ALLEN & OVERY

Employment Reorganisation Roadmap

Morocco

1 January 2024

allenovery.com

Contents

1. Employee representation 3
2. Process on business sales 4
3. Process on share sales 5
4. Process on outsourcings 5
5. Process on collective dismissals 6
6. Process on individual dismissals 8
7. Process when implementing alternatives to redundancy 11
8. Process on insolvency 13
9. Contacts 14

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:

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

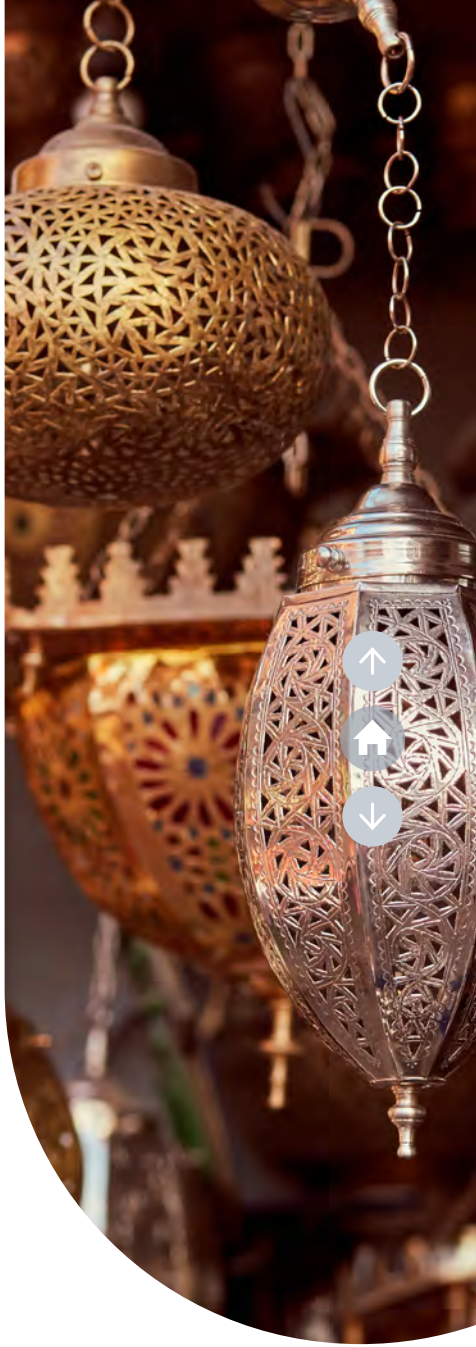
– employee delegates (in companies with 10+ employees), and/or

– trade union representatives (in companies with 100+ employees).

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation, unless the employment contract provides otherwise.

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 the buyer by operation of law on a business sale. This automatic transfer principle would not apply on a sale of assets alone.

Article 19 of the Moroccan Labor Code provides that, in the event of a change in the legal status of the employer or in the legal form of the company, in particular by succession, sale, merger or privatisation, all contracts in force on the date of the change shall remain in force between the employees and the new employer.

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 part of one) will be transferred to the buyer. Whether an employee is “assigned” depends on factors such as which entity is responsible for paying their salary, the percentage of time they spend working in the business, 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?

Employees have no legal right to object to the automatic transfer of their employment contract. Any employee objecting to such transfer may be dismissed without any severance.

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

The buyer/seller must inform/consult employee representatives prior to a business transfer, only if such transfer will entail structural or technological changes within their business. There are no specific requirements in relation to process or timing. However, even if there is no obligation to inform/consult, it is good practice from an industrial relations perspective to inform/consult employee representatives about the proposed transfer.

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

Failure to inform/consult may result in a fine for the employer ranging from MAD 10,000 to MAD 20,000.

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)?

There is no obligation to inform/consult employee representatives on a direct share sale, provided no changes are contemplated regarding the employees, organisation, operations or economic situation of the company.

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, provided no changes are contemplated regarding the employees, organisation, operations or economic situation of the company.

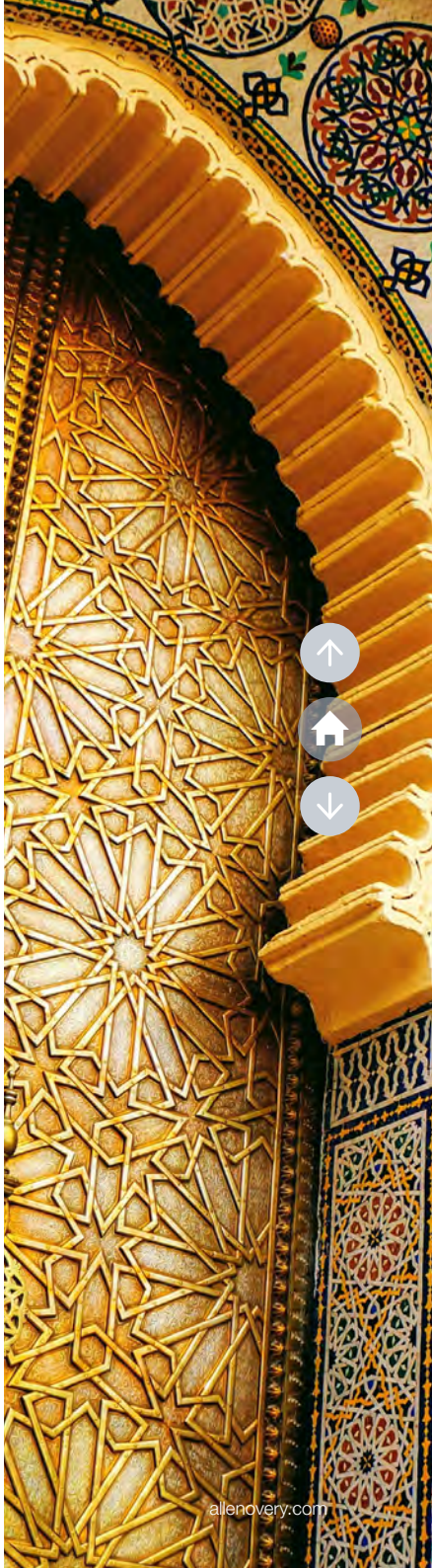
4. Process on outsourcings

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 these scenarios. However, an employee may be considered to have transferred where the employee of the outsourcer/supplier acts under the direction and control of its client.

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

There is no obligation to inform/consult employee representatives in any of these scenarios, provided no changes are contemplated regarding the employees, organisation, operations or economic situation of the employer.



5. Process on collective dismissals

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

There is no definition of collective dismissal. However, the Labour Code provides for a specific procedure to apply to dismissals for technological, structural or economic purposes by companies employing ten or more workers. This procedure applies even for a single dismissal.

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

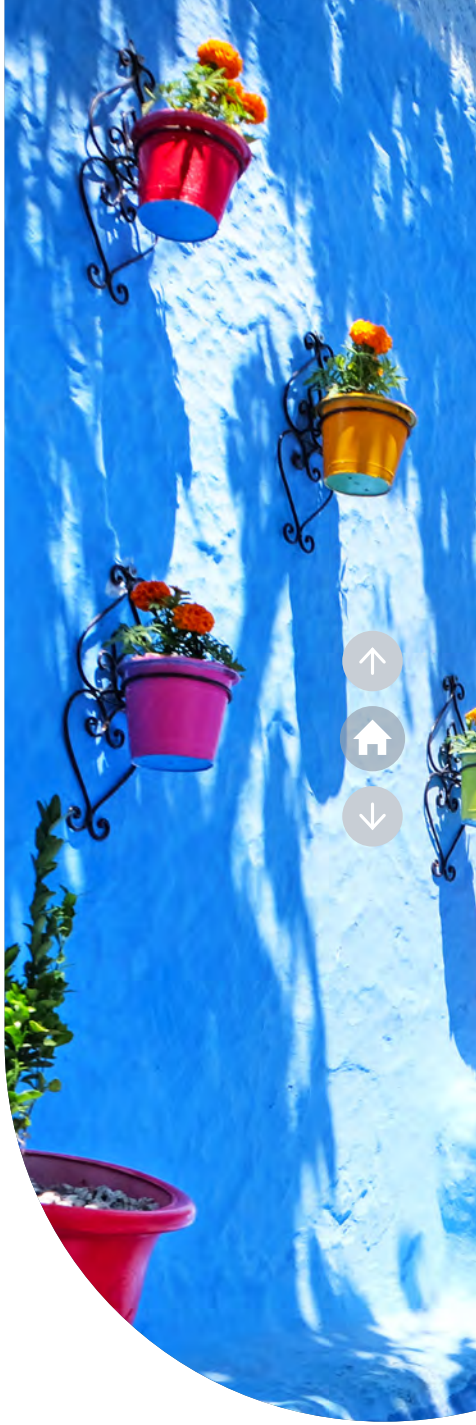
There is no concept of collective dismissals. However, employers with ten or more workers must comply with certain obligations to inform/consult when proposing dismissals for technological, structural or economic purposes.

The employer must inform employee representatives at least one month before proceeding with the dismissals and provide them with all information pertaining to the dismissals (including the reasons, number, categories of employees affected and timing). The employer must also engage in consultation and negotiations with employee representatives in order to examine measures that could avoid the need for dismissals or reduce their negative effects, including the possibility of reinstating the affected employees in other positions.

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

Dismissals for technological, structural or economic purposes are subject to an administrative authorisation issued by the province or préfecture governor ("Governor"). Whilst this authorisation should be issued within two months of the employer's request to the provincial delegate in charge of labour, the Governor rarely grants authorisation and does not usually respond to requests. The absence of a response from the Governor is, however, treated as a rejection of the employer's request. Although there is a theoretical risk of fines if the employer proceeds without the Governor's authorisation (see answer to **5.5**), fines are rare.

Rather than relying on the Governor's authorisation being granted, it is common in practice for employers to engage in a conciliation procedure involving the Work Inspector so as to reach agreement as to the proposed dismissals and to prevent employees from bringing claims (see **section 6 – Process on individual dismissals** for further information).



5.4. When are these obligations triggered?

These obligations are triggered prior to any decision being taken to proceed with collective dismissals.

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

Failure to comply with obligations to inform/consult or to seek administrative authorisation in relation to dismissals for technological, structural or economic purposes may result in a fine for the employer ranging from MAD 10,000 to MAD 20,000.

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 definition of collective dismissal (for further information see response to question above on definition of collective dismissal). However, the Labour Code provides for a specific procedure to apply to dismissals for technological, structural or economic purposes by companies employing ten or more workers. This procedure applies even for a single dismissal.

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

As explained above, it is common in practice for employers to engage in a conciliation procedure involving the Work Inspector so as to reach agreement as to the proposed dismissals and to prevent employees from bringing claims (please see section 6 – Process on individual dismissals for further information).

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 and seniority level as follows:

For white-collar and blue-collar workers

– less than one year's service – eight days;

– one to five years' service – one month; or

– five or more years' services – two months.

For managerial and similar positions

– less than one year's service – one month;

– one to five years' service – two months; or

– five or more years' services – three months.

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

Employers with ten or more workers must comply with the information and consultation procedure for dismissals for technological, structural or economic purposes (including the obligation to obtain the Governor's authorisation), even in the case of a single dismissal.

While not mandatory, it is highly recommended that employers do not rely on the grant of the Governor's authorisation (which is rarely granted – see **section 5 – Process on collective dismissals**) but instead engage in a conciliation procedure before the Work Inspector prior to proceeding with the dismissals. This involves negotiating with employees on an individual basis, and either asking the Work Inspector to mediate in negotiations or to approve the terms agreed with employees. Provided that the Work Inspector has signed the conciliation minutes, employees are prevented from bringing claims relating to their dismissal. It is common practice to offer employees enhanced severance payments in negotiations in order to reach agreement (see answer to **6.4**).

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 where dismissals are to be implemented following or in connection with a business transfer.

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

Employees with at least six months' service' are entitled to a dismissal indemnity (*indemnité de licenciement*) as follows:

– Up to five years' service – 96 hours of salary per year (or part of a year);

– Five to 10 years' service – 144 hours of salary per year (or part of a year);

– 10+ to 15 years' service – 192 hours of salary per year (or part of a year); or

– 15+ years' service – 240 hours of salary per year (or part of a year).

However, given that the Governor's authorisation is rarely granted, employers must often pay employees upfront an amount equivalent to damages for unlawful dismissal (which amount to 1.5 months' salary per year of service, or per part of a year of service, subject to a 36-month limit), as well as this dismissal indemnity, in order to reach agreement with them for the purpose of the conciliation procedure (see answer to **6.2**).

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 (*licenciement abusif*) and may award the employee damages. The maximum amount of damages (*dommages-intérêts*) cannot exceed 1.5 months' net salary per year of service capped at 36 months' pay. While a court has powers to order reinstatement, these are not applied in practice.

The employer would also be liable to pay a fine ranging from MAD 10,000 to MAD 20,000.

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

Employee delegates and trade union representatives are entitled to receive a double dismissal indemnity (*indemnité de licenciement*).

7. Process when implementing alternatives to redundancy

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

The general principle is that the employment terms may not be modified without the employee's express consent.

However, the Labour Code allows the employer to reduce normal working hours (including wages) without getting the prior approval of the employees provided that:

– the reduction is justified: (i) either by a temporary economic crisis which has affected the company; or (ii) by unforeseen exceptional circumstances (eg the Covid-19 outbreak), and

– the reduction in wages must not in any circumstances exceed 50% of the normal wage.

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

Obligations apply where an employer seeks to reduce normal working hours (see answer to **7.1**).

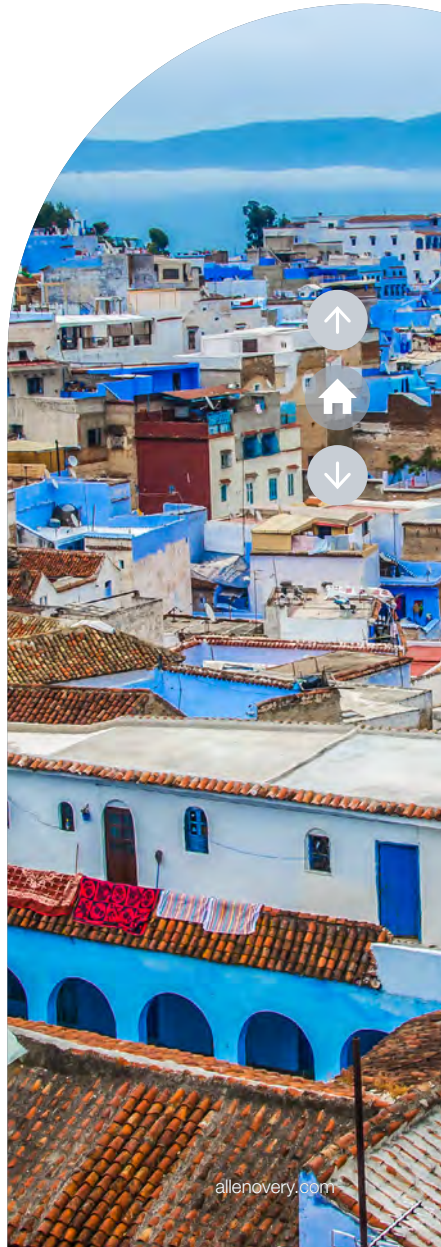
Where the intended reduction in normal working hours is less than 60 days (over a continuous or interrupted period), the employer is required, before applying such a measure, to consult the employee delegates and, as the case may be, the trade union representatives within the company.

Where the intended reduction in normal working hours is greater than 60 days, the employer may apply the measure only after obtaining the prior agreement of the employee delegates and, as the case may be, the trade union representatives within the company. If no agreement is reached, the employer is required to obtain the authorisation of the Governor.

In all cases, if the employer who plans to reduce the normal working hours usually employs ten or more employees, it must notify the employee delegates and, where applicable, the trade union representatives within the company, at least one week before proceeding with the reduction. At the same time, it must provide them with all information about the measures it plans to take and the effects that may result from them. The employer must also consult them on any measures that are likely to prevent the reduction in normal working hours or to reduce its negative effects. The works council (*comité d'entreprise*) replaces the employee delegates and trade union representatives in companies employing 50 or more employees.

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

No additional restrictions apply where normal working hours are reduced in connection with or following a business transfer.



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

If the procedure for reducing normal working hours is not followed, a court may find the reduction of normal working hours (including salary) to be unlawful and qualify it as unfair dismissal. The court may also award the employee severance for unlawful dismissal.

The employer would additionally be liable to pay a fine ranging from MAD 10,000 to MAD 20,000.

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

The Labour Code allows the reduction of normal working hours, and the use of layoff, subject to strict conditions (see answers to **7.1** and **7.2**).

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. The buyer/seller must only inform and consult employee representatives prior to a business transfer if such transfer will entail structural or technological changes within their business (see **section 2 – Process on business transfers** for further information).

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

Employees and employee liabilities transfer automatically to the buyer of an insolvent business.

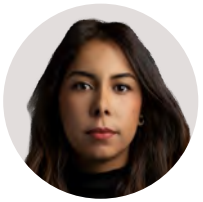
8.3. Do obligations to inform and consult employee representatives arise where collective dismissals are to be implemented in an insolvent business?

The same obligations apply as for dismissals for technological, structural or economic purposes in a solvent business (see **section 5 – Process on collective dismissals**).

9. Contacts

Yassir Ghorbal
Partner
Tel +212 520478000
yassir.ghorbal@allenovery.com

Naoufal Achergui
Counsel
Tel +212 520478000
naoufal.achergui@allenovery.com



Sanaa El hadil
Collaboratrice
Tel +212 520478014
sanaa.elhadil@allenovery.com

For more information, please contact:

Casablanca

Anfaplace, Centre d'Affaires, Immeuble A,
Boulevard de la Corniche
Casablanca
20180

Tel +212 520 478 000

Global presence

Allen & Overy is an international legal practice with approximately 5,800 people, including some 590 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at www.allenovery.com/global_coverage.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is open to inspection at our registered office at One Bishops Square, London E1 6AD.

ROW
CS2308_CDD-73925_ADD-111162