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Employment Reorganisation Roadmap

Romania

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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, where a trade union is recognised (a trade union may be established by 10 or more employees from the same company or by 20 or more employees from different units within the same collective bargaining sector), or

– employee representatives, where there is no recognised trade union in companies with 10 or more employees.

1.2. Is there a system of employee participation rights?

A company's board of directors must invite trade union representatives to participate as observers where social or professional-related matters which affect the employees are addressed. Trade union representatives and employee representatives have the right to participate in negotiations to conclude a collective agreement (where applicable) and to create internal regulations.

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 or undertaking (or part of a business or undertaking) to a buyer where there is a transfer of a stable economic entity that retains its identity after the transfer. Whether this test is met is determined by reference to various factors, in particular whether customers, assets and employees have transferred, and how similar the 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 employed by the seller immediately before the transfer and who are assigned to the business or undertaking (or part thereof) will transfer to the buyer. Whether an employee is "assigned" is a question of fact, having regard to 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 only work for it on a temporary basis.

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

Employees may terminate their employment agreement as a result of a substantial negative change in their working conditions due to the transfer. In this case, the employer will be considered liable. The employees will be deemed to have been dismissed even if they resign and may be entitled to severance (**see answer to 6.4**). Employees have no other right to object to the transfer. If they terminate their employment, this would be treated as a resignation, except for the case above (ie a resignation due to a change in their working conditions). Whether they are entitled to a severance payment will depend on the internal policy of a company/individual employment agreement.

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

Information must be given to the relevant employee representatives at least 30 days prior to a business transfer. Consultation on any envisaged measures must be "with a view to reaching an agreement" and undertaken at least 30 days prior to the business transfer.

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

Failure to inform or consult the trade union or employee representatives on a business sale is an administrative offence. The sanction is a fine ranging from RON 1,500 (approximately EUR 300) to RON 3,000 (approximately EUR 600).

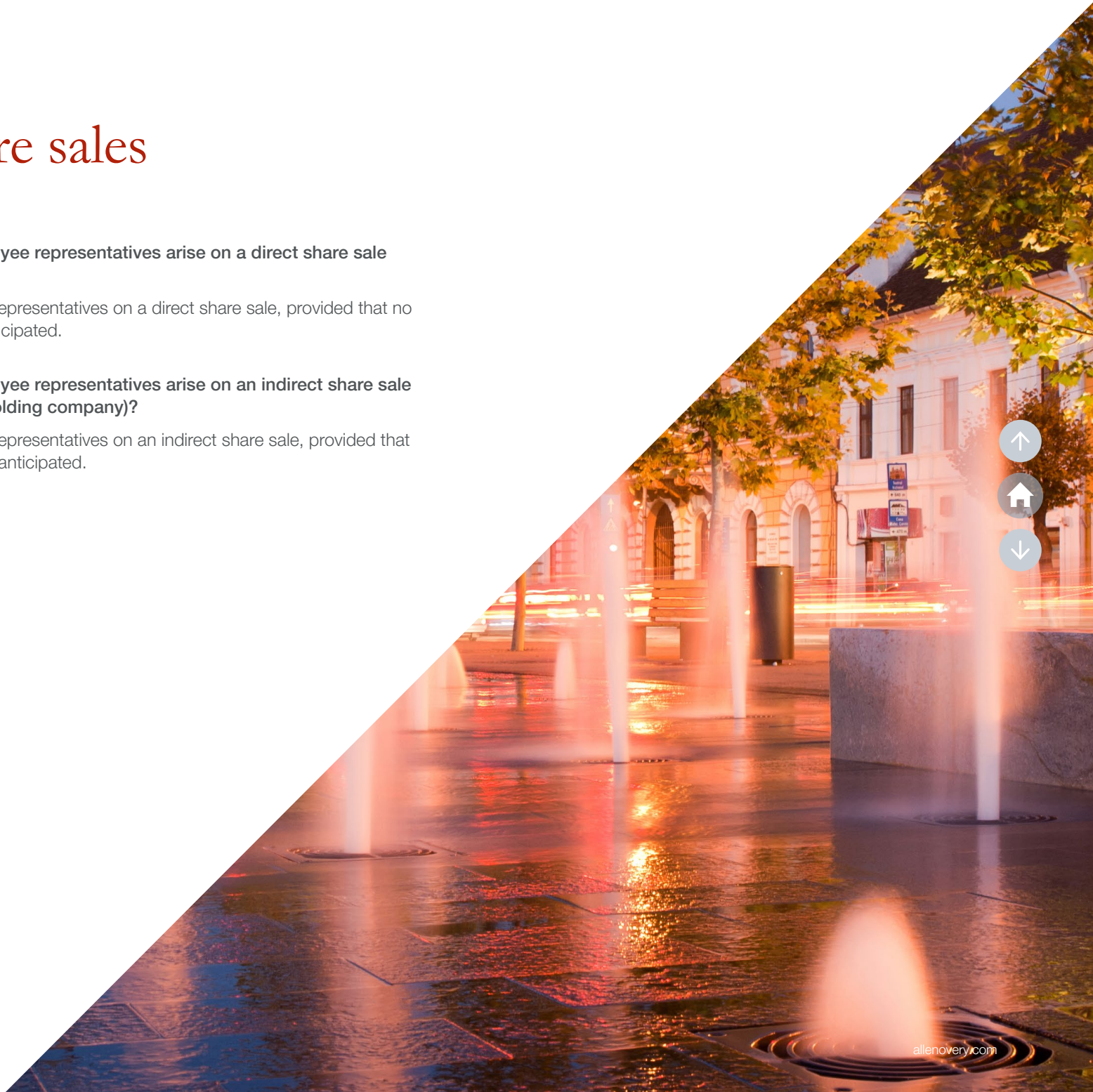
3. Process on share sales

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 that no important changes to working relationships are anticipated.

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 that no important changes to working relationships are anticipated.



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 (ie the conditions specific to a transfer of undertaking). 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/consult apply in relation to a service provision change as they do on a business sale (**see section 2 – Process on business sales**).

Companies with more than 20 employees have a general obligation to inform and consult the representatives of the employees with respect to:

– the recent and the likely development of the activities and economic situation of the company

– the status, structure and potential development and likely use of manpower within the company, as well as possible measures, especially where there is a threat to the preservation of jobs, and

– decisions which may lead to major changes regarding work organisation, employment agreements and labour relations.

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 21-99 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.

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

An employer must notify and consult the trade union or employee representatives about the proposed dismissals with a view to reaching an agreement regarding the protection of affected employees and with a view to avoiding or reducing the number of dismissals.

In order for representatives to formulate appropriate proposals for the protection of the employees, the employer must provide them with any and all relevant information in writing (including certain prescribed information) during the consultation process. The employer must send a copy of the notification about the proposed dismissals to the competent labour inspectorate and regional agency for professional occupation.

The relevant employee representatives may present proposals to avoid the dismissals, or reduce the number of dismissals, to the employer within ten days of receipt of the employer’s notification. The employer must respond to the employees’ proposals in writing within five days of the date on which they are received.

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

The employer must send to the competent labour inspectorate and regional agency for professional occupation a copy of the notification about the proposed dismissals sent to the employees` representatives/ trade union.

If, after consultations held with the trade union or employee representatives, the employer decides to implement the collective dismissals, it must notify the competent labour inspectorate and the regional agency for professional occupation of its decision (and send a copy of this to employee representatives) at least 30 days prior to the date on which dismissal notices are submitted to each employee.

5.4. When are these obligations triggered?

The obligation to consult for collective dismissals/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?

Non-compliance with information and consultation obligations under the collective dismissal procedure is an administrative offence. The sanction is a fine ranging from RON 1,000 (approximately EUR 200) to RON 20,000 (approximately EUR 4,000). In addition, a competent court may declare the dismissal procedure null and void.

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 are no obligations to inform/consult employee representatives and/or competent authorities in this situation.

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 reach agreement with employees` representatives.

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 period is 20 working days.

More favourable notice provisions may apply under sectoral collective agreements.

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

Dismissal can be justifiable on redundancy grounds, such as the elimination of the employee's position due to economic difficulties, technological changes, modernisation and automation of production processes or a reorganisation of activities. In order to have legal effect, the elimination of the employee's position must be effective and must be justified by a serious and real reason.

The relevant trade union must be consulted in advance of a dismissal in certain specific situations provided by the law.

An employer cannot serve notice of dismissal on certain protected groups of employees, in particular those on maternity, adoption or parental leave, pregnant employees, those on sick leave or taking paid holiday.

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

A business transfer cannot constitute grounds for the dismissal of the employees. In the absence of specific legal provisions, the validity of dismissals of transferred employees is a "grey area" and there is no relevant court practice in order to establish a consistent approach. Dismissals should therefore be viewed with extreme caution. In any case, in order for a dismissal of the transferred employees to be considered valid, such dismissal must be grounded on reasons which are not in any way related to the transfer (such reasons might include, for example, changes in the market conditions, according to jurisprudence).

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

There is currently no regulation on statutory redundancy pay in the Romanian Labour Code, although employees may be entitled to redundancy compensation under applicable collective greements. The employee is entitled to benefit from measures against unemployment.

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

If the procedure on individual dismissals is not followed, the dismissal may be judged to be null and void by a competent court. The court may order the reinstatement of the employee (only at the employee's request) and require the employer to pay the employee damages based on the wages and other entitlements the employee would otherwise have received.

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

Dismissals cannot be implemented during: (i) temporary work incapacity of the employee (certified by a medical certificate); (ii) temporary suspension of the activity due to quarantine; (iii) the employee's pregnancy; (iv) maternity leave; (v) the two years' parental leave (three years in the case of children with a disability); (vi) parental leave to take care of a sick child aged up to seven years (18 years in the case of children with a disability); (vii) annual leave; (viii) carer's leave; or (ix) the period of absence from work in the case of unforeseen circumstances caused by family emergencies due to illness or accident, which make the immediate presence of the employee indispensable.

The above restrictions do not apply where dismissals are triggered by reorganisation, bankruptcy or the dissolution of the employer.

7. Process when implementing alternatives to redundancy

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

An employee's express consent is generally required for changes to terms and conditions in the employment contract. However, the employee's consent is not required where such a change is provided for by law (ie delegation, secondment, force majeure, a disciplinary sanction, or to protect the employee where required by the law).

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

As a rule, the employer is required to inform each affected employee of the contemplated changes before they are implemented. This obligation is considered to be fulfilled upon the execution of the amendment to the employment agreement.

For companies with more than 20 employees, the Romanian legislation provides specific requirements for consultation with employee representatives in certain circumstances, such as where a change may lead to a significant change in work organisation, contractual relationships or labour relations (eg on the transfer of an undertaking).

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

All rights and obligations arising from the individual employment agreements and collective bargaining agreement that apply to the transferred employees at the moment of the transfer must be taken over by the transferee. The transferred collective bargaining agreement must be observed until its expiry or termination. If it is still in force, it can only be renegotiated after the expiry of one year from the transfer.

However, the transferee and the transferred employee can renegotiate the individual employment agreement once the transfer has been implemented and conclude an addendum to it.

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

Under Romanian labour legislation, an employer's failure to inform the affected employee before implementing a change entitles the employee to recover the damages they incur as a result of that failure.

For companies with more than 20 employees, the legislation on information and consultation of employees specifically requires consultation with employee representatives in certain circumstances, such as any change that may lead to a significant change in work organisation, contractual relationships or labour relations (eg on the transfer of an undertaking). Failure to comply with this obligation may trigger a fine ranging from RON 1,000 to RON 25,000 (approx. EUR 200 to EUR 5,000).

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

Under Romanian law, the temporary working time reduction, as well as technical unemployment and the suspension of an individual employment agreement by mutual consent, are regarded as alternatives to redundancy.

– **Temporary working time reduction**: This entitles the employer to reduce the work programme of its employees from five days to four days per week, as a temporary measure, and only in the case of a temporary reduction of its activity because of economic, technological, structural or similar reasons. In this situation, the employees' salaries will be reduced accordingly. Note that such a measure: (i) is valid as long as the reasons for which it was implemented do not cease to exist; and (ii) may be implemented only after consultations with the employee representatives are carried out.

– **Technical unemployment**: Due to justified economic reasons, the activity of a company may be temporarily reduced or interrupted. The affected employees who can no longer work during the affected period of time will have to be available to go back to work upon the request of the employer. During this time, the affected employees will receive a benefit of at least 75% of their gross base salary (such compensation being borne by the employer).

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**). This is the position whatever the type of insolvency proceedings.

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

Under the applicable legislation, the buyer will not inherit the seller's rights and obligations arising from individual and/or collective employment agreements existing as of the transfer date if the seller is subject to reorganisation proceedings (which in Romania are court-approved proceedings the purpose of which is to rescue the company) or bankruptcy proceedings.

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 to inform and consult employees arise as in the case of a solvent business (**see section 5 – Process on collective dismissals**). However, the timescales within which: (i) the employees must present proposals to avoid/limit dismissals; (ii) the employer must respond to these proposals; and (iii) the employer must notify the labour inspectorate and the regional agency for professional occupation with respect to the dismissals, are halved.

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