

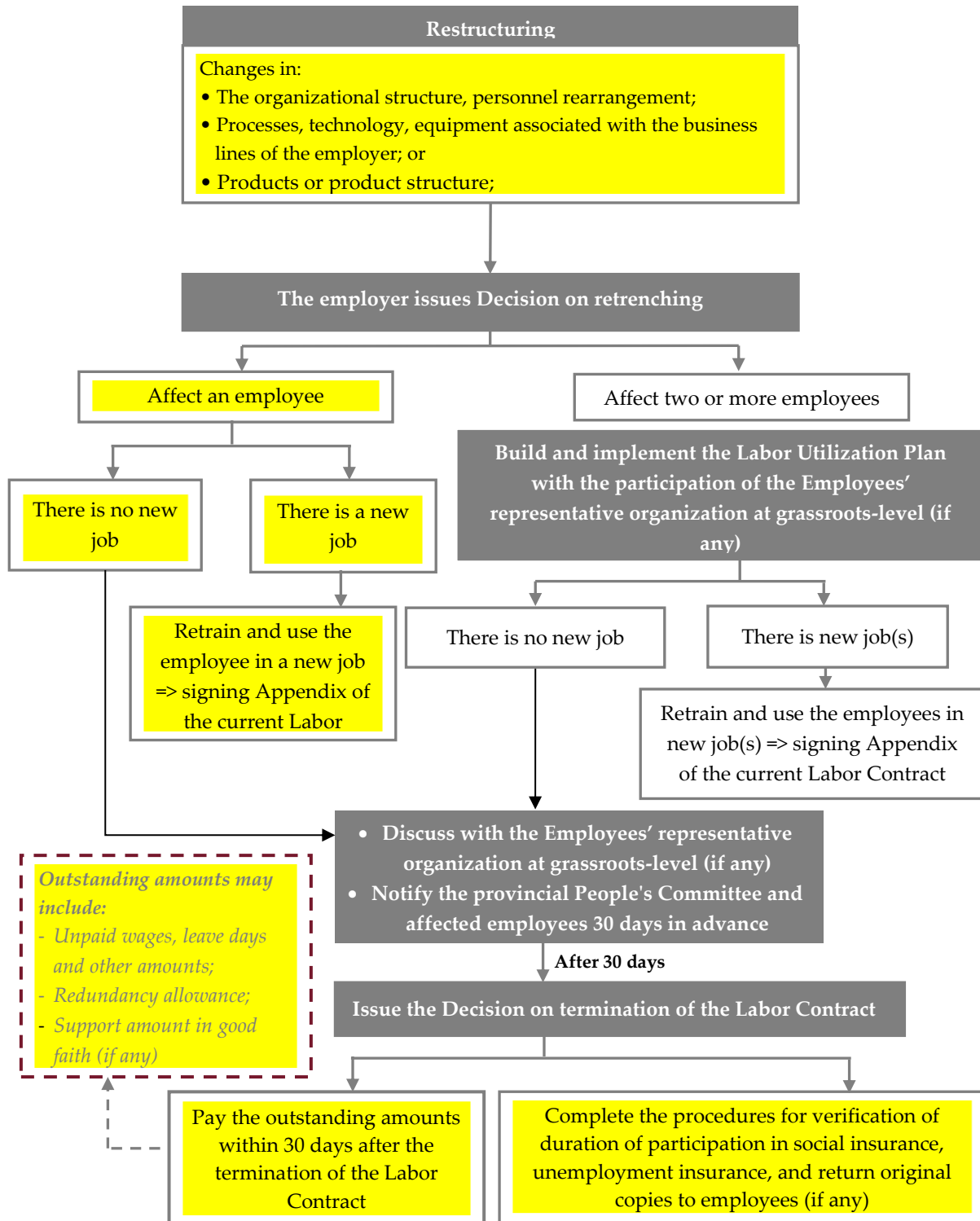


# RESTRUCTURING PROCESS AND NOTES FOR AN ENTERPRISE WITHOUT A GRASSROOTS TRADE UNION

*The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.*

*The article concentrates on the restructuring causing the dismissal of a number of employers in an enterprise without a grassroots trade union overview of representative office of a foreign enterprise in Vietnam.*

When considering regulations related to changes in structure, technology (“*Restructuring*”) in Labor Code No. 45/2019/QH14 dated 20 November 2019 (*the “2019 Labor Code”*), it is worth discussing the role of an employees’ representative organization at grassroots-level in the case of the Restructuring affects the employment of a large number of employees.



The term “*Employees’ representative organization at grassroots-level*” (in Vietnamese: “*Tổ chức đại diện người lao động tại cơ sở*”) is used for the first time in the 2019 Labor Code. It includes both grassroots trade unions and employees’ organizations at enterprise-level. Although the 2019 Labor Code took effect on 01 January 2021, we are not aware of any employees’ organizations at enterprise-level established thus far. This is due to the lack of specific instructions on the establishment, members, and operation of these organizations. Therefore, this summary only refers to the role of trade unions when the enterprise carries out the Restructuring.

Similarly, to the 2012 Labor Code and the 2019 Labor Code, when developing a labor utilization plan and lay-off of employees, an enterprise has to consult with the grassroots trade union (executive committee of grassroots trade union) prior to implementation. However, for the enterprise without a grassroots trade union, how these regulations are prescribed in each Code?

- In Clause 4 of Article 3 of the 2012 Labor Code, right at the definition of “representative organization of a grassroots-level employees’ collective”, it has mentioned the role of the immediate higher-level trade union when an enterprise does not establish union: “*Representative organization of a grassroots-level employees’ collective means the executive committee of the grassroots trade union or the executive committee of the immediate higher-level trade union in a non-unionized enterprise*”.

In regard to the role of representative organization of a grassroots-level employees’ collective in restructuring of an enterprise, the 2012 Labor Code stipulated that “*the dismissal of more than one employee in accordance with this Article may be implemented only after discussion with the representative organization of a grassroots-level employees’ collective and notification 30 days in advance to the provincial-level state management agency of labor*”<sup>[1]</sup> and “*the labor utilization plan must be elaborated with the participation of the representative organization of the grassroots-level employees’ collective*”<sup>[2]</sup>.

- In the 2019 Labor Code, the term of “*immediate higher-level trade union*” no longer appears in the relevant regulations. It seems that the 2019 Labor Code does not require the participation of employees’ representative organization at grassroots-level in discussion before dismissal of employees upon restructuring or during the development of the labor utilization plan<sup>[3]</sup>. However, the 2019 Labor Code has left it open in the case of a non-unionized enterprise.

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[1] Clause 3 Article 44 of the 2012 Labor Code

[2] Clause 2 Article 46 of the 2012 Labor Code

[3] Clause 6 Article 42 and Clause 2 Article 44 of the 2019 Labor Code

The Restructuring is a tough procedure for employers if affecting the employment of more than one employee. The employer therefore needs to be cautious and stringent when conducting this, especially when the relevant regulations are still not clear.

Following the spirit of the 2012 Labor Code, when implementing the Restructuring under the 2019 Labor Code for a non-unionized enterprise, the enterprise should keep consulting with the immediate higher-level trade union. In some cases, the enterprise may receive comments or guidance from such organization on the contents to be consulted. On another note, several immediate higher-level trade unions hold the opinion that the 2019 Labor Code has no provisions on their competencies or responsibilities in case the enterprise conduct such Restructuring.

Another way may keep the role of trade union in a non-unionized enterprise is to consult with all employees working at the enterprise for the Restructuring. The purpose of a trade union is to protect the legitimate rights and interests of employees in labor relations. If there is no organization representing them to do this, the employees will protect their rights and interests themselves.

However, still returning to the concerns of enterprises related to compliance with procedural regulations, either way, the non-unionized enterprise is very confused to implement the Restructuring without an official guide. It is hoped that the authorities will expedite issuing the necessary guidance and regulations to enforce the 2019 Labor Code's provisions in order to strongly and effectively protect the interests of employees.

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