

ALLEN & OVERY

Employment Reorganisation Roadmap

Turkey

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GEDİK & ERAKSOY

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1. Employee representation

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

Trade union representatives (where there is a trade union at the workplace authorised by the Ministry of Labour and Social Security) are the main form of employee representation involved in restructurings.

1.2. Is there a system of employee participation rights?

Employees have no right to management or board representation, unless a collective agreement 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 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 depends on various factors, in particular whether customers, assets and employees have transferred, and how similar 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) will transfer to the buyer. Whether an employee is “assigned” depends on 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 work for it on a temporary basis only.

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

In most cases, employees cannot object to the automatic transfer of their employment. However, there is an exception: in the case of a merger or demerger involving the employing entity, or a change in the type of business that it carries out, employees can object to the transfer of their employment to the new entity, or to being employed within the new type of business it carries out, as a result of the merger, demerger, or change of business. Contracts of employees who object to the transfer terminate by operation of law, once their statutory notice period has expired.

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

There are no requirements to inform/consult employee representatives in relation to a proposed business sale, unless a collective agreement provides otherwise.

In the case of a business sale (if the workplace is transferred), employees will be automatically transferred to the new workplace and their employment and rights arising from their employment with the seller will be preserved retrospectively. From an industrial relations perspective, it is good practice to inform the relevant trade union (if any) about the proposed sale.

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

There are no requirements to inform/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 obligation to inform/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/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?

A transfer of employees is normally only possible if there is an agreement between the employer and the supplier, or between the suppliers, for the transfer of employees, where employees consent to being transferred. If the service/process being outsourced is labour-intensive, then a transfer of employees between the parties is usually regarded as a transfer of workplace, and employees are automatically transferred (see [answer to question 3.1](#)).

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

Employees are not usually transferred by operation of law in any of these scenarios. Where they are automatically transferred on account of the transfer of a workplace, obligations to inform/consult do not usually apply (see answer to [question 4.1](#)).



5. Process on collective dismissals

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

A collective dismissal arises where there is a proposal to dismiss employees within a one-month period affecting:

- at least ten employees (in a workplace with 20-100 employees)
- at least 10% of employees (in a workplace with 101-300 employees), or
- 30 or more employees (in a workplace with 301 or more employees).

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

Written notification and specific information about the proposed dismissals must be given to the trade union representatives (if any) at least 30 days prior to implementation of the dismissals. Such notice must include information relating to the reasons for, and timing of, the dismissals and the number and groups of employees to be affected.

Following this notification, the trade union representatives (if any) and the employer must meet to negotiate ways of avoiding or reducing the number of dismissals, or reducing the adverse effects of the dismissals. The trade union’s feedback is not binding and the employer has no obligation to take its views into account. However, it is advisable to attempt to reach a compromise to maintain a good relationship with the union. The minutes of the meeting must be kept in writing.

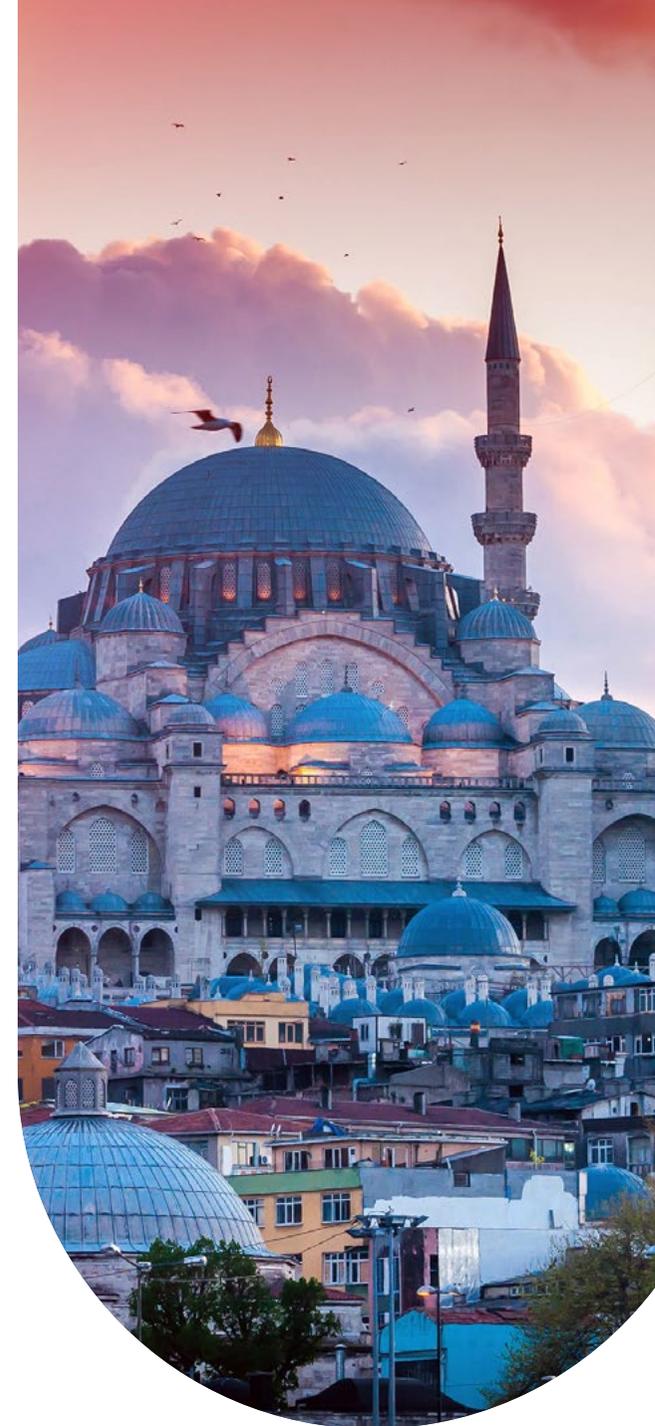
5.3. Do obligations to inform and consult the competent authorities arise on a collective dismissal?

Written notification and specific information about the proposed dismissals must be given to the Provincial Directorate of Labour and Employment Agency where the workplace is located, at least 30 days prior to implementation of the dismissals. Such notice must include the reasons for, and timing of, the dismissals and the number and groups of employees to be affected.

Notices of termination will take effect 30 days after the notification has been served on the Provincial Directorate of Labour and Employment Agency.

5.4. When are these obligations triggered?

The obligation to consult for collective dismissals and notify the authorities arises when dismissals are “proposed” – a “proposal to dismiss” means more than just contemplating the possibility of dismissals, but it 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?

An administrative fine in the amount of TRY1,050.53 per employee will be imposed on the employer.

The High Court of Appeals, in its latest decisions, has started to depart from the view that non-compliance with the due procedure would not invalidate dismissals. Accordingly, employees who are dismissed may challenge their dismissal, and request reinstatement to work before a competent court of law, if they qualify for the job security provisions (see answer to).

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 and consult employee representatives and/or competent authorities for multiple dismissals that do not qualify as a collective dismissal.

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 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 depends on length of service:

- less than six months' service – two weeks
- six to 18 months' service – four weeks
- 18 months' to three years' service – six weeks, and
- three or more years' service – eight weeks.

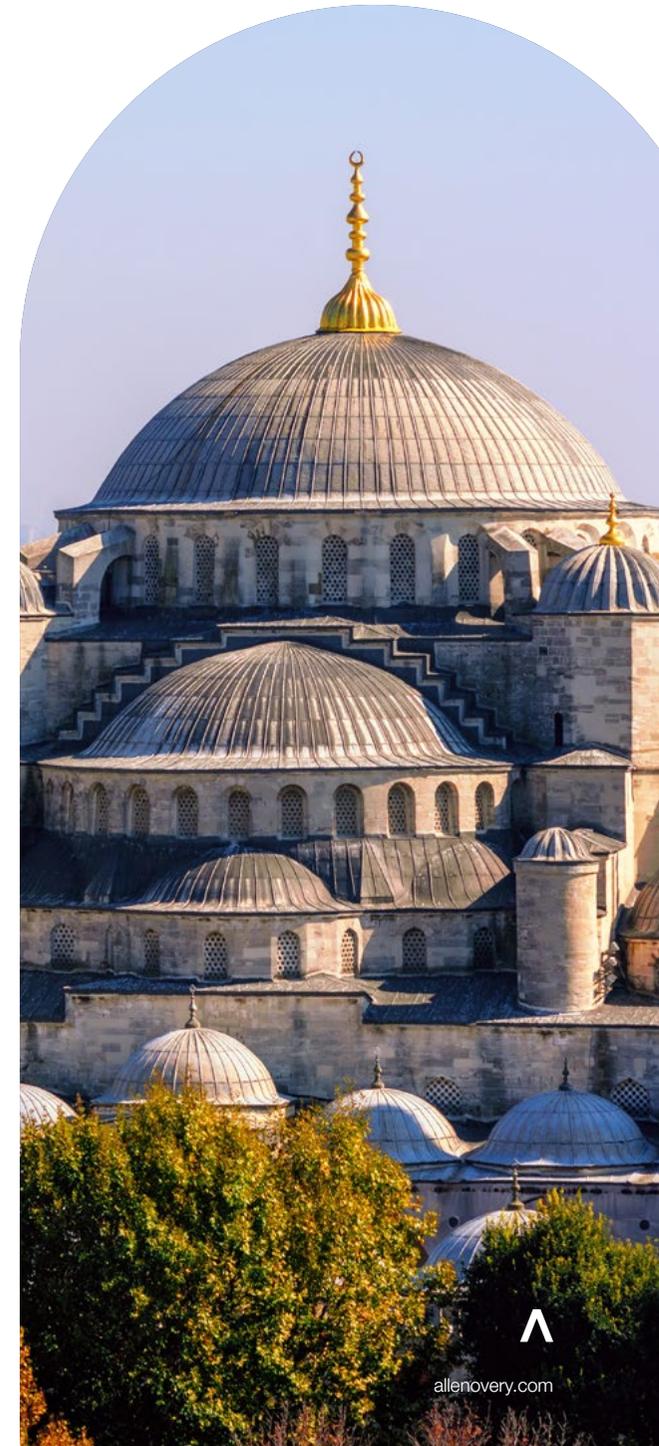
Notice periods may be enhanced by contract or collective agreement. These apply to indefinite-term employment contracts.

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

Employers with 30 or more employees must have a “valid” reason to dismiss employees employed on an indefinite basis who have at least six months' service. This “valid” reason can be based on the operational requirements of the business and could therefore cover redundancy. The dismissal notice must be in writing and specify the reason for dismissal in clear and precise terms.

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 in connection with business transfers. However, the Turkish Labour Code provides that employment cannot be terminated solely on the grounds of a business transfer.





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

The severance payment (for employees with one or more years' service) is 30 days' pay per year of service (pro-rated for part years worked). Severance payments are based on the employee's gross monthly salary at termination plus other continuous benefits or benefits in kind (eg bonuses, premiums, family allowances, heating, clothing and health benefits). The gross monthly salary payment is subject to a cap which is revised every six months. The cap for the period from 1 January 2021 to 30 June 2021 is TRY7,638.96.

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

If the procedure is not followed, the employee's remedies depend on the size of the employer's workforce.

If the employee is working in a company employing fewer than 30 people, they cannot claim reinstatement but can claim compensation before the labour courts.

If the employee is working in a company employing 30 or more people and believes that the dismissal was made without a "valid reason", they can seek reinstatement before the competent labour court within one month of receiving the termination notice (these are known as the "job security" provisions). An employer can choose to pay the employee compensation of an amount between four and eight times the employee's monthly salary (to be determined by the court) instead of reinstating them.

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

There is no special dismissal protection save for the job security provisions (see answer to **6.5**). In addition, the Turkish Labour Code provides that pregnant employees should not be treated inequitably and grants them specific protection against termination of their employment.

7. Process when implementing alternatives to redundancy

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

If the changes to be made are regarded as material changes, the employee's express written consent is required.

However, for immaterial changes, employers may (in principle) change terms of employment without employee consent, to the extent such terms fall within the management authority of the employer, unless the applicable employment contract(s) provide(s) otherwise.

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

There is no consultation requirement. However, if the changes to be made are regarded as material changes, the employee's express written consent must be obtained.

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

No additional restrictions apply if changes are proposed in connection with or following a business transfer.

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

Unless the employee accepts a material change in writing within six business days, the change would not be binding on the relevant employee. If the employer still implements the change, depending on the nature of the change, employees may terminate their employment contracts for cause, bring claims for breach of contract and/or unlawful deductions from wages, and refrain from performing their duties.

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

The government has adopted a number of emergency measures in response to the Covid-19 pandemic.

Employers are prohibited from making redundancies until 17 May 2021, although dismissals based on employee misconduct where principles of morality, good faith or the like have been infringed are still permitted. Termination agreements are also allowed. Employers, on the other hand, are allowed to place employees on unpaid leave during the redundancy prohibition period. Employees to be placed on unpaid leave are entitled to receive state-funded financial support (ie TRY47.70 per day and, if applicable, payment of general health insurance premiums) during the redundancy prohibition period. The redundancy prohibition period may be extended by the President until 30 June 2021.

In addition, employers could apply (by 31 January 2021 at the latest) to put employees on short-time work under the short-time work scheme for a maximum duration until 31 June 2021 (which may be subject to further extension), due to force majeure arising from the Covid-19 pandemic. The scheme allows employers to reduce working hours or to suspend some or all activities, while employees will not be dismissed and will receive short-time work benefits from the state as long as the short-time working continues to be implemented.



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)?

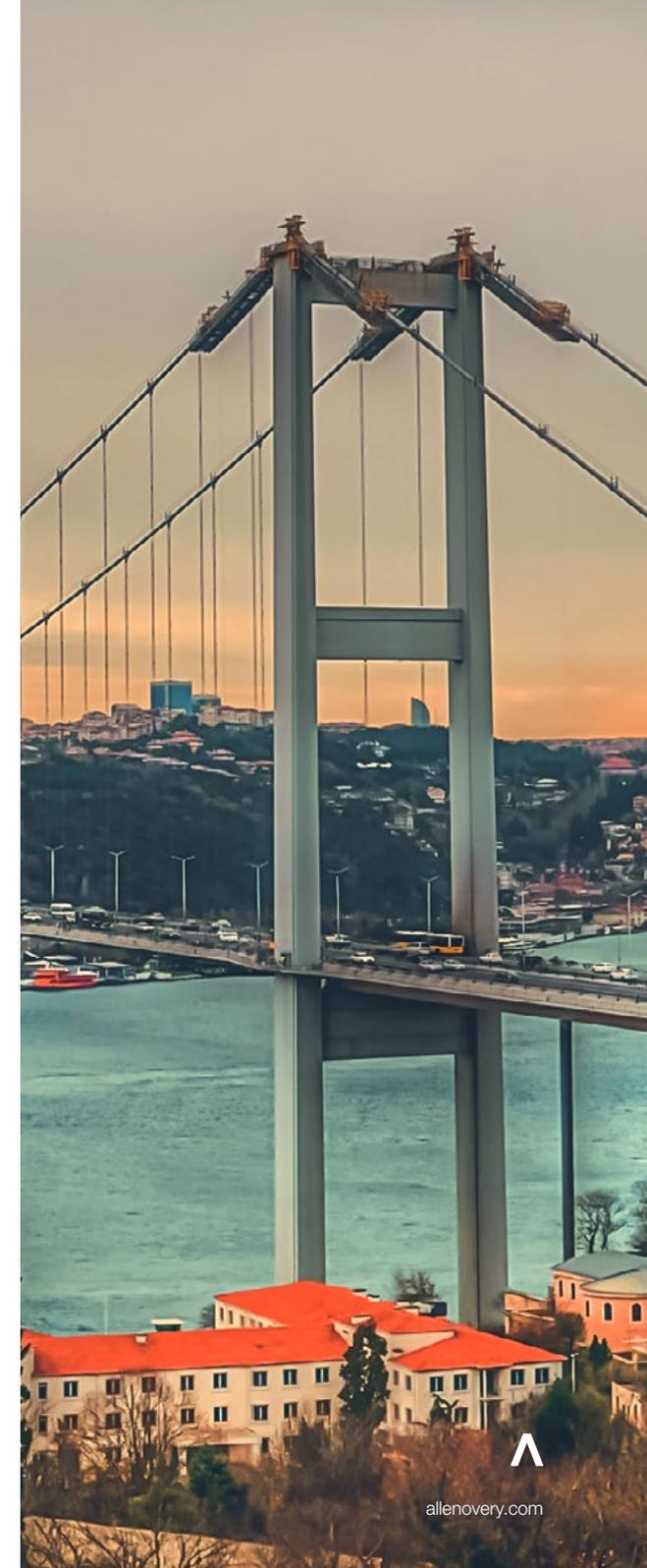
The position is the same as for the sale of a solvent business (see [8.1.1](#) for further information).

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

If the buyer acquires a workplace (or part of one) through liquidation of assets due to bankruptcy of the insolvent business' owner, it does not inherit the employees and/or employee liabilities by operation of law. Otherwise the sale of an insolvent business, which involves the transfer of a workplace, would still require the buyer to inherit the employees and employee liabilities (see [8.2.1](#) for further information).

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 [8.3.1](#) for further information).



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