



Restructuring / Redundancy

In the case of redundancies, the German Civil Code and (in the event of more than five employees) also the Dismissal Protection Law (*Kündigungsschutzgesetz*) always apply. The periods of notice are regulated in the German Civil Code. Nevertheless, individual or collective agreements apply, when these provisions are more advantageous for employees.

Pursuant to the Dismissal Protection Law, an employer can dismiss an employee:

- on behavioural grounds;
- if the employee is unable to perform his/her duties (e.g. as a result of physical inability or being unqualified for the position); or
- an operational reason.

When the dismissal is based on an operational reason, the employer has to observe social criteria in order to select the employee (e.g. duration of employment, age or the obligation to pay for dependants). The transfer of an undertaking cannot be used as a valid reason for the termination. Nevertheless, the termination can be effected on the basis of other above-mentioned reasons in case of a corporate transaction. Pursuant to the Works Council Constitution Act, the employer must inform the works council of every dismissal, including the reasons. A dismissal without a hearing of the works council is ineffective, provided an elected works council exists.

Collective Redundancies

Depending on the size of the company, the employer is obliged to inform the public employment agency when he/she is proposing to dismiss five or more employees pursuant to the Works Council Constitution Act. In addition, the works council has to be informed of the reasons, the number of the employees affected, the anticipated timescales and the operative criteria.

Social Plan

Companies and works councils may agree upon a social plan or a "balance of interests' agreement". This would set out guidelines on the rules and responsibilities of both parties in a restructuring operation and provides the terms and conditions under which this reorganisation measures can be implemented, including some or all of the following: social criteria for selection, the numbers of employees concerned (sometimes split by function or department), compensation elements, training or outplacement help, procedures and terms in the event of alternative positions being found, including positions in other locations and severance payments.