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Employment Reorganisation Roadmap

Singapore

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Contents

1. Employee representation

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

Trade union representatives (if a trade union is recognised by the employer) are the main form of employee representation involved in restructurings. Under the Industrial Relations Act 1960 (IRA), a trade union may only represent executive employees (ie employees employed in a managerial or an executive position) for limited purposes, which include negotiations on disputes relating to retrenchment benefits, and negotiations with a view to resolving any re employment dispute, or any dispute relating to a breach of contract of employment by the executive employee or the employer. The employer may object to representation of executive employees by trade unions on limited grounds, including the fact that the employee is in a senior management position, has access to confidential information relating to the budget and finances of the employer, or performs or exercises any other function, duty or power which may give rise to a real or potential conflict of interest if he/she is represented by the trade union.

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation, unless such a right is contractually agreed between the employee and the employer.

2. Process on business sales

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

Under the Employment Act 1968 (EA), employees are automatically transferred to a buyer on a business sale. The EA provides that if an undertaking (which includes any trade or business) or part of an undertaking is transferred from one person to another, the contract of service of employees of the transferor/seller will have effect after the transfer as if originally made between the employees and the transferee/buyer. The transfer will not break the continuity of the period of employment of these employees.

Whether there is a "transfer" is determined by reference to various factors. For the purposes of the EA, a "transfer" includes the "disposition of a business as a going concern" and a transfer of it effected by sale, amalgamation, merger, reconstruction or operation of law. However, the following are not regarded as transfers: (i) a transfer of assets only; (ii) a transfer of shares; (iii) a transfer of operations outside Singapore; (iv) the outsourcing of support functions; or (v) an incoming service provider taking over from an outgoing service provider during competitive tendering.

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

There is no established legal test under Singapore law to identify which employees transfer. However, in practice, an employee would generally be deemed to belong to the business line to be transferred to which they devote the most substantial part (eg at least 50%) of their working time.

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

Employees have the right to terminate their employment in accordance with the terms of their employment contracts.

Employees may also refer any dispute or disagreement arising from the transfer to the Commissioner for Labour. Where a trade union is involved, the matter may be referred to the Industrial Arbitration Court. The Commissioner and/or Industrial Arbitration Court are empowered to: (i) delay or prohibit the transfer of the employee concerned; or (ii) order that the transfer of employment of that employee be subject to such terms as the Commissioner or Industrial Arbitration Court considers just.

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

The EA provides for a procedure of notification and consultation with the affected employees and the trade unions of the affected employees (if any) in relation to the automatic transfer process. The affected employees and the trade unions of the affected employees (if any) must be notified as soon as it is reasonable, and before a transfer of the business takes place, to enable consultations to take place between the seller and the affected employees and between the seller and the trade union of the affected employees. The time period for "reasonable" notice is not prescribed. However, it is generally advisable to give such notice as soon as practicable after the transfer arrangements have been finalised. The seller must notify the affected employees and the trade union of:

– the fact that the transfer is to take place, the approximate date on which it is to take place and the reasons for it

– the implications of the transfer in relation to the affected employees

– the measures that the seller envisages it will take in relation to the affected employees in connection with the transfer, or if it envisages that no such measures will be taken, that fact, and

– the measures that the buyer envisages it will take in relation to the affected employees or, if it envisages that no measures will be taken, of that fact – to enable the seller to comply with such obligation, the buyer must, as soon as it is reasonable, give the seller such information so as to enable the seller to make the necessary notification.

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

The Commissioner for Labour may direct the seller or buyer to comply with the notification procedures if it considers that there has been an inordinate delay by the seller in notifying the affected employees or their trade union, or by the buyer in notifying the seller of the relevant information. An employer who enters into a contract of service or collective agreement in breach of the information and consultation obligations prescribed under the EA will be guilty of an offence and will be liable on conviction to a fine not exceeding SGD5,000 or to imprisonment for a term not exceeding six months, or to both. For a subsequent offence under the same section of the EA, the employer will be liable to a fine not exceeding SGD10,000 or to imprisonment for a term not exceeding 12 months, or to both. Where such a breach is committed with the consent of, or is attributable to any act or default of, any director, manager, secretary or similar officer of the employer, that person will be subject to the same penalties as the employer.

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, unless provided for in the employment contract or collective agreement with the relevant trade union.

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, unless provided for in the employment contract or collective agreement with the relevant trade union.

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?

If an initial outsourcing of processes/services, a change of supplier or an insourcing of processes/services takes place, employees are not automatically transferred by law. If the employer wishes to transfer its employees to the supplier/service provider, it must terminate the relevant employees' contracts. The supplier/service provider must then make an offer of employment to the employees. The employees' consent to the new offer of employment is required.

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, unless provided for in an employment contract or collective agreement, which would be unusual.

5. Process on collective dismissals

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

There is no definition of "collective dismissal" or "mass layoff" under the EA, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see **section 6 – Process on individual dismissals**.

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

There are no specific regulations regarding collective dismissals nor statutory procedures for the conduct of collective dismissals. Therefore no such obligations to inform/consult arise, unless provided for in employment contracts or collective agreements.

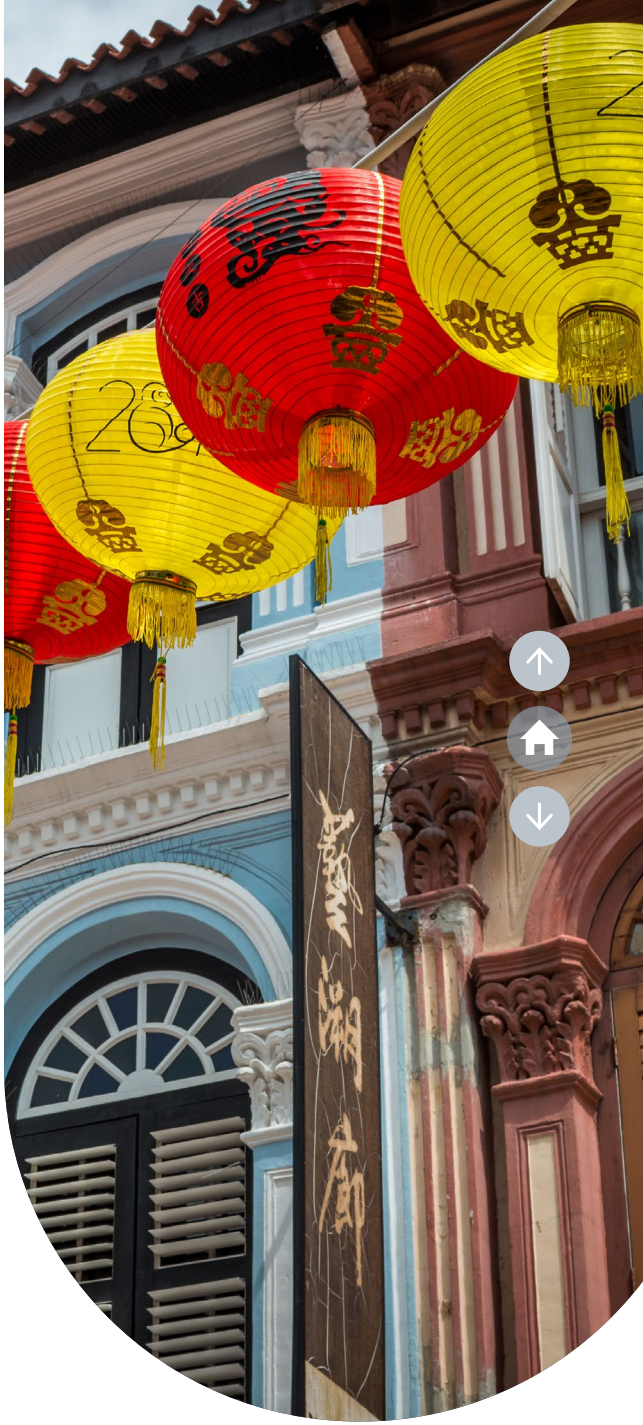
Nonetheless, in respect of potential retrenchment exercises, the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (Tripartite Advisory) states that where the employer is unionised, it should consult the relevant union(s) as early as possible. Where this is provided for in a collective agreement, the norm is to consult the union(s) one month before notifying the employees of the retrenchment.

As to individual redundancy dismissals, please see **section 6 – Process on individual dismissals**.

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

Under the Employment (Retrenchment Reporting) Notification 2019 (Retrenchment Reporting Requirements), an employer with its business registered in Singapore and with ten or more employees must notify the Ministry of Manpower via a prescribed online form if the employer has notified any employee of their retrenchment. The notification must be submitted within five working days after the day that the employer gives the notice of retrenchment.

For the purposes of the Retrenchment Reporting Requirements, "retrenchment" means the termination of the employee's contract of service at the initiative of the employer because of redundancy or any reorganisation of the employer's profession, business, trade or work.



5.4. When are these obligations triggered?

The duty to consult a trade union provided for under the Tripartite Advisory generally arises one month before notifying the employees of the retrenchment. The reporting obligation under the Retrenchment Reporting Requirements arises once any employee has been notified of their retrenchment.

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

While the Tripartite Advisory is not legally binding, the Ministry of Manpower has indicated that it may take action for non-compliance with the Tripartite Advisory.

Contravention of the Retrenchment Reporting Requirements will attract an administrative penalty of SGD1,000 on the first occasion and of SGD2,000 on each subsequent occasion.

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" or "mass layoff" under the EA, nor any specific regulations regarding collective dismissals or multiple dismissals. Nonetheless, duties to consult a trade union may arise under the Tripartite Advisory and reporting obligations may arise under the Retrenchment Reporting Requirements where an employer with ten or more employees has notified at least five employees of their retrenchment within any six-month period (see answer to **5.3**). As to individual redundancy dismissals, please see **section 6 – Process on individual dismissals**.

5.7. What options/alternatives does an employer have 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 employee representatives in respect of collective dismissals nor are there any specific options/alternatives regarding agreements with employee representatives in respect of collective dismissals. As to individual redundancy dismissals, please see **section 6 – Process on individual dismissals**.

6. Process on individual dismissals

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

Employment contracts or collective agreements should generally specify the length of notice of termination required to be given by the employer and the employee. If the notice period is not specified, the EA provides that the length of notice (depending on the employee's length of continuous service with the employer) should be as follows:

– less than 26 weeks' service – one day

– 26 weeks' up to two years' service – one week

– two up to five years' service – two weeks, or

– five or more years' service – four weeks.

If no notice period is specified by the contract and the EA does not apply, then the law will imply a reasonable notice period, taking into account all the circumstances of the employment.

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

Employers are generally not required to follow any special procedure before dismissing employees, subject to any procedure specified in the express terms of the employment contract, any legally-binding staff handbook or any relevant collective agreement.

The Tripartite Advisory sets out the matters that employers should consider when carrying out a retrenchment exercise. Among other matters, the selection of employees for retrenchment should be conducted fairly, based on objective criteria such as the ability of the employee to contribute to the company's future business needs. Employers should not discriminate against any particular group of employees on grounds of age, race, gender, religion, marital status and family responsibility, or disability.

The Tripartite Advisory also recommends that employers communicate their intention to retrench to affected employees early and before public notice of retrenchment is given.

Notice of termination must be given to the employee. Alternatively, the employer can terminate the employment contract without giving the required notice, or if the notice has been given, without waiting for the expiry of that notice period, by making a payment in lieu of notice if so permitted under the employment contract. This right is expressly provided for under the EA.

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 protection against dismissal following or in connection with a business transfer. However, any dispute or disagreement arising from the transfer can be referred to the Commissioner of Labour.

Redundancy is a legitimate reason for dismissing an employee with notice – where the employer is able to establish that it has excess manpower and the company is undergoing restructuring, the old job no longer exists, or the employee's job scope has changed, the employee cannot challenge the dismissal as being a wrongful dismissal.

However, where an employee considers that they have been dismissed without a just cause or excuse on the part of the employer (eg the selection of employees for retrenchment was conducted on an unfair/discriminatory basis), they may be able to challenge the dismissal (see answer to **6.5**). That employee may lodge a wrongful dismissal claim for compensation, or for reinstatement in their former employment.

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

The EA provides that an employee who receives a salary not exceeding SGD2,600 a month, and who has less than two years' continuous service with an employer, is not entitled to any retrenchment (ie redundancy) benefit where they have been dismissed on redundancy grounds, or by reason of any reorganisation of the employer's profession, business, trade or work.

The EA does not set out any statutory requirements with respect to redundancy payments. The quantum of benefits may either be stipulated in the employment contract, collective agreement or negotiated between the parties. However, the Tripartite Advisory states that the prevailing norm is for employers to pay a retrenchment benefit of between two weeks' to one month's salary per year of service, depending on the company's financial position and the industry. For unionised employers where the amount of retrenchment benefit is stated in the collective agreement, the norm is one month's salary for each year of service.

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

Where an employee considers that they have been dismissed without a just cause or excuse on the part of the employer, they may be able to challenge the dismissal. That employee may lodge a wrongful dismissal claim with the Employment Claims Tribunal for compensation, or for reinstatement in their former employment; the employee is required to submit a mediation request at the Tripartite Alliance for Dispute Management within one month of the last day of their employment. If the wrongful dismissal claim cannot be resolved via mediation at the Tripartite Advisory, it will be referred to the Employment Claims Tribunal. An employee may also challenge their dismissal if they are of the view that the employer's selection of employees for retrenchment is not based on objective criteria (such as the ability, experience, and skills of the employee to support the company's sustainability, workforce transformation and/or future business needs) or if the employer has discriminated against any employee(s) on grounds of their age, race, gender, religion, marital status and family responsibility, or disability.

In addition, employees may have an action for damages for wrongful dismissal if they were dismissed in breach of the terms of their employment contracts.

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

Employers are prohibited from issuing a notice of dismissal to an employee during her maternity leave, or a notice of dismissal which expires during her maternity leave.

Employers are also prohibited from dismissing any employee solely based on an employee's age (eg because they have reached the minimum retirement age (currently 63 years of age)). Nevertheless, redundancy is a legitimate reason for dismissing an employee (even one who has reached retirement age) provided they are given notice (see answers to **6.1** and **6.2**).

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 change the employment terms, unless the employment contract expressly provides for that right. Even so, the validity of changes would depend on whether the variation clause in question is clear, and whether it covers the changes to be made. In addition, the employer cannot make fundamental alterations to the employment terms or conduct itself in a manner that is likely to damage its relationship of trust and confidence with the employee.

Where the employment contract does not have a variation clause, an employer may make changes to employment terms with the employee's consent. Seeking an employee's express consent is recommended for detrimental changes to core terms, such as pay, working hours or job duties.

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

Unless the employment contract expressly provides for the right for the employer to unilaterally amend the employment terms, the employer would generally have to consult (and seek the consent of) the affected employees to effect any variation of those employment terms.

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

There are no additional restrictions if changes are proposed in connection with or following a business transfer. However, please see the answer to **2.4** in relation to obligations to inform/consult employees or employee representatives with regard to measures.

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

Employees could potentially bring claims for constructive unfair dismissal, breach of contract and/or unlawful deductions from wages.

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

While not legally binding, the Tripartite Advisory recommends that employers consider alternatives to retrenchment, and that retrenchment should be the last resort. Such alternatives are:

– sending employees for training to upgrade their skills and employability

– redeployment of employees to alternative areas of work within the company

– implementation of a flexible work schedule, flexible work arrangements, a shorter work-week or temporary layoff

– adjustment of wages in line with tripartite norms, and

– implementation of unpaid leave.

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)?

An employer has obligations under the EA, including to inform/consult employees on the sale of a business (see **section 2 – Process on business transfers** for further information). These statutory obligations are contemplated within the context of a "disposition of a business as a going concern" and therefore do not arise where an insolvent business is not sold as a going concern.

Where an insolvent company is put under receivership, management or judicial management with a view to preserving the company and its business, the sale of such an insolvent company can be treated as "a disposition of a business as a going concern". In this regard, the provisions of the EA relating to the transfer of employment on the sale of a business will apply.

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

The position depends on whether there is a "disposition of a business as a going concern". Where an insolvent company is put under receivership, management or judicial management with a view to preserving the company and its business, the sale of such an insolvent company can be treated as "a disposition of a business as a going concern" and the provisions of the EA relating to the transfer of employees and employee liabilities on the sale of a business will apply (see **section 2 – Process on business transfers** for further information).

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

There is no concept of collective dismissals, or any specific regulations regarding collective dismissals. Nonetheless, duties to consult a trade union under the Tripartite Advisory and reporting obligations under the Retrenchment Reporting Requirements would still need to be observed in an insolvency situation (see **section 5 – Process on collective dismissals** for further information). Rules on individual dismissals would also need to be observed (see **section 6 – Process on individual dismissals** for further information).

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