ALLEN & OVERY

Employment Reorganisation Roadmap

Poland

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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

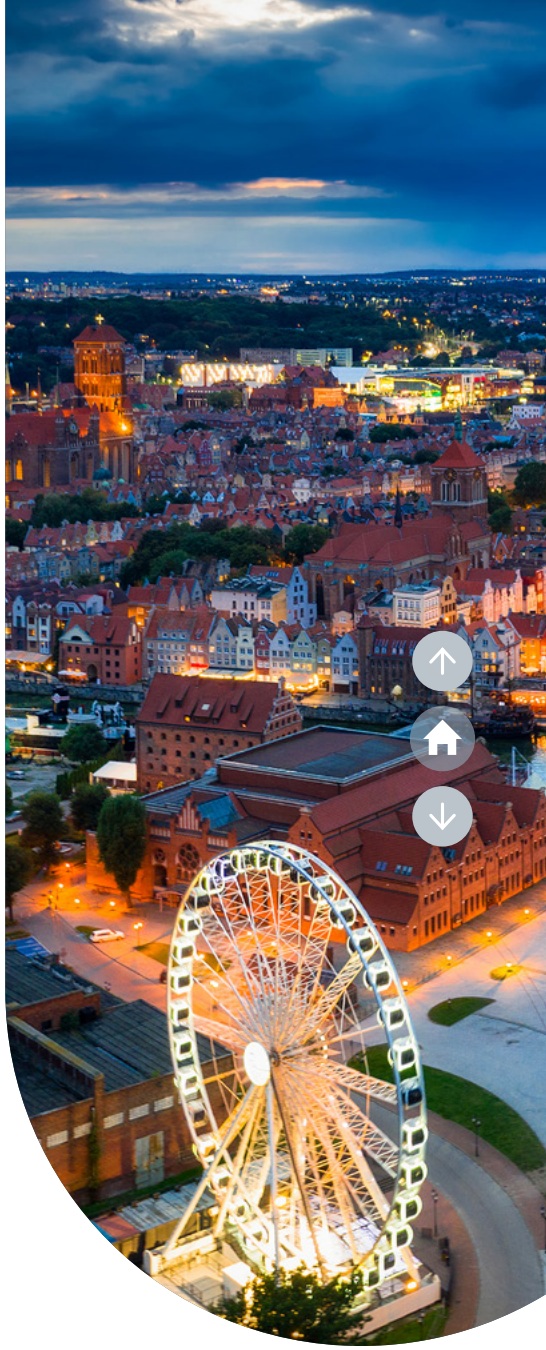
– employee representatives (if there is no recognised trade union), and/or

– the works council (in companies with 50 or more employees).

1.2. Is there a system of employee participation rights?

Employees or their representatives have the right to elect a certain proportion of members of corporate bodies in state-owned, municipally-owned and privatised companies.

2. Process on business sales



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

If an employing undertaking (or part of one) is transferred to another employer (including a transfer of assets and/or activities constituting a business unit in which employees are employed), that employer becomes a party to the existing employment relationships by operation of law.

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

The automatic transfer rule applies to all persons who are considered as "employees" in relation to the undertaking (or part of it) which is being transferred. No distinction is made between those who have employment contracts for a definite or for an indefinite period. There is extensive case law regarding the rules for determining a separate employing undertaking and the eligibility criteria in order for employees to transfer. If there are doubts as to whether or not an employee transfers, regard should be had to the portion of their working time that they spend working in relation to the transferring undertaking (or part of it).

People performing work on the basis of civil law contracts, eg a mandate contract or a specific task contract, are not covered by the automatic transfer rule.

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

Within two months of the transfer of the employing undertaking (or part of it) to another employer, the employee may, without giving notice, but subject to notifying the employer seven days in advance, terminate their employment relationship. The consequences for employees where they terminate their employment relationship in accordance with this procedure are the same as the labour law consequences of an employer terminating their employment relationship with notice.

Employees' contracts could also terminate if the employer serves a notice of change to their employment conditions and they refuse to accept the changes (see **section 7 – Process when implementing alternatives to redundancy**).

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

Information must be given to trade unions (or to employees if there are no trade unions) at least 30 days prior to a business transfer. If the current or new employer intends to change employment conditions after the transfer, it is obliged to take up negotiations with trade unions "with a view to reaching an agreement" on any envisaged measures and this must take place within 30 days of information being given (ie before the transfer).

If the business sale affects the company's economic situation and operation, work organisation and employment structure, the works council must be informed and consulted as soon as the intention to sell the business arises.

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

Failure to inform and negotiate with trade union(s) on a business sale may result in a fine for the employer of up to PLN 1,080,000 (approximately EUR 245,500) or an order for two years' "limitation of freedom" (usually social work).

A failure to inform/consult the works council, as required by Polish statutory provisions, may result in a fine of PLN 5,000 (approximately EUR 1,200) or an order for one month's "limitation of freedom". However, this does not delay or invalidate the 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/consult employee representatives on a direct share sale, provided no changes are contemplated regarding employees, organisation, operations or economic situation.

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 employees, organisation, operations and economic situation.

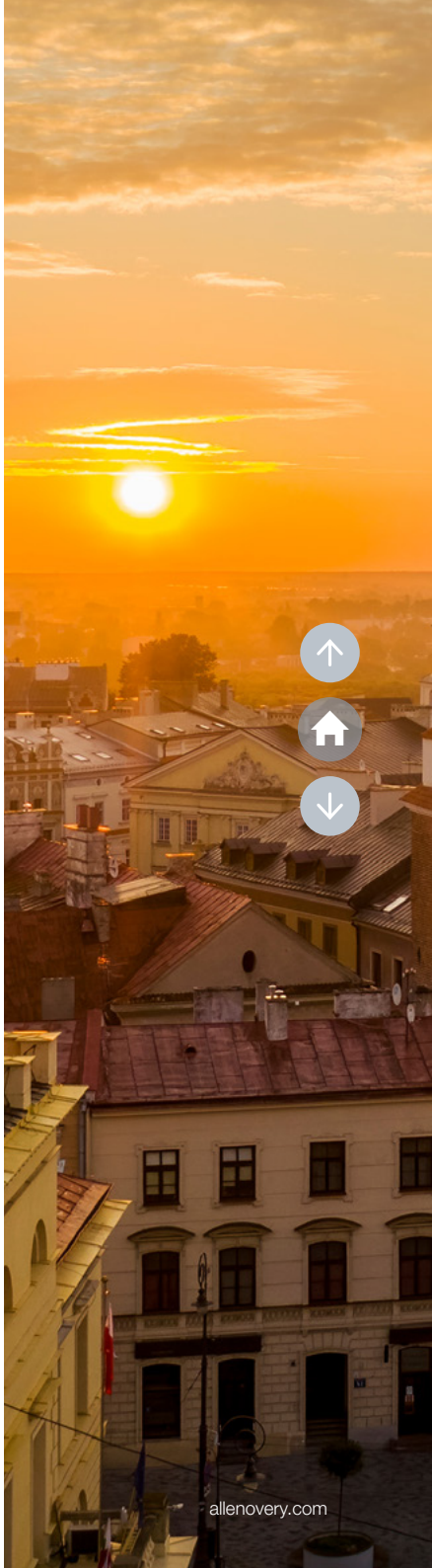
4. Process on outsourcings

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?

A transfer of relevant employees may occur in these scenarios by operation of law where certain conditions are met. The processes/services transferred must be considered a separate business unit (eg comprise the assets and/or employees necessary and sufficient to conduct a separate business) which must retain its identity. This needs to be assessed on a case-by-case basis having regard to case law.

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

Where employees transfer by operation of law, obligations to inform/consult apply as they do on a business sale (see **section 2 – Process on business sales**).



5. Process on collective dismissals

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

A collective dismissal arises where dismissals are proposed within a 30-day period affecting:

– 10 or more employees in an undertaking with 20-99 employees

– at least 10% of employees in an undertaking with 100-299 employees, or

– 30 or more employees in an undertaking with 300 or more employees.

These thresholds also include employees whose employment is terminated by mutual consent (at the initiative of the employer) if there are at least five such employees.

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

An employer must notify trade unions of the proposed dismissals and must then consult with the trade unions and reach agreement with them within 20 days. If no agreement is reached, the employer must adopt rules on redundancy (taking into account trade union proposals where possible). If there are no trade unions, the employer must adopt rules on redundancy itself, after consulting employee representatives.

The employer must also inform/consult the works council as soon as the intention to make a collective dismissal arises.

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

The employer must notify the competent labour authorities of the rules adopted on redundancy and of the outcome of consultation (providing a copy of the notification to the trade unions, or to employee representatives if there are no trade unions). This must be done after reaching an agreement with the trade unions, or adopting rules on redundancy itself (if the employer has failed to reach an agreement with the trade unions, or if it has consulted employee representatives because there are no trade unions). Notices of dismissal cannot be given until at least 30 days after the labour authority is notified of the outcome of the consultation.

5.4. When are these obligations triggered?

The obligation to notify and consult trade unions and to 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?

A violation of the information and consultation obligations in a collective dismissal results in all the redundancy notices made within the framework of collective dismissal becoming defective, and at risk of being challenged before the court.

A failure to inform/consult the works council, as required by Polish statutory provisions, may result in a fine of PLN 5,000 (approximately EUR 1,200) or in an order for one month's limitation of freedom. However, this does not delay or invalidate the collective dismissals.

Employees may challenge the lawfulness of their dismissal (please see answer to **6.5**).

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?

Any relevant trade union representing an employee employed on an indefinite basis must be consulted in advance of their dismissal.

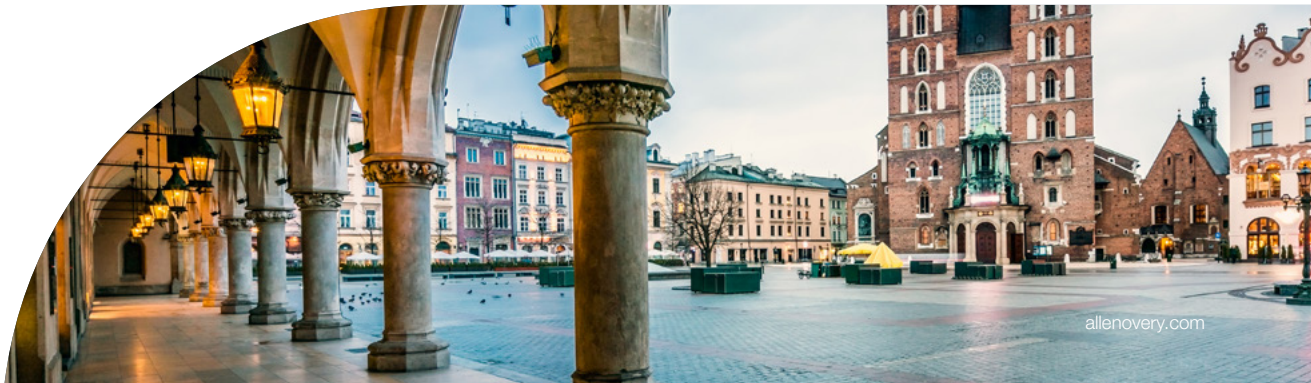
Additionally, an employer is always obliged to consult a trade union representing an employee if the employer intends to terminate their employment contract without notice:

– for reasons not attributable to the employee (eg due to the employee's long-term illness), or

– for reasons attributable to the employee (eg on disciplinary grounds due to theft of the employer's property or consumption of alcohol at work).

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 agreement is reached, the employer must adopt rules on redundancy itself (taking into account trade union proposals where possible). The same applies if there are no trade unions, ie the employer must adopt rules on redundancy itself, after consulting employee representatives (see answer to **5.2**).



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. This ranges from a minimum of two weeks to a maximum of three months (for those with three or more years' service).

Notice may be enhanced by contract or collective agreement.

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

Dismissal must be justifiable on redundancy grounds, ie it must be solely for reasons not attributable to the employee. Any relevant trade union representing an employee must be consulted in advance of a dismissal. An employer cannot serve notice of dismissal on certain protected groups of employees, in particular pregnant employees or those on maternity leave, or works council members or trade union representatives. These employees must be offered new terms and conditions of work or employment; if they refuse to accept these conditions, their employment terminates at the end of the notice period.

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

The transfer does not constitute grounds for an employer to terminate an employment relationship with notice.

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

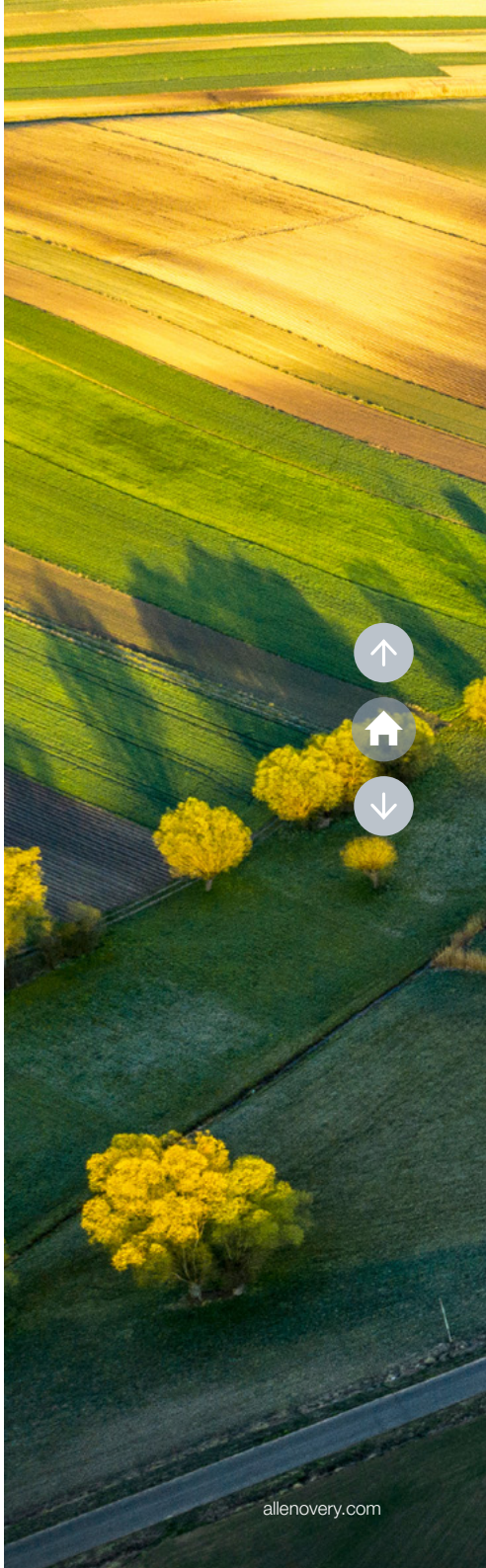
The minimum severance payment depends on length of service. This ranges from a minimum of one month's pay (for those with less than two years' service) to a maximum of three months' pay (for those with more than eight years' service). Severance pay cannot exceed 15 times the national minimum wage applicable on termination. Employers with fewer than 20 employees are not obliged to make severance payments.

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. The court may declare the dismissal ineffective, and if the employment has already been terminated, the court may order the reinstatement of the employee or it may award compensation.

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

Some categories of employee are protected against their employment being terminated with notice. They include: (i) pregnant employees; (ii) employees on maternity and similar leave; (iii) employees on childcare leave; (iv) employees who will reach retirement age in less than four years if that period of employment gives them the right to a retirement pension on reaching that age; (v) employees who are justifiably absent from work; (vi) members of works councils; and (vii) trade union members designated by the trade union authorities.



7. Process when implementing alternatives to redundancy

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

The employer may either: (i) enter into an agreement changing the terms of employment with the relevant employee; or (ii) serve the employee with a notice of change stating the nature of the proposed change and the reason for it. If the employee accepts the notice of change, this will lead to a change in their employment contract. If the employee does not accept the new employment terms, their employment contract will be terminated at the end of the notice period. In this situation, an employee will not be automatically entitled to severance pay, for example, where the revised conditions proposed by an employer are objectively acceptable. However, if the employee does not make a declaration of refusal of the proposed changes before the halfway point in the notice period, the employee will be deemed to have agreed to them.

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

An employer must consult any relevant trade union representing an employee in advance of serving the employee with a notice of change. This obligation does not apply if the change of employment terms is implemented with the parties' mutual consent.

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

In accordance with case law (specifically a recent ruling of the Polish Supreme Court dated 10 October 2019, case file No. I PK 196/18), if changes are made by simultaneously providing a notice of change to a large number of employees which meet the thresholds for triggering a collective dismissal procedure (see answer to **5.2**), the collective dismissal procedure should be followed. Whether the collective dismissal procedure should apply in this scenario is still open to debate, but there is a risk that submitting a notice of change to a large number of employees simultaneously will trigger it.

If there is an automatic transfer of employment on a business transfer, an employee's employment terms and conditions remain unchanged. However, an employer can still make changes by providing a notice of change to the employee stating the nature of the proposed change and the reason for it (provided that the reason cannot be the transfer). Please see answer to **7.1** as to the consequences of serving a notice of change.

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

An employee who receives a notice of change can seek relief from the court. The employee can demand reinstatement of the original terms and conditions or seek up to three months' compensation. The employee can seek full damages if they can prove actual damages that exceed three months' compensation.

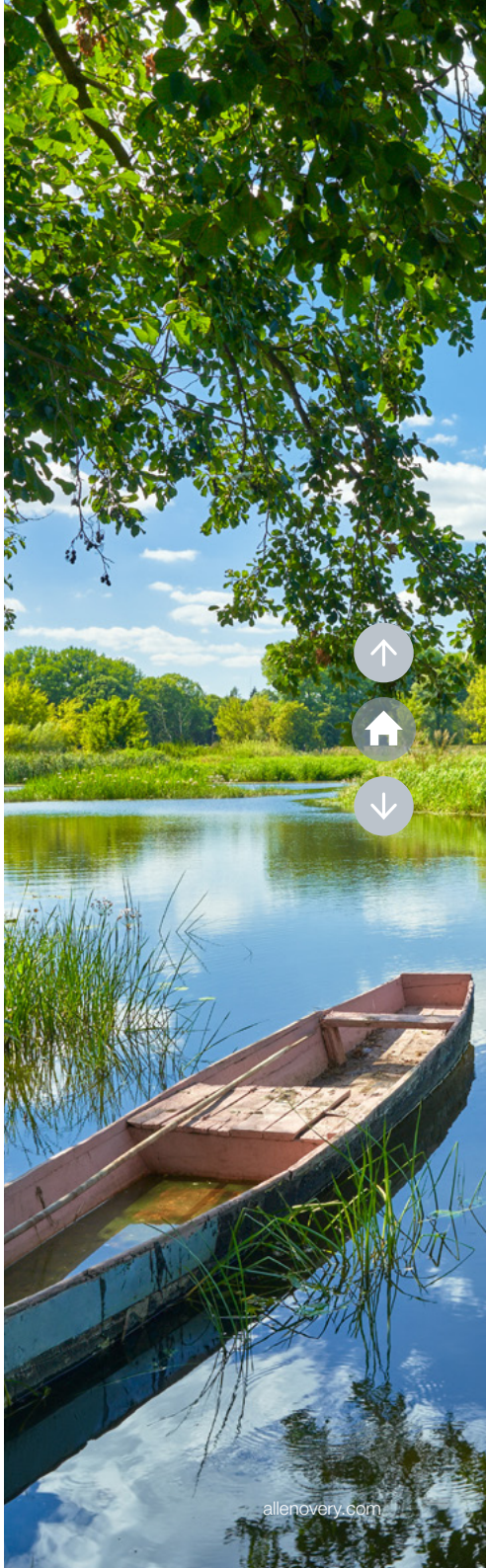
7.5. Do national laws promote or permit any alternatives to redundancy (eg layoff or short-time working)?

Where justified by the employer's financial situation, the Labour Code provides a possibility for the employer to enter into an agreement with trade unions or, if no trade unions are operating at the employer, with employees' representatives elected on an ad hoc basis from the employer's staff, regarding:

– the temporary application of conditions of employment which are less favourable than those under the individual employment contracts concluded with employees

– the temporary suspension, in whole or in part, of the employer's employment by-laws (if components of the salary subject to reduction are based on the remuneration rules applicable at the employer), or

– the temporary suspension, in whole or in part, of the corporate collective labour agreement or of the multi-company collective agreement applicable to the employer (if components of the salary being reduced are based on that collective labour agreement or multi-company collective agreement).



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)?

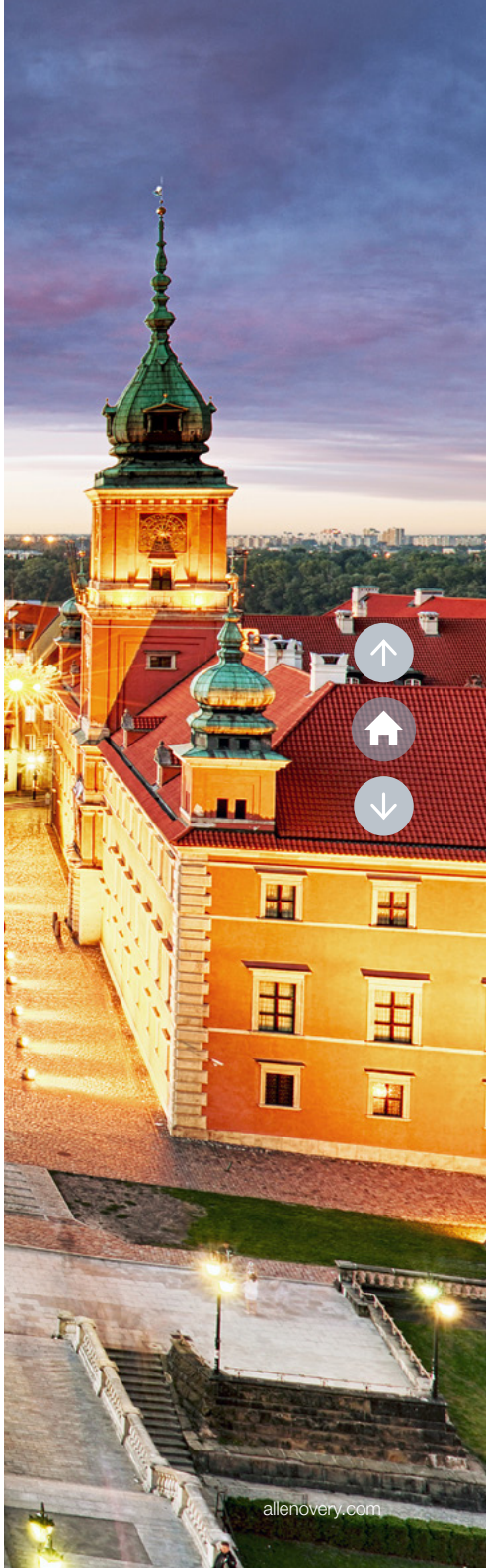
The same obligations apply as in the case of the sale of a solvent business (see **section 2 – Process on business sales**).

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

Under Polish transfer of undertakings regulations, employees transfer to the buyer of an insolvent business. This applies whether the seller is subject to bankruptcy or insolvency proceedings with a view to a liquidation of its assets, or to composition or restructuring proceedings (the purpose of which is to rescue the company). Note, however, that employee liabilities incurred prior to the business transfer do not transfer to the buyer of the insolvent business (unless otherwise agreed).

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 collective dismissals**).



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