

Retrenchment and restructuring – labour and community issues, a brief guide

EBRD requirements on redundancy

PR 2.17 If the client anticipates collective dismissals as defined in Article 1 of EU Directive 98/59, the client will develop a plan to mitigate the adverse impacts of retrenchment, in line with national law and good industry practice and based on the principles of non-discrimination and consultation. Without prejudice to more stringent provisions in national law, such consultation will involve reasonable notice of employment changes to the workers' representatives and, where appropriate, relevant public authorities, so that the retrenchment plan may be examined jointly in order to mitigate adverse effects of job losses on the workers concerned. The outcome of the consultations will be reflected in the final retrenchment plan

Whenever a project is likely to give rise to significant job losses, it is important that the EBRD is satisfied that the process is being handled in a professional, economically efficient and legal manner. The aim of this note is to provide clients who anticipate collective job losses with some guidance on the appropriate steps to take in ensuring that the retrenchment is carried out in accordance with EBRD requirements.

Key points

- The client will develop a proposed plan for effecting redundancies
- The client will commit to consulting with trade unions or other workplace representatives over the proposed redundancies. Consultation should be about obviating or reducing redundancies, the method of selection and mitigating the effects of the redundancies.
- The client will ensure that the criteria for selection are objective, fair, transparent and non-discriminatory.
- The client will implement a procedure which provides individuals with the right to challenge their selection
- The client will seek to mitigate the adverse effects of the redundancies on individuals and affected communities
- The client will notify EBRD in advance of all redundancies covered by PR 2 and, in the case of large scale redundancies also provide EBRD with a copy of the retrenchment plan in advance of dismissals.

What is a “collective dismissal” under PR 2?

Consistent with Article 1 of EU Directive 98/59, the requirements of section 17 PR 2 will apply in case of *dismissals effected by an employer for one or more reasons not related to the individual workers concerned where the number of redundancies is, over a period of 30 days:*

Total no. of employees	Redundancies threshold
up to 20	Not applicable
21 to 99	10
100 to 299	10%
300 or more	30

EU member states may also choose to set the thresholds defining collective dismissals as follows:

- *over a period of 90 days, at least 20 workers are dismissed, whatever the number of workers normally employed in the establishments in question.*

If clients operate in an EU Member State that has chosen this definition of collective redundancies, it will be used to determine whether PR 2 requirements are triggered. As of February 2009, this definition applies in Slovakia and Slovenia. In Slovenia, it applies in addition to the above mentioned 30 day-related thresholds, as per Slovenian law.

Compliance with national law and collective agreements

Collective dismissals should always be carried out in accordance with the provisions of national law and / or collective agreements. National law will often contain clauses relating to the notification, consultation and other means of effecting the dismissals. Collective agreements often have clauses relating to consultation and also may include the agreed methods for selection. Both will normally include clauses relating to the level of payments to be received by those dismissed for redundancy.

Retrenchment Plan

The kinds of things that would normally be included in a retrenchment plan are set out in Annex A. In short, a plan will normally include:

- The reasons why job losses are necessary
- The timescale
- Who will be consulted
- How employees will be selected
- How alternative jobs will be sought
- How severance pay will be calculated
- What measures are in place to assist those losing their jobs to seek new work / retrain
- How broader community impact issues are to be addressed

The scope and level of detail of the retrenchment plan will vary from case to case, depending among others on the number anticipated of job losses and associated socio-economic impacts. The table in Annex B shows typical coverage for larger and smaller collective redundancies. Where retrenchment plans are required by law clients should ensure that the retrenchment plan is in line with regulatory requirements.

Reasonable notice of planned redundancies

Where redundancies are planned, there should normally be reasonable notice given to both workers representatives and national authorities. This will often be required under the terms of national law and these provision should always be complied with.

In any event the notice should be sufficient in terms of duration to allow workers representatives to:

- Assess the likely impact of the redundancies on the workforce and the community
- The seek independent advice
- To propose alternatives to mitigate the impact of the redundancies
- To discuss these with the company
- To put in place other appropriate actions

Consultation

Talking through the options around proposed redundancies is an important part of the process and consultation with trade unions and workers' representatives will also often be a requirement of national law. It is certainly always good practice and avoiding consulting will almost certainly lead to problems later. Workers' representatives may come up with alternative suggestions which lead to fewer job losses and greater efficiency gains. Clients can

demonstrate their commitment to good practice by their efforts to facilitate the inclusion of both men and women in the consultation process, both on the trade union/workers' representative team and on the management team.

Key points on consultation are:

- Start consultations earlier rather than later
- Define who will be consulted
- Define the subject of consultation

Selection criteria

Where the redundancy process does not involve a complete closure of the workplace, it is important that the selection criteria ensure that the best employees are retained. Therefore, any criteria should be objective and related to the needs of the job. This has the added advantage of minimising the risk of discrimination. Typical factors included in selection criteria include:

- Length of service
- Skills assessment
- Disciplinary record
- Performance record
- Absence record
- Knowledge

Some criteria may have disproportionate, but unintended, impact on one group compared to another. For example, selecting workers who are part-time or those with the shortest service will often have a disproportionate impact on women and should be reviewed to see whether there are alternative criteria or ways to mitigate this impact.

Severance payments

The employer implementing redundancies should be able to inform the EBRD how the amount of each severance payment complies with national legislation. It is important to ensure that any payments are made in a timely manner and that the amount of each payment is clear to employees receiving it.

Appeals, meetings and alternative job search

Once an employee has been identified as being selected for dismissal, it is appropriate to then consider whether there is any alternative position within the organisation or any associated organisation. It is also good practice and often a legal requirement that an employee has the right to appeal against the decision to dismiss them. All of these matters should be dealt with quickly and transparently.

Retraining, assistance and community impact

It is good practice to seek to provide retraining or job search assistance for any employees who are losing their jobs. There will often be other sources of assistance, for example from the State or other bodies, which can be used.

While the closure or radical restructuring of a plant, mine or other workplace has drastic impacts for the employees in that workplace, there will also be a major impact on the community at large. This can include:

- Range and severity of retrenchment or closure impacts on local communities.
- Impacts on vulnerable groups including women, older workers and migrant workers.

- Impact of a sudden and large injection of cash into the local economy as a result of severance payments.
- Level of dependency of communities on social infrastructure and services provided by the company
- Food security

Implementation and follow-up

The redundancy plan should be implemented in accordance with the law and in such a way ensures that there is no discrimination. It is important to put in place some form of monitoring to ensure that the process is complied with and also to assess whether particular groups are more adversely affected than others. It is good practice to carry out a process of evaluation and drawing of lessons from the process some time, for example, six months after the completion of the exercise.

Notification and reporting requirements to EBRD

Advance notification:

EBRD requires to be notified in good time in advance of any proposed collective redundancies covered by PR 2. Such notification should include the reason for the proposed retrenchment, the number of workers affected, and the time frame. In the case of large-scale redundancies – typically where either 25% or more of the workforce or over 500 workers are to be dismissed – clients will also be required to provide EBRD with an advance copy of the retrenchment plan. Additional or alternative requirements may be agreed on a case-by-case basis.

Ex-post reporting:

The Client's annual environmental and social reports to EBRD should include information on the implementation of all collective redundancies that occurred during the reporting period.

Corporate distress, insolvency, workplace closure and employee debts

Where a client is in extreme financial difficulties it may be that the company ceases to trade. It is very unusual that EBRD investments will be formally declared as insolvent, but where this is the case the insolvency practitioners will be responsible for determining that workers have been paid any outstanding wages or other debts due to them. National law will determine whether workers have special preferential rights over other creditors.

Where the client is at serious risk of ceasing to trade it may be the case that job losses will be inevitable in order to protect the trading position of the company. In such circumstances, any job losses should be kept to a minimum and should also be carried out in accordance with this note.

Support and further guidance

The Environment and Sustainability Department of the EBRD can provide assistance and guidance on all of the matters set out above and clients dealing with large-scale job losses should not hesitate to demand further support where appropriate.

There are a number of other resources which can be consulted, including the IFC's Good Practice Note on Retrenchment – which can be downloaded by [clicking here](#).

Annex A: Typical Contents of a Retrenchment Plan

1. Description of Anticipated Retrenchment and Rationale

- anticipated magnitude, rationale, and timeframe
- characteristics of the labor force (number of men and women employed by skill level and type of contract)
- adequacy of current staffing levels and need for retrenchment from a business point of view
- size of the planned retrenchment (number of men and women to be retrenched by skill level and type of contract)
- retrenchment schedule

2. Relevant Economic Context

- situation of the local economy, as it relates to the retrenched workers' ability to find new jobs or start new businesses
- importance of the firm/enterprise in the local economy
- main trends in the sector in which the firm operates (e.g., projected growth, level of employment, wages, foreign and domestic investment)

3. Retrenchment Methods and Procedures

- methods anticipated (e.g., voluntary retirement, severance packages, lay-offs)
- consultation and negotiation (e.g., with labor organizations, workers' representatives, community organizations, government representatives, and NGOs)
- selection criteria for worker dismissal
- strategies to prevent the disproportionate representation of a social group (e.g., women or members of a particular ethnic or religious group) among the retrenched workers

4. Management Arrangements

- person or people who will direct/supervise the retrenchment process
- grievance and appeal procedures

5. Legal/Institutional Framework

- legislation that applies to early retirement, provision of severance packages and lay-offs
- legal role of trade unions or other representative bodies in the retrenchment process
- relevant agreements with labor unions or other labor representatives
- compliance of planned retrenchment with applicable legislation and agreements
- coverage of retrenched workers by unemployment insurance or any other welfare programs
- eligibility of part-time or contract workers to receive benefits or assistance

6. Anticipated Impacts on Retrenched Workers and Communities

- prospects for retrenched workers (market demand for their skills and alternative sources of income/employment)
- eligibility of retrenched workers for unemployment or other benefits
- impacts on wider communities and remedial measures proposed

7. Compensation and Any Additional Assistance to Be Provided to Retrenched Workers

- compensation anticipated by skill level and type of contract
- training programs
- career counseling
- assistance to set up micro-enterprises
- financial counseling

8. Monitoring of the Retrenchment Process

- indicators to be monitored (e.g., situation of the retrenched workers, payment of entitlements, outcomes of assistance provided)
- frequency of monitoring activities
- party or parties that will carry out the monitoring activities

9. Supporting Documentation

- references of written materials, record of consultations with affected workers, tables, and the like included in an annex

Outline of Retrenchment Plan, taken from IFC Good Practice Note on Retrenchment, 2005.

Annex B: How implementation of PR 2 may vary between smaller and larger collective redundancies

	10% or over 30 staff	25% or over 500 staff
Actions to implement PR2, 17		
Consult with workforce	√	√
Develop a retrenchment plan	√	√
Assess community impact		√
Advance notification to EBRD	√	√
Advance submission of retrenchment plan to EBRD		√
Reporting to EBRD in annual report	√	√
Components of retrenchment plan		
Description and rationale	√	√
Economic context		√
Retrenchment methods and procedures	√	√
Management arrangements	√	√
Legal and institutional framework	√	√
Impacts on workers and communities		√
Compensation and assistance	√	√
Monitoring		√
Documentation	√	√