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Employment Reorganisation Roadmap

Luxembourg

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Contents

1. Employee representation

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

The main form of employee representation involved in restructurings is the staff delegation (in companies with 15 or more employees).

The staff delegation has additional information and consultation rights if there are 150 or more employees.

1.2. Is there a system of employee participation rights?

Employees are represented on the boards of companies which: (i) have more than 1,000 employees; (ii) are more than 25% state-owned; or (iii) receive state aid for their main business. Employee representatives make up one third of the board in companies with more than 1,000 employees and up to one third of the board in companies with state involvement.

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 to a buyer in circumstances where the activity of a transferred economic entity is pursued and such entity maintains its identity post-transfer. Whether this test is met depends on various factors, such as whether customers, assets and employees have been transferrred and how similar the entity's 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 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?

The transfer of employment contracts existing at the date of transfer to the buyer is automatic and does not require the employees' approval. An employee who does not agree to the transfer would have to resign and would not be entitled to severance.

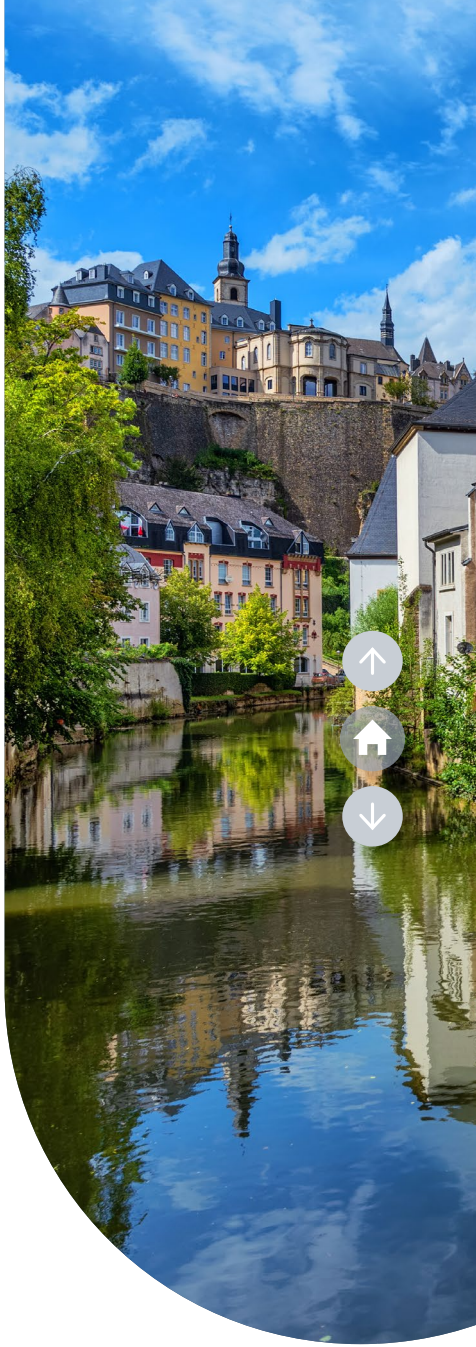
If an employee resigns on account of substantial detrimental changes to their contract as a result of the transfer, a court may regard the resignation as a dismissal, find it unfair and may award the employee damages (see answer to **7.3**).

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

Information and consultation obligations must be fulfilled "in due time" and before employees' working conditions are directly affected by a business transfer. Information and consultation must take place before the implementation of any envisaged changes and, in any event, before any public announcement and before the transfer takes place.

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

Criminal sanctions are in place for anyone who intentionally hinders the regular functioning of the staff delegation. Fines vary between EUR251 and EUR15,000.



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)?

Changes in the structure of the shareholdings of the employing entity or its parent company do not, in themselves, trigger any information and/or consultation requirements. However, if the share transfer is accompanied by, or inevitably leads to, changes in the Luxembourg company's structure (eg because an entire business unit is disposed of), employment levels, work organisation or the employment contracts of Luxembourg-based employees, an information and consultation process with the staff representatives would be required in relation to these consequences of the share transfer. Penalties are similar to those applicable on business sales (see answer to **2.5**).

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)?

If an indirect share sale has no implications for the company itself, no obligation to inform and consult employee representatives is triggered.

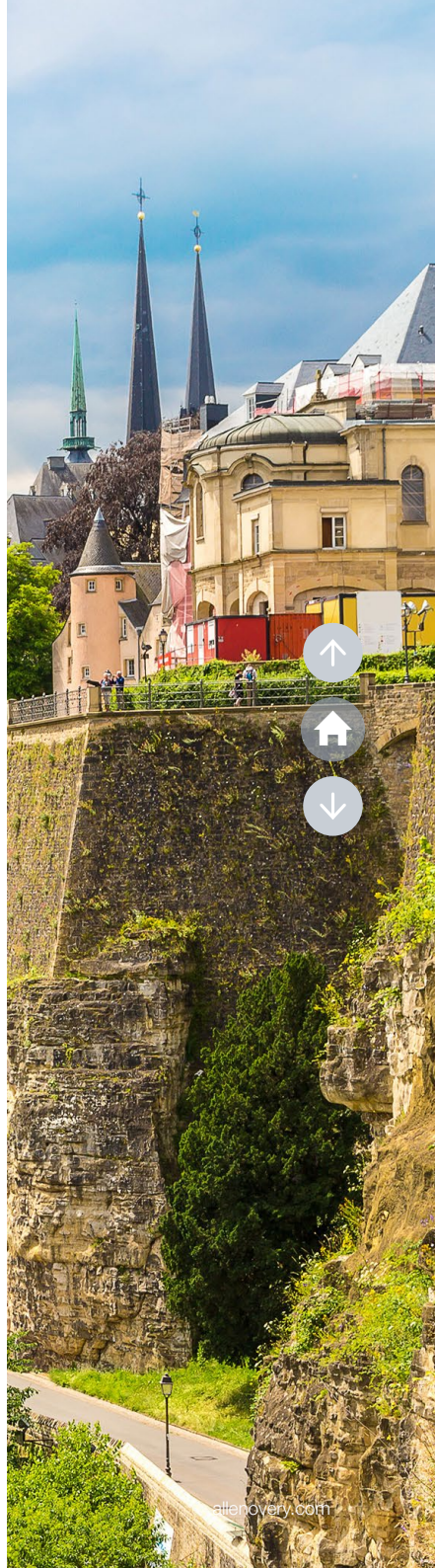
4. Process on outsourcings

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 in any of these scenarios where certain conditions are met. The processes/services transferred must be considered a separate economic entity (involving an organised grouping of resources with the objective of pursuing an economic activity, whether that activity is central or ancillary) and must be carried on in an identical or similar way post-transfer.

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

Obligations to inform and consult apply as they do on a business sale (see answer to **2.5**).



5. Process on collective dismissals

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

A collective dismissal arises where dismissals for economic reasons are proposed affecting:

– 7+ employees within a 30 day period, or

– 15+ employees within a 90 day period.

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

The employer must inform employee representatives about the proposed dismissals "sufficiently early" to enable them to negotiate a social plan. Negotiations must begin with a discussion on mitigation measures in order to reduce the number of dismissals. If no agreement on a social plan is reached within a 15 day period of commencement of negotiations, the parties must refer their case to the National Conciliation Office (NCO). Until the social plan is agreed, or the NCO has published a statement on the parties' failure to reach an agreement, the dismissals are ineffective. The NCO deliberations are terminated no later than 15 days after the date fixed for its first meeting with the parties.

Negotiations to conclude the social plan are generally completed within three to six weeks.

Once the social plan is agreed or the NCO statement is signed, the employer may issue individual notices of dismissal.

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

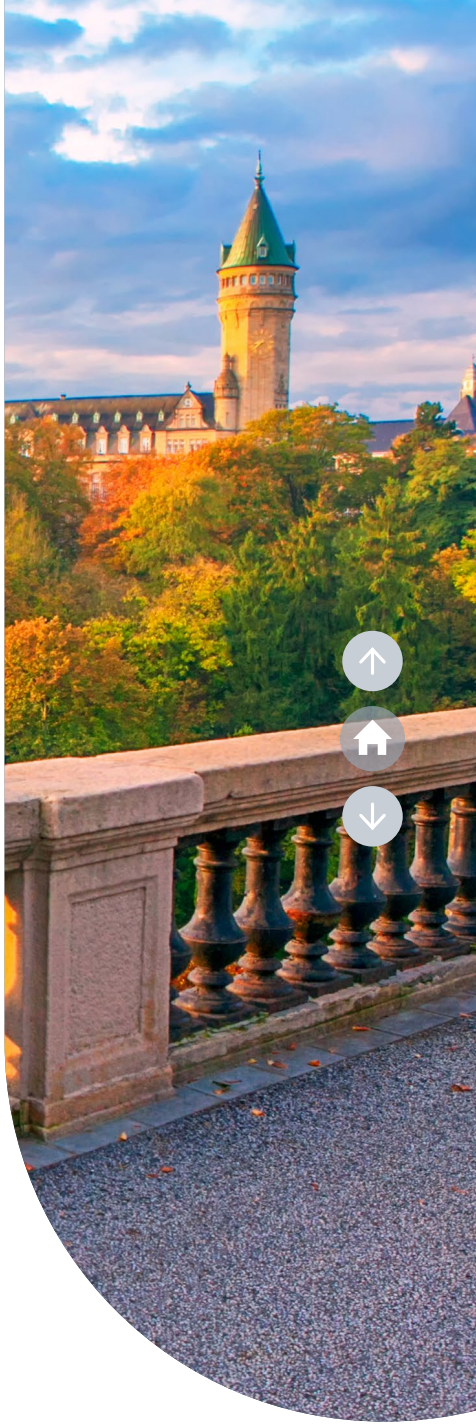
The employer must provide the Labour Administration (ADEM) with:

– a copy of the information it was legally required to provide to the staff delegation, immediately after it has been communicated to the staff delegation

– the project plan for the collective dimissals, no later than when the negotiations begin

– the result of the negotiations (ie the social plan or the statement on the failure to reach an agreement), without undue delay, and

– in the case of a failure to reach an agreement, the statement on consultation with the NCO, without undue delay.



5.4. When are these obligations triggered?

The obligation to consult on 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?

Breach of consultation procedures may render the dismissals ineffective and may result in successful claims aiming for the annulment of the dismissals (see answer to **6.5**). Failure to inform the authorities is a criminal offence.

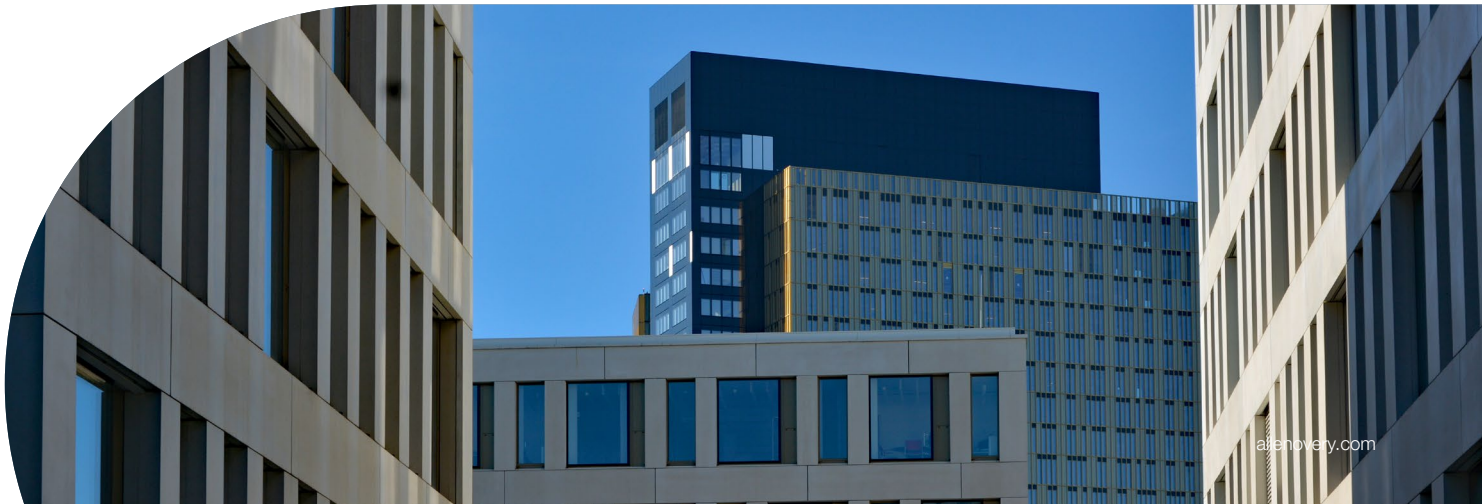
5.6. Do obligations to inform and consult employee representatives and/or competent authorities arise in the context of multiple dismissals, which do not qualify as a collective dismissal, as defined by law?

The employer must inform and consult employee representatives if the planned dismissals may have a decisive impact on the structure of the company, even if they do not qualify as a collective dismissal (eg if the work of an entire department of four employees is discontinued).

Moreover, an employer that regularly employs 15 or more employees has to notify a specfic governmental body (*Comité de conjoncture*) of each dismissal for economic reasons no later than at the time the notice of dismissal is given to the employee (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?

If no social plan has been concluded and the NCO statement on failure to reach an agreement has been signed, the employer can issue individual notices of dismissal.



6. Process on individual dismissals

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

The minimum notice entitlement depends on length of service:

– less than 5 years' service – 2 months

– 5 but less than 10 years' service – 4 months, or

– 10+ years' service – 6 months.

Notice may be enhanced by collective agreement.

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

There must be a legitimate dismissal for economic reasons. In companies with 150 or more employees, the employee must be interviewed before dismissal (and has the right to be accompanied), informed of the grounds of possible dismissal and given an opportunity to respond. The employee must be invited to attend a preliminary meeting in writing by registered mail. A copy of the letter must be sent to the staff delegation.

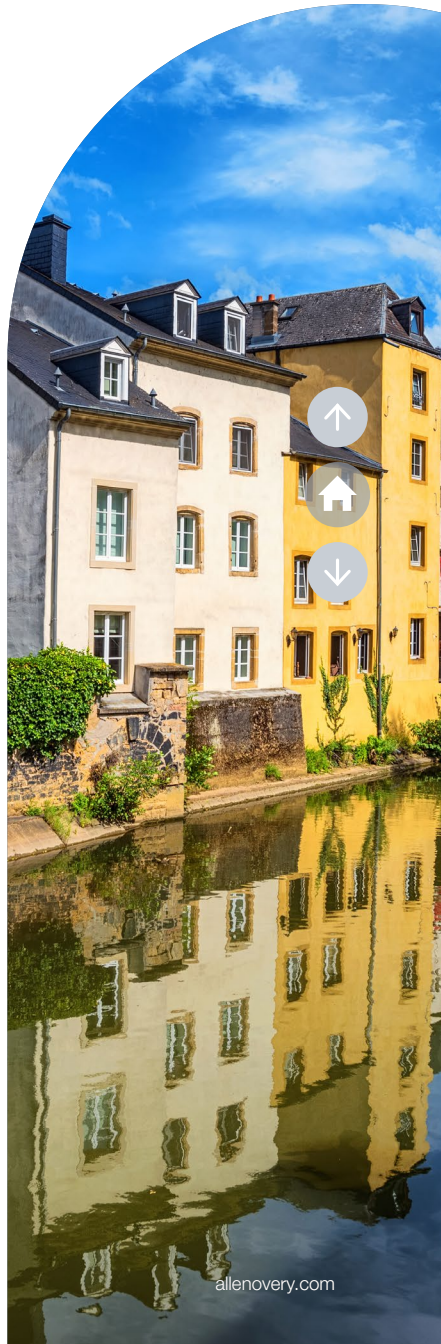
Dismissal must not be notified to an employee any earlier than the day following the date of the preliminary meeting or any later than eight days after it. There are strict formalities for serving notice. There are no statutory selection criteria.

In companies with 15 or more employees, the employer must notify a specific governmental body (*Comité de conjoncture*) regarding a dismissal on redundancy or economic grounds no later than when notice is served on the employee(s).

Once the dismissal notice has been served, the employee has one month to request that the dismissal reasons be provided in writing. The employer has one month from this request to provide them in writing.

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

In general, an employer can dismiss employees after a business transfer but special dismissal protection may be provided for by a collective bargaining agreement. The business transfer itself must not be grounds for dismissal by the seller or the buyer.



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

There are minimum severance payments for employees with five or more years' service:

– 5+ to 10 years' service – 1 month's salary

– 10+ to 15 years' service – 2 months' salary

– 15+ to 20 years' service – 3 months' salary

– 20+ to 25 years' service – 6 months' salary

– 25+ to 30 years' service – 9 months' salary, or

– 30+ years' service – 12 months' salary.

Payments may be enhanced by collective agreement.

An employer with fewer than 20 employees has the option, in the letter of dismissal, of giving an extended period of notice in lieu of a severance payment.

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 unfair or wrongful and may award the employee damages. For instance, failure to follow the pre-dismissal interview procedure properly means dismissal is deemed wrongful (irrégulier) and entitles the employee to compensation of up to one month's pay.

If the dismissal is considered unfair (eg the reasons are not sufficiently real, serious or precise), the court will award damages. There is no mathematical formula for damages, but the court will take into account the age, seniority and qualifications of the employee.

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

There are three main groups of employees who benefit from specific dimissal protection, notably:

– employees on specific types of leave (eg maternity, sickness or parental leave)

– staff delegates, and

– reclassified employees.

The extent of dismissal protection depends on the specific category of protected employees. If the employer terminates the employment contract while the employee is protected, the dismissal will be either void or unfair, depending on the situation.

7. Process when implementing alternatives to redundancy

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

The employer cannot unilaterally amend a substantive employment term where the change is detrimental to the employee. In the absence of employee consent, any such amendment must – after a preliminary meeting (if applicable) – be notified to the employee by the employer. The same requirements on form and timing apply as for a dismissal with notice, and notification must indicate the date on which the change is to take effect. The employee is entitled to ask the employer to provide a statement of the reasons for the change. The employer must provide real and serious reasons, fulfilling the same requirements on form and timing that apply to the provision of the statement of reasons in the event of dismissal with notice.

All other changes (ie that are not detrimental to the employee and/or do not relate to a substantial term) can in general – with certain exceptions – be unilaterally imposed upon the employee.

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

Employers must provide information on every decision that may bring about substantial changes to the organisation of work and employment contracts. Hence, if for example the projected change concerns all staff, then employee representatives must be informed and consulted. If, however, the projected change concerns a single employee, no obligation to inform/consult the staff delegation arises. Where applicable, a preliminary meeting with the affected employees is required.

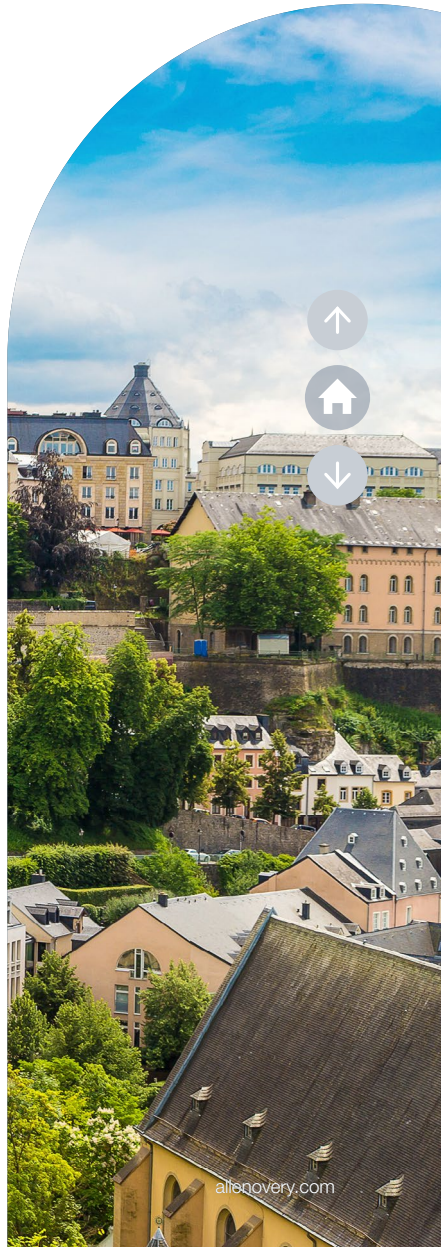
7.3. Do additional restrictions apply if changes are proposed in connection with or following a business transfer?

The general principle is that the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing at the date of a transfer are, by reason of such transfer, transferred to the transferee.

The employee has two possible courses of action to oppose changes:

– If the amendment is notified in accordance with the conditions and in the form required by law, the employee may refuse the amendment, in which case their refusal is equivalent to a termination of the employment contract and regarded as a dismissal. In this case, the employee may take legal action on the grounds of unfair dismissal.

– If the amendment is not notified in accordance with the conditions and in the form required by law, the employee may take action within a reasonable timeframe and seek annulment of the amendment. This action is not conditional on the employee's resignation.



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

Aside from employees' rights of legal action to oppose changes (see answer to **7.3**), there is no general penalty for non-compliance.

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

In the event of temporary economic difficulties affecting an industry or a specific company, an employer can apply for short-time working. In such a case, employees' working time is reduced and they receive (in general) 80% of their remuneration for every unworked hour. The payment of remuneration for the unworked hours will be reimbursed to the employer (subject to a cap of 250% of the amount of social minimum wage for unskilled employees) but the employer still has to pay the social security contributions.

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 on the sale of a solvent business (see **section 2 – Process on business transfers**). According to the Labour Code (Article L.125-1(1)), employment contracts will lapse with immediate effect in the event of the termination of business due to a declaration of the employer's bankruptcy. The Labour Code specifies that if an undertaking is transferred within three months following automatic termination of the employment contracts, these contracts are reinstated.

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

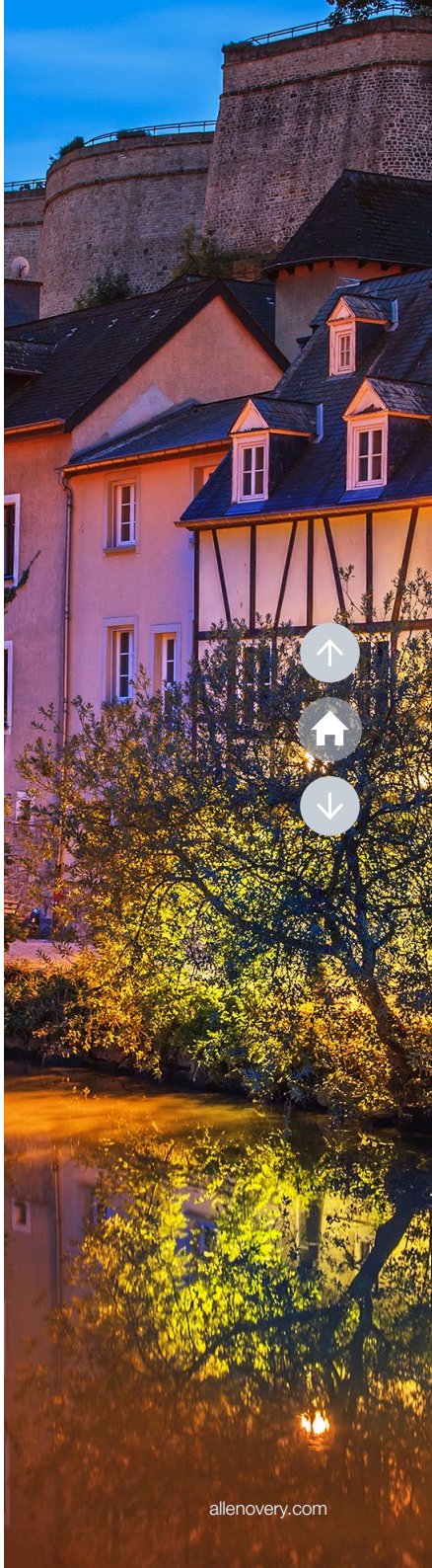
Under Luxembourg transfer of undertakings regulations, employees transfer to the buyer of an insolvent business and the seller and buyer are, after the date of the transfer, jointly liable for obligations arising under employment contracts which exist at the date of transfer (unless otherwise agreed). This is the case when the seller is subject to bankruptcy or insolvency proceedings with a view to a liquidation of its assets; or to controlled management proceedings (which are court-approved reorganisation proceedings the purpose of which is to rescue the company).

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 for collective dismissals in a solvent business (see **section 5 – Process on collective dismissals**).

In the event of a closure following a declaration of the employer's bankruptcy, employment contracts will lapse with immediate effect.

Although national legislation provides for the termination of employment contracts with immediate effect, the process for collective dismissals applies on the termination of an employer's activities as a result of a judicial decision ordering its dissolution and winding-up on grounds of insolvency.



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