

ALLEN & OVERY

Employment Reorganisation Roadmap

United Arab Emirates

1 January 2024



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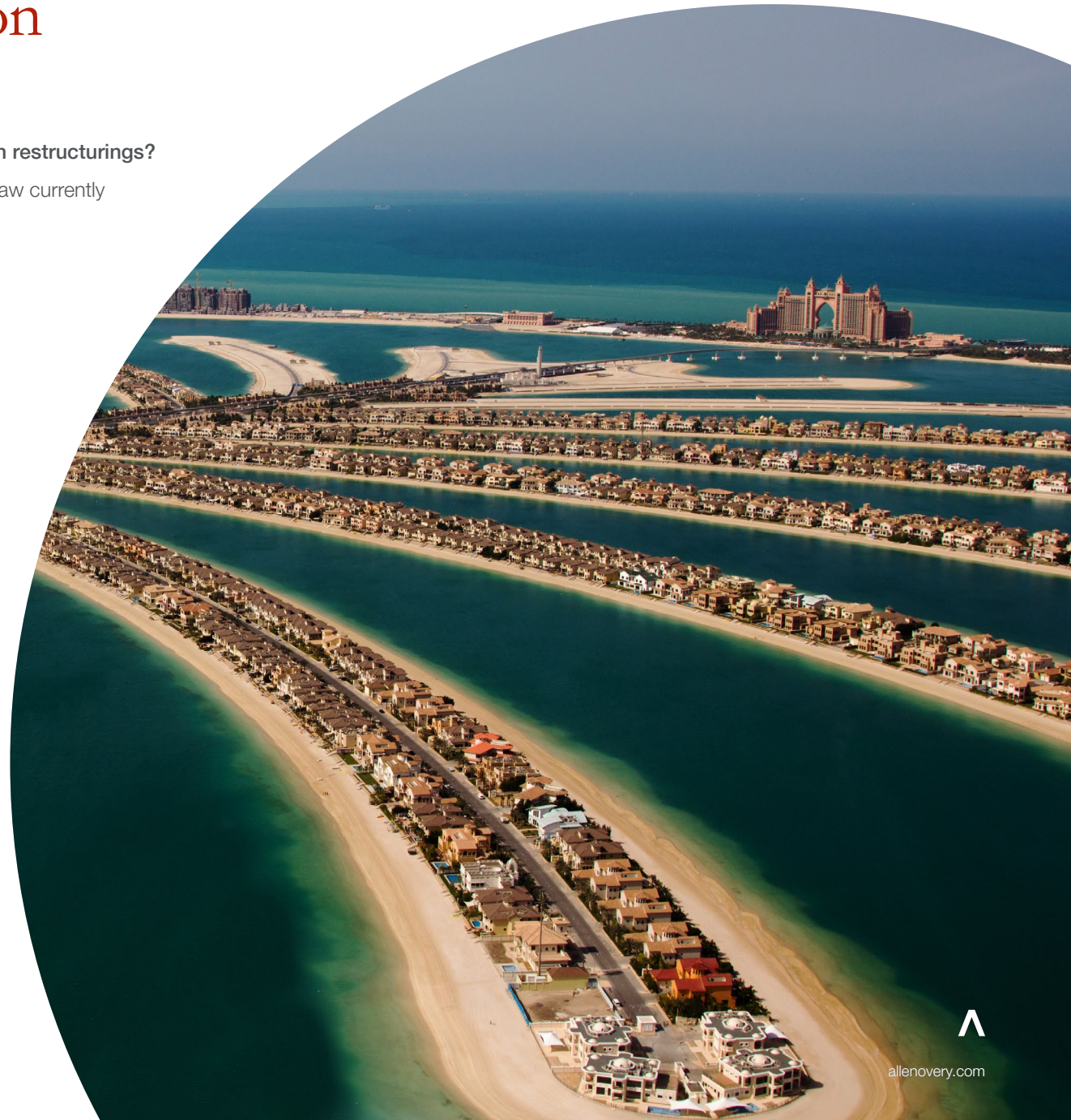
1. Employee representation

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

There are no trade unions or employee works councils in the UAE. UAE law currently prohibits the formation of trade unions.

1.2. Is there a system of employee participation rights?

Employees have no right to management or board-level representation.



2. Process on business sales

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

If a business sale takes place, employees are not automatically transferred to a buyer by law. The transfer of employees must be agreed separately between a buyer and seller. Employees will only transfer to a buyer if the buyer offers them employment and they accept. If their employment terminates with the seller and they are rehired by the buyer, employees will be entitled to receive severance pay from the seller in accordance with Articles 51 and 52 of the Federal Decree Law No. 33 of 2021. Regarding the Regulation of Employment Relationships and its amendments (the “UAE Employment Law”) (see answer to).

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

Employees are not automatically transferred to a buyer by operation of law on a business sale.

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

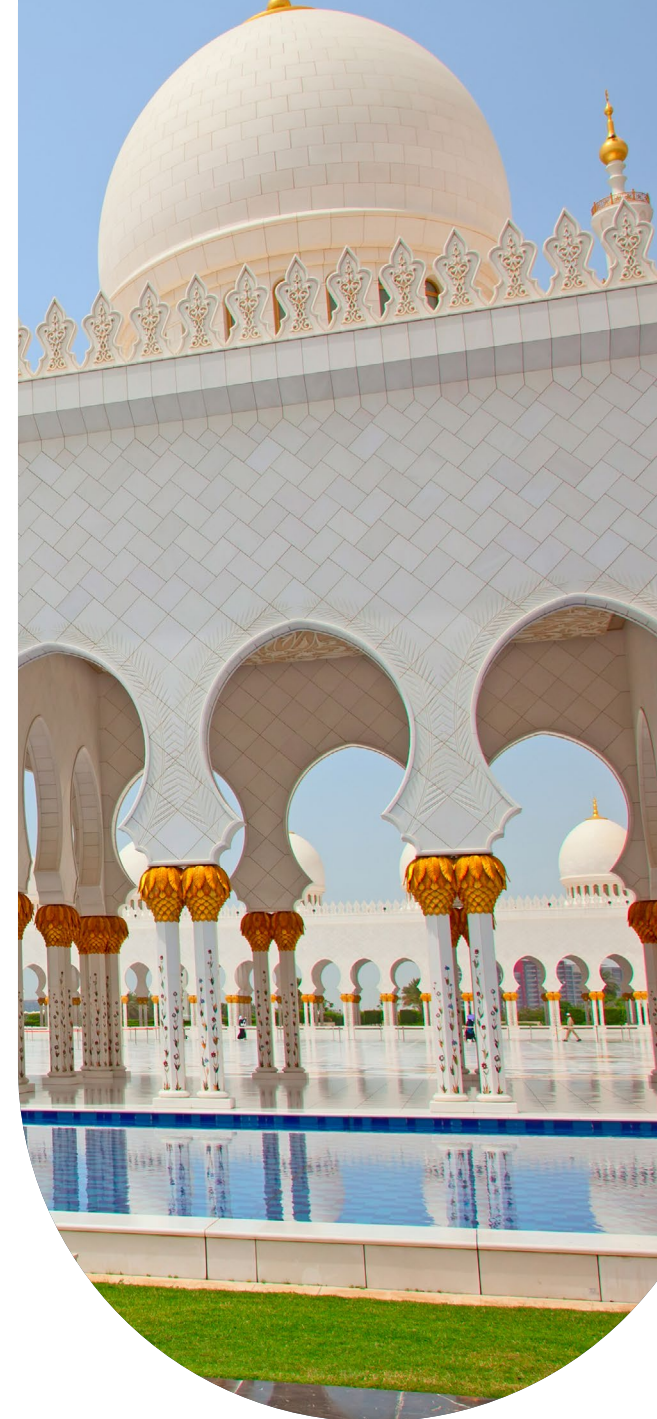
There is no automatic transfer of employees in the case of a business sale. An employee may resign on account of a change in their working conditions, in which case the employee will be entitled to receive severance pay from the seller in accordance with Articles 51 and 52 of the UAE Employment Law.

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

There is no obligation to inform or consult employee representatives in relation to a proposed business sale. There is no obligation to inform or consult employees save to the extent necessary to seek their consent to a transfer of their employment to the buyer.

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

There is no obligation to inform or consult employee representatives on a 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 distinction in **UAE Employment Law** between a share sale and a business sale.
There is no obligation to inform or consult employee representatives on a direct share sale.

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 or consult employee representatives on an indirect share sale.

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 any of these scenarios. The transfer of employees must be agreed separately in the outsourcing arrangement. Employees will only transfer to a new supplier/service provider if it offers them employment and they accept. If their employment terminates with the outgoing supplier/service provider and they are rehired by the incoming one, employees will be entitled to receive severance pay from the outgoing supplier/service provider in accordance with Articles 51 and 52 of the UAE Employment Law (see answer to).

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

There is no obligation to inform or consult employee representatives in these scenarios. There is no obligation to inform or consult employees save to the extent necessary to seek their consent to a transfer of their employment to the new supplier/service provider.



5. Process on collective dismissals

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. As to individual redundancy dismissals, please see

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

There is no requirement to inform and consult the competent authorities, as there are no specific regulations regarding collective dismissals.

5.4. When are these obligations triggered?

There is no requirement to inform or consult regarding collective dismissals.

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

There are no specific penalties for collective dismissals as there are no specific regulations regarding collective dismissals. Please see answer to as to penalties for non-compliance with individual dismissal requirements.

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 obligation to inform or consult employee representatives and/or the competent authorities in the context of multiple dismissals.

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 inform or consult or to reach agreement with employee 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 entitlement is 30 days and the maximum notice entitlement is 90 days.

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

The concept of redundancy is now expressly recognised as a lawful reason for termination if the employer is bankrupt or insolvent, or there are any economic or exceptional reasons where: (i) a court ruling has been issued to confirm that the employer is bankrupt or insolvent; or (ii) any “economic or exceptional reasons that prevent the continuation of a project”. Reliance upon this is only possible where a decision has been issued by the UAE authorities confirming that the employer is unable to continue their activity due to exceptional economic reasons beyond its control.

Additionally, despite the UAE Employment Law recognising only fixed-term contracts, it provides that fixed-term contracts can be terminated on notice during the course of the term for a “legitimate reason”. The term “legitimate reason” is not defined (but is understood to mean a reason connected with the employment). It is not clear whether termination for redundancy or economic grounds that does not fall squarely within the recognised reason set out above qualifies as valid reason for termination subject to notice requirements. Please see answer to 6.5 for further details on unfair dismissal.

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

There are no specific procedural requirements relating to dismissals following a business transfer, other than the requirement to give minimum notice.

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

Employees who are nationals of the UAE or of the Gulf Cooperation Council (GCC) (GCC member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE) must be enrolled with the relevant state pension scheme in accordance with Federal law requirements and will have no entitlement to severance pay.

The minimum severance payment for an employee who is an expat (not a UAE or GCC national) with one or more years’ service is:

- 21 days’ wages per year of service for up to five years’ service, and
- 30 days’ wages for each additional year of service up to a total maximum of two years’ wages.

Severance is calculated on the basis of the last basic wage (excluding gratuities in kind) received by the employee before





the termination of the employment contract. According to a recent judgement delivered by the UAE courts, with the exception of allowances and bonuses, any amounts payable to an employee as wages, including commission payments or performance payments, are considered as salary and will be taken into consideration when calculating severance. The employer must pay the employee the severance pay (and all other contractual and legal entitlements) within 14 days from termination of employment.

Resolution No. 96 of 2023 Regarding an Alternative End of Service Benefits System was issued as an optional alternative system to the end-of-service gratuity (severance) system. This alternative scheme is effective from 10 October 2023 and does not have mandatory application.

Instead of making a lump sum cash severance payment on termination of employment, eligible employers may instead make a monthly contribution into a fund supervised by the UAE Securities and Commodities Authority. The cost of the scheme replicates the formula of the severance pay as follows:

- 5.85% of an employee's monthly basic salary during the first five years of an employee's employment in the UAE, and
- 8.33% of an employee's monthly basic salary during each additional year of an employee's employment in the UAE.

In the event that an employer enrolls its employees to this alternative scheme, the severance pay will stop accruing at the date the employer enrolls its employee into the scheme. It will consequently be ring-fenced and deferred for payment on the termination of the employee's employment (and will be based on the employee's basic salary at the time of enrollment into the scheme).

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

If the employer fails to pay the employee's severance (and any contractual or legal entitlements) within 14 days from termination, they may be subject to an administrative fine.

Also, if an employee is arbitrarily dismissed, they are entitled to a compensatory payment that does not exceed three months' wages in addition to the employee's severance payment and any contractual entitlements.

While UAE Employment Law requires that termination takes place for a valid reason, compensation for unfair dismissal is only available in very narrow victimisation-style circumstances; where an employee claims to have been dismissed as a result of bringing a successful claim before the Courts or a serious complaint before the Ministry of Human Resources and Emiratisation. While this has not been widely tested (as this is a relatively recent legislative change), case law is largely aligned with the letter of the law. Having said that, the prospect of the Courts continuing with their historic practice and awarding compensation in any circumstances where they do not consider the termination to be fair cannot be entirely ruled out (but remains a low risk).

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

Employers are prohibited from terminating an employee (or threatening to terminate an employee) on the basis that she is pregnant or on maternity leave.

Also, in alignment with the UAE Government's Emiratisation strategy (which is designed to increase the number of Emiratis in the workforce), the UAE Employment Law allows positive discrimination in favour of UAE nationals.

7. Process when implementing alternatives to redundancy

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

Changes to the employment terms should generally be agreed with 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?

Please (see answer to 7.1).

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.

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

Subject to the terms of the employment agreement, the changes cannot be made without the employee's consent (see answer to 7.1). If an employee is arbitrarily dismissed (as defined under the UAE Employment Law), they will be entitled to a compensatory payment in addition to the severance payment (see answer to).

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

UAE law does not promote alternatives to redundancy. However, alternatives can be agreed between an employer and the relevant employees.



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)?

Insolvency in the UAE is extremely rare and there are no real precedents dealing with what happens to employees on the sale of an insolvent business. There is, however, no obligation to inform or consult employee representatives on the sale of a solvent business, and this is also likely to be the position on the sale of an insolvent business (see [for further information](#)).

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

Insolvency in the UAE is extremely rare. The concept of redundancy is now expressly recognised as a lawful reason for termination if the employer is bankrupt or insolvent, or there are any economic or exceptional reasons. In particular where: (i) a court ruling has been issued to confirm that the employer is bankrupt or insolvent; or (ii) there are any “economic or exceptional reasons that prevent the continuation of a project”. Reliance upon this is only possible where a decision has been issued by the UAE authorities confirming that the employer is unable to continue their activity due to exceptional economic reasons beyond its control.

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

There is no concept of collective dismissals, nor any specific regulations regarding collective dismissals. Rules on individual dismissals would, however, need to be observed in an insolvency situation (see [for further information](#)).



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