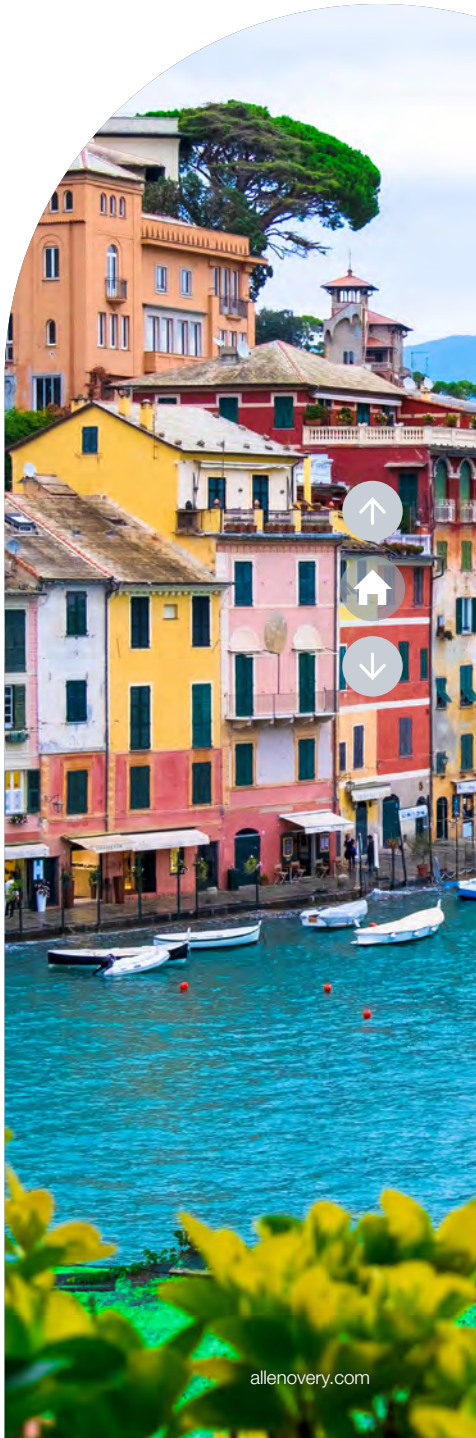
If an individual dismissal does not follow a collective dismissal process (ie the employer intends to dismiss fewer than five employees), no information and/or consultation obligations arise. Nevertheless redundancy must be justifiable for an objective reason relating to an employer's organisational requirements that are due to a reduction or change in working activity. According to court precedents, selection criteria similar to the statutory criteria set out by the law on a collective dismissal process should preferably be applied when selecting an employee for redundancy. The dismissal must be communicated in writing to the employee concerned. Before serving the dismissal notice, the employer should seek a suitable alternative position for the employee within the company.

Employers with 16+ employees can serve the dismissal notice only after following a preliminary conciliation procedure before the competent Labour Bureau, the purpose of which is to find an alternative to dismissal where possible. The Labour Bureau can summon the employer and the employee to a meeting within seven days of receiving the employer's communication starting the procedure. This procedure cannot run for more than 20 days from the date on which the parties were called upon to meet, unless they agree to discuss the issue further pending a settlement being reached. If the parties do not reach agreement during the procedure or if, after seven days from delivery of the employer's communication to the Labour Bureau, no meetings have been scheduled, the employer can serve the dismissal notice. This will take effect from the delivery date of the initial communication and will not affect the employee's right to the notice period or to payment in lieu of it.

This procedure does not apply to executives, nor to the dismissal of employees hired after 7 March 2015 in companies with 16+ employees. In these cases, the employer must give the employee a dismissal notice in writing which must specify:

– the reasons for the dismissal, and

– the reasons why it has not been possible to assign the employee to the same or similar duties within the company or within any other company of the group ("*duty of repêchage*").



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

According to the Italian Civil Code, an employee's dismissal must not be on grounds of the business transfer. Any dismissal connected with or arising from the business sale will be deemed null and void, and the employee will have rights to reinstatement and to payment of an indemnity depending on the protection set out by applicable law.

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

The minimum severance payment (*trattamento di fine rapporto* (TFR)) is based on annual salary divided by 13.5 and multiplied by years of service.

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

Employees hired before 7 March 2015

In a company with 61+ employees in Italy, or 16+ employees in a single work unit or town, an employer can be ordered:

– to pay an indemnity ranging between 12 and 24 months' salary, or

– to reinstate the employee on the same contractual terms as previously (the employee can alternatively elect to receive an indemnity payment equal to 15 months' salary) and pay damages amounting to a maximum of 12 months' salary (if there are clearly no grounds for the dismissal).

In a company with 60 or fewer employees in Italy, or 15 or fewer employees in a single work unit or town, the employer can be ordered to choose either:

– to re-engage the employee (ie the employee returns to work with a new contract), or

– to pay damages of between two-and-a-half and six months' salary, depending on the employee's status, length of service and behaviour. (Damages may increase to ten months' salary for employees with ten years' service and to 14 months' salary for those with 20 years' service.)

Employees hired from 7 March 2015

In a company with 61+ employees in Italy, or 16+ employees in a single work unit or town, an employer can be ordered to pay an indemnity equal to:

– two months' salary for each year of service, subject to a minimum of six and a maximum of 36 months' salary (if the reason given for the dismissal is not justified), or

– one month's salary for each year of service, subject to a minimum of two and a maximum of 12 months' salary (if the employer has given no reason for the dismissal or is in breach of the disciplinary procedure).

In a company with 60 or fewer employees in Italy, or 15 or fewer employees in a single work unit or town, the employer can be ordered to pay an employee one month's salary for each year of service, subject to a minimum of three and a maximum of six months' salary.

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

There is a general prohibition on dismissing employees on maternity leave. The dismissal of an employee on, or on return from, maternity leave (as defined by the law) is null and void, and the employee will have rights to reinstatement and payment of an indemnity for the months of salary lost since the date of the dismissal.

Other categories of employees who have special dismissal protection include those with a disability and female employees who have recently married.

7. Process when implementing alternatives to redundancy

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

An employer cannot unilaterally modify the terms and conditions of an employment agreement unless there are technical or business reasons for doing so. However, employee consent is always required (including for amendments favourable to the employee).

Detrimental changes to the employment relationship (such as a reduction in remuneration, status or duties) are prohibited, other than in exceptional circumstances.

Since 2015, the law has changed to allow the parties to change duties significantly and reduce remuneration only where this has the purpose of avoiding redundancy or improving the work-life balance of the employee. However, since an agreement of this nature could entail a detrimental change to employment terms and conditions, the agreement must be ratified before the trade union body committee.

Often, the labour office or unions may require the agreement regarding the change to be be structured as a settlement with proper legal consideration. The change to minimum standards would be qualified as a waiver of the employee's rights in exchange for, eg, monetary compensation or saving their position which is at risk of redundancy, depending on the circumstances.

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

The employer will need to consult individually with a view to seeking employee consent to a detrimental change. In addition, an agreement to implement certain types of detrimental change must be ratified before the trade union body committee. (Please see answer to **7.1** for further information.)

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

The same restrictions apply when making changes (see answer to **7.2**). Additionally, the Italian Civil Code provides that the employment terms and conditions that previously applied to employees must be maintained following the transfer.

An employee whose position is negatively impacted by the transfer has the right to resign for cause (with entitlement to notice) within three months following the transfer.

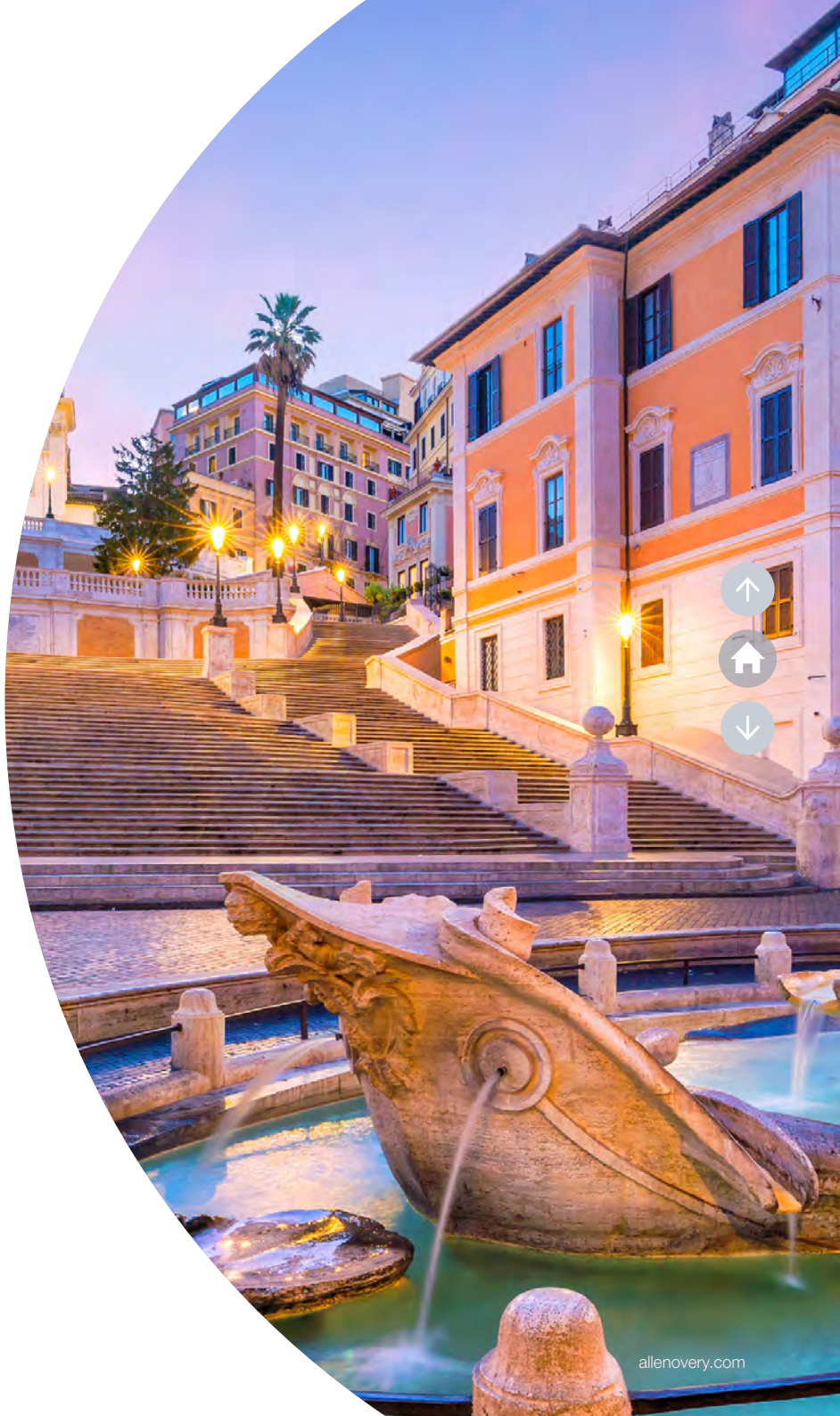
7.4. What are the penalties for non-compliance with these procedures?

Any detrimental change to employment terms/conditions that is not signed and agreed by the trade union body committee is null and void.

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

In the event of a collective dismissal, the specific mandatory procedure must be followed.

Alternatives can be considered, which must comply with specific laws.



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 for the sale of a solvent business (see **section 2 – Process on business sales** for further information).

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

The position depends on whether:

– during the insolvency proceedings business activities have ceased or will cease, and

– an agreement is in place between the trade unions/RSU and the buyer in order to maintain or partially maintain employment.

If both conditions are met, Italian transfer of undertakings regulations providing for the automatic transfer of employees and accrued liabilities may be disapplied. The parties may agree that not all the employees working in the transferring business will transfer to the buyer and that the accrued liabilities relating to affected employees will not be borne by the buyer. In any event, the parties are permitted to agree more favourable conditions for the transferring employees during consultation.

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 individual dismissals** for further information).

9. Contacts

Livio Bossotto
Partner
Tel +39 02 2904 9678
livio.bossotto@allenovery.com

Giorgia Giorgetti
Counsel
Tel +39 02 2904 9621
giorgia.giorgetti@allenovery.com

Claudio Chiarella
Senior Associate
Tel +39 02 2904 9721
claudio.chiarella@allenovery.com

For more information, please contact:

Milan

Allen & Overy Studio Legale Associato
Via Ansperto 5
Milan
20123

Tel +39 02 290 491

Rome

Allen & Overy Studio Legale Associato
Corso Vittorio Emanuele II 284
Rome
00186

Tel +39 06 684 271

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