



## LEGAL NEWS

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### RESTRUCTURING IN A CRISIS: A LEGAL COMPARISON OF TERMINATION OPTIONS AND ALTERNATIVES

In crisis situations, companies are regularly faced with the need to reduce costs. This is often accompanied by the restriction of certain business activities or even the closure of certain unproductive operating units; in other words, the question inevitably arises as to whether and to what extent notices of termination have to be given. On the other hand, there is an interest in retaining valuable employees and their know-how in the company.

In this newsletter, we investigate various questions within the framework of a restructuring with a legal comparison analysis. This concerns in particular the question of the conditions under which companies can issue notices of termination for reasons owing to the economic situation or whether the individual legal systems provide relief in terms of termination protection as soon as the company is in a crisis situation.

We reflectively address the question of which works constitution and labour law instruments are provided by national legal systems to prevent such notices of termination, and at the same time take into account the need to reduce costs. Finally, we conclude the analysis with a look at ancillary social security instruments to cushion the effects of corporate crises on the workforce.

#### CHINA

##### I. What opportunities do employers have to dismiss employees in corporate crisis situations?

In China, companies in an economic crisis may give notices of termination for operational reasons (“economic dismissals”). In this case, the following legal requirements have to be observed:

- Employee representatives must be informed at least 30 days before such a measure is adopted, and the overall situation must be explained and their opinions obtained;
- When drafting the dismissal plan, social selection (relevant aspects: company service, other sources of income in the family, support obligations, etc.) must be addressed in accordance with the legal requirements;
- The drafted dismissal plan must be submitted to and approved by the competent labour authority.

When implementing the procedure, the Company must pay the statutory severance to the dismissed employees.

If new jobs are posted within six months of implementing the procedure, previously dismissed employees must be given priority for rehiring under the same conditions.



## II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?

China has introduced special labour law regulations to secure employment while protecting employer interests. For this purpose, the Employment Contract Act enables the implementation of flexible working time models in certain cases in deviation from the contractually agreed working hours. The implementation of such models must be approved by the competent labour authority. These instruments can help prevent employers from having to pay the statutory bonuses for overtime, weekend, and holiday work. These statutory bonuses may otherwise amount to up to 300 % of the contractually agreed salary.

## III. What social security instruments are available?

China has several ancillary social assistance systems:

- **Minimum livelihood standard guarantee:** Financial support and basic living support for low earners, especially in rural areas.
- **Social housing programmes:** Providing low-and middle-income groups with discounted housing and public flats. In addition, residential areas in poorer neighbourhoods in need of reorganisation are modernised using government funding.
- **Educational support:** Financial support for school-aged children from families receiving the minimum livelihood standard guarantee, from primary to higher education.
- **Medical assistance:** Financial support for low earners and those with high healthcare costs by reducing their employee share of health insurance.

## GERMANY

### I. What opportunities do employers have to dismiss employees in corporate crisis situations?

According to the termination protection law applicable in Germany for companies that regularly employ more than ten employees, it is possible to dismiss employees in a corporate crisis situation if there are operational requirements that preclude the continued employment of the employees. As part of a social selection process, it is then necessary to determine which employees are least worthy of protection and thus must be prioritised for termination. Depending on the number of employees employed and the intended dismissals, for the dismissal to be effective, a mass dismissal notification is required at the Employment Agency for the dismissal to be effective. If a works council exists, it must be consulted in advance of any dismissal. If an operational change occurs due to the scope of the planned measures, the works council must be informed from the outset about the planned changes and must negotiate with it on reconciling interests and a social plan.

### II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?

A key instrument for securing jobs during times of economic crisis is short-time work. This allows companies to temporarily reduce their employees' working hours rather than dismiss them. In short-time work, employees receive a reduced salary for the lost working hours, which is partially compensated by the short-time worker's allowance. This is paid by the Federal Employment Agency and is usually 60 % or 67 % of the lost net wage for employees with children. The prerequisite for short-time work, which the company must apply for at the employment agency, is essentially a temporary significant loss of work due to economic reasons or an unavoidable event. Furthermore, a legal basis for introducing it to the employee. This may be based on a collective agreement, a works agreement, or a provision in the employment contract.



### III. What social security instruments are available?

Agreements with the works council – if they exist – are considered labour law instruments for securing jobs. If collective regulations exist, it is also possible to negotiate collective bargaining regulations with the union for the purpose of preserving existing jobs. Such agreements may include, for example, the introduction of more flexible working time models to adapt to order fluctuations. The temporary reduction of wages through a voluntary waiver of certain wage components or wage increases by employees can also be agreed to secure employment. In return, the company then generally undertakes to refrain from dismissals for operational reasons. Especially in times where there is a shortage of skilled workers, retaining qualified employees can be of great importance for times when the company is doing better again.

## ITALY

### I. What opportunities do employers have to dismiss employees in corporate crisis situations?

In Italy, there is the right in corporate crisis situations to give notices of termination for so-called “justified objective reasons” (“giustificato motivo oggettivo” – GMO), i.e. when a business decision results in the loss of a job without replacement, and continued employment in another position is not possible. This is often done in the form of mass dismissals in corporate crisis situations. A mass dismissal occurs either when at least five employees are dismissed within a period of 120 days, or when drawing on the income support scheme (cassa d’integrazione) is unproductive and does not lead to successful recovery of the business. For employment relationships established after 2015, termination protection consists in a severance payment, the amount of which, simply put, is based on the length of company service. Only in exceptional cases, such as “fabricated” reasons for termination or discrimination, does re-integration occur.

### II. Are there special labour law instruments for securing jobs, taking into account the employer’s interests?

In Italy, the institution of the so-called “solidarity agreement” has existed since 1984. This is a real contract between employers and trade unions that, simply put, can spread the reduced workload over the entire workforce and thus avoid dismissals in crisis situations. For the solidarity agreement to apply, the company must have an average size of at least 15 employees. The solidarity agreement does not apply, among others, to senior employees and apprentices. By means of the solidarity agreement, the average working time can be reduced by up to 60 %. The duration is limited to 24 months but can be extended by an additional 24 months. Up to 80 % of the loss of earnings will be covered by a corresponding subsidy from the Italian National Social Security Institute (INPS [Istituto Nazionale Previdenza Sociale]). Special regulations also apply to smaller businesses, in which case the subsidy is lower.

### III. What social security instruments are available?

In corporate crisis situations, companies in Italy can resort to the so-called income support scheme (cassa d’integrazione); this exists in two forms: as a “normal” and as an “extraordinary” measure. Both systems share the basic principle that

- in a corporate crisis situation,
- employees are exempted in whole or in part from performing work, and
- part of their salary is paid by social security institutions.

While the “ordinary” fund is used in objective circumstances, such as a lack of intermediate products or natural disasters, the “extraordinary” fund typically applies precisely to cases of corporate restructuring. In addition to the temporary need for reduced working hours, one prerequisite in particular is that the company must present a corresponding reorganisation



plan that outlines future growth prospects and general planned investments.

## AUSTRIA

### **I. What opportunities do employers have to dismiss employees in corporate crisis situations?**

With the exception of employees with special termination protection, ending employment relationships by an ordinary notice of termination in compliance with notice periods and deadlines is not bound to any special reasons for termination in Austria. Only if a notice termination is challenged, in the case of a so-called impairment of interests due to a difficult job search, could it be necessary to justify the termination on operational grounds. Economically necessary optimisation measures cannot generally be reviewed by the court. In this context, the court can only check whether the measures taken (such as the termination of employment relationships) have a logical connection to the economic justification of the measure. As in other European countries, there are regulations for an early warning system. From a certain number (starting from five dismissals), depending on the size of the company and within a period of 30 days, the dismissals would have to be reported to the regional employment service 30 days before the first dismissal is issued.

### **II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?**

Instruments are principally set up to secure jobs by means of termination protection provisions, although these still allow for the possibility of termination by dismissal in the event of operational restrictions, plant closures or economically challenging circumstances. Depending on the group of employees and the applicable termination protection, there is a lower or higher requirement for justification of dismissal. For example, mothers with children up to the age of 2 years are subject to special strict termination protection, which also obliges the employer to dismiss a less protected employee instead of the protected employee, provided that the protected employee can take over the other employee's

work. On the other hand, for employees without special termination protection, the employer is only required to justify the dismissal with economically necessary measures.

### **III. What social security instruments are available?**

Depending on the operational situation, there are different instruments aimed at temporarily reducing wage and salary costs or existing staff resources while at the same time making compensation payments to employees for the loss of working hours or salary entitlements. This is possible, for example, in the form of short-time work arrangements and short-time work allowances or subsidised part-time training or suspended contracts in conjunction with entitlement to unemployment benefits.

## POLAND

### **I. What opportunities do employers have to dismiss employees in corporate crisis situations?**

Employers can end the employment relationship with their employees by notice of termination or mutual agreement.

The reason for termination is either the removal of a position if the employer has definitively eliminated it or a reduction of staff if the employer decides to end the employment relationship only with some employees in a particular position. In the latter case, objective criteria must be applied to decide which individuals are to be dismissed, such as their length of company service, qualifications, skills or work attitude. The law on special regulations for terminating employment relationships with employees for reasons that are not attributable to the employees applies. In the event of a termination of employment contracts for the above-mentioned reasons, employees are also entitled to a severance payment. Its amount depends on the length of the employee's service with the respective employer.



## **II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?**

Employers have the option to suspend the provisions of the generally applicable labour law. If the employer's financial situation warrants this, an agreement may be made to suspend the application of all or part of the labour law provisions that define the rights and obligations of parties to the employment relationship; this does not apply to the provisions of the Labour Code or the provisions of other laws and implementing acts. The suspension of labour law provisions must not last longer than three years. If justified by the employer's financial situation, and if the employer is not covered by a collective bargaining agreement or employs fewer than 20 employees, employers also have the option to introduce less favourable employment conditions through agreement, within the scope and for the period specified in the agreement.

## **III. What social security instruments are available?**

A company in a crisis situation can apply to the tax office for tax relief. In this case, it is possible, among other things, to pay the tax in instalments or to postpone the payment date.

However, this tax relief does not automatically apply – the Company must make an application proving the public interest/important interest of the company that justifies the application.

Tax relief is generally granted at the discretion of the official. There are no clear conditions under which officials decide on this matter.

In extreme cases, tax liability can also be waived in full. However, it is very difficult to obtain a positive decision in this regard, and it must be proven, for example, that paying taxes could lead to irreversible consequences that would make it impossible for the company to continue operating.

## **SLOVAKIA**

### **I. What opportunities do employers have to dismiss employees in corporate crisis situations?**

In the Slovak Republic, employers generally have the same legal means of dismissing employees in the event of a crisis as under normal circumstances. In these cases, mutual or unilateral termination is most commonly used for organisational reasons, i.e. termination of employment due to the dissolution of the employer's business or part thereof, or due to the employee's position becoming unnecessary; the dismissal of a large number of employees is a mass dismissal. Upon dismissal, the employer must comply with all formal and substantive requirements required by law for effective termination of employment, including the disbursement of severance pay to the employees concerned.

### **II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?**

In the case of mass dismissals, the employer is obliged to negotiate at least one month in advance with employees about measures to prevent or limit mass dismissals and, in cooperation with the National Labour Office, to search for solutions to related problems.

If the employee is unable to perform their work due to temporary work obstacles on the part of the employer (decline in production, etc.), the employer can pay only the agreed part of the wage (at least 60 %) if a written agreement has been reached between the employer and the union.

A "short-time work" regulation is also established in the Slovakian legal system. The state grants financial support to the employer if its work is restricted due to an external factor; the support serves to cover part of the employer's wage costs.



### **III. What social security instruments are available?**

According to the Labour Code, the employer is obliged to inform employees in writing about insolvency within ten days after the insolvency occurs, and if the employer becomes insolvent and cannot satisfy employee claims arising from the employment relationship, these claims are satisfied by a guarantee insurance payment. Guarantee insurance is insurance in the event of the employer's insolvency for the purpose of satisfying the claims of employees and assuming the compulsory pension premiums not paid by the employer. Guarantee insurance applies to all employees in an employment relationship.

In addition, the state uses various instruments of active labour market policy, such as the organisation of various educational courses, contributions, and compensations aimed at creating jobs and keeping people in employment.

## **CZECH REPUBLIC**

### **I. What opportunities do employers have to dismiss employees in corporate crisis situations?**

In corporate crisis situations, the employer can carry out mass dismissals. In doing so, it works with the competent labour office and simultaneously conducts negotiations with the union or the employees. A final report must be submitted to the employment office which summarises the negotiations with the unions and provides information about the professional composition of terminated employees, so that the employment office can prepare for an increased need for certain job vacancies or develop retraining programmes.

If a moratorium has been imposed on the employer prior to the initiation of insolvency proceedings, or an insolvency application has been filed, and the employer does not pay the wages of employees due to insolvency in a timely manner, the employee may apply to the employment office for payment of his/her wages up to the amount of wage claims due for three calendar months.

### **II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?**

If an employer cannot assign work to an employee within the framework of the weekly working hours because the sales of its products or demand for its services are temporarily restricted, this is a work obstacle on the part of the employer, referred to as partial unemployment. The employee is then entitled to compensation of at least 60 % of their average earnings. The amount of the wage replacement must be determined in agreement with the union or through one of the employer's internal regulations. The employer can apply for this allowance with the competent labour office. In this case, the compensation must be at least 70% of the average earnings, of which 20 % is paid as a subsidy by the labour office.

### **III. What social security instruments are available?**

The state ensures employment policy. The objective of the active employment policy is to organise the highest possible level of employment, taking into account social circumstances. Under the passive employment policy, the state provides employment to job seekers through employment offices, according to their qualifications, or prepares retraining programmes, and provides material assistance in the event of unemployment and during retraining.

## **TURKEY**

### **I. What opportunities do employers have to dismiss employees in corporate crisis situations?**

Employers in Turkey can dismiss employees in corporate crisis situations due to operational requirements. For companies with at least 30 employees and for employees with at least six months of company service, special termination protection applies in accordance with Art. 18 of Labour Act No. 4857. This means that termination for operational reasons is only possible for demonstrable operational or economic reasons, whereby termination must be the last means to cope with the corporate crisis. In other words,



before termination, the employer must check whether other means such as reducing, overtime, reducing working hours, developing flexible working methods, employment in other jobs, retraining or other means are suitable. In cases of mass dismissals (at least ten employees within one month), employers must inform the Turkish Employment Agency (İŞKUR [Türkiye İş Kurumu]) and the unions in accordance with Art. 29 of the Labour Act.

## II. Are there special labour law instruments for securing jobs, taking into account the employer's interests?

The Turkish legal system offers various labour law instruments for securing jobs. This includes in particular short-time work ("Kısa Çalışma"), which is regulated by the Turkish Labour Act and the Unemployment Insurance Act. Short-time work allows companies to reduce working hours and cover a portion of wages through government grants during economic crises or unexpected market developments. In addition, employers can make individual or collective agreements with employees on work time flexibility (e.g. flexitime or home office regulations). A temporary salary reduction, possibly associated with a reduction in working hours, or unpaid leave can also be mutually agreed upon. Such measures help to prevent terminations and maintain the economic stability of the company.

## III. What social security instruments are available?

In Turkey, there are various social security measures to support employers and employees during times of crisis. The most important instrument is the short-time worker's allowance provided by the Turkish Labour Agency. During short-time work periods, employees receive up to 60 % of their average gross income. The standard duration for receiving the short-time worker's allowance is a maximum of three months and can be extended to six months by presidential decree. There is also an unemployment allowance, which is paid in accordance

with Art. 50 of Unemployment Insurance Act No. 4447 to eligible employees who become unemployed involuntarily. Another instrument is social security premium support, which provides financial relief to businesses in economic difficulties. In addition, employers and employees can benefit from various subsidy programmes provided by the government during times of crisis.

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