



**European Bank**  
for Reconstruction and Development

# EBRD Performance Requirement 2: Labour and working conditions

## Guidance note on collective dismissal

March 2023

**Disclaimer**

This document contains references to good practices and should be interpreted bearing in mind the Environmental and Social Policy adopted by the EBRD; it is not a compliance document. It does not alter or amend EBRD policies and does not create any new or additional obligations for any person or entity. In case of any inconsistency or conflict between this document and the Environmental and Social Policy adopted by the EBRD as amended from time to time, such policy shall prevail. Questions of interpretation shall be addressed solely in respect of the Environmental and Social Policy.

The information and opinions within this document are for information purposes only. No representation, warranty or undertaking expressed or implied is made in respect of any information contained herein or the completeness, accuracy, or currency of the content herein. The EBRD does not assume responsibility or liability with respect to the use of or failure to use or reliance on any information, methods, processes, conclusions, or judgments contained herein, and expressly disclaims any responsibility or liability for any loss, cost, or other damages arising from or relating to the use of or reliance on this document. In making this document available, the EBRD is not suggesting or rendering legal or other professional services for any person or entity. Professional advice of qualified and experienced persons should be sought before acting (or refraining from acting) in accordance with the guidance herein.

This document does not constitute or imply a waiver, renunciation or other modification, either express or implied, of any of the privileges, immunities and exemptions granted to the EBRD under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Certain parts of this document may link to external internet sites and other external internet sites may link to this publication. The EBRD does not accept responsibility for any of the content on these external internet sites.

Whenever a project is likely to give rise to significant job losses, it is important that such a collective dismissal is carried out in accordance with the European Bank for Reconstruction and Development's requirements and in line with national law. EBRD Performance Requirements (PRs) on redundancy are contained in PR2.20.

### EBRD requirements on collective dismissal (PR2.20)

"Prior to implementing any collective dismissals\* in connection with the project, the client will carry out an analysis of alternatives to the planned workforce reduction. If the analysis does not identify viable alternatives, the client will develop and implement a collective dismissals plan to assess, reduce and mitigate the adverse impacts of the workforce reduction on workers, in accordance with national law and good international practice (GIP) and based on the principles of non-discrimination and consultation.

The selection process will be transparent, based on fair, objective, consistently applied criteria, and subject to an effective grievance mechanism. The client will comply with all legal and collectively agreed requirements relating to collective dismissal, including notification of public authorities, and provision of information to, and consultation with, workers and their organisations.

The final collective dismissals plan will reflect the outcomes of consultations with workers and their organisations. All outstanding back pay and social security benefits and pension contributions and benefits will be paid: (i) to the workers on or before termination of the working relationship; (ii) where appropriate, for the benefit of the workers; or (iii) in accordance with a timeline agreed through a collective agreement. Where payments are made for the benefit of workers, workers will be provided with evidence of such payments. The client will provide advance notification to the EBRD of the planned workforce reduction and, where requested by the EBRD, a copy of the proposed plan for collective dismissals."

### EBRD requirements – key points

- Collective dismissals must always be carried out in accordance with the provisions of national law and applicable collective agreements.
- The client will carry out an analysis of alternatives to collective dismissal.
- If no viable alternatives are identified, the client will develop a collective dismissal plan for carrying out redundancies. The collective dismissal plan should include measures to reduce and mitigate the adverse impacts of mass redundancy on workers.
- The client will consult with trade unions or other workplace representatives on the proposed redundancies. Consultation should be about avoiding or reducing redundancies, the method of selection and mitigating the effects of the redundancies. The outcome of the consultation should be reflected in the final collective dismissal plan.
- The client will ensure that the selection criteria for redundancy are objective, fair and transparent. In particular, the client will aim for a gender-neutral impact in the restructuring.
- The client will implement a procedure that gives individuals the right to challenge their selection.
- The client will pay all outstanding back pay, social-security benefits and pension contributions and benefits to those affected by collective dismissal in a timely manner. Where payments are made for the benefit of workers, workers will be provided with evidence of such payments.
- Clients must provide advance notification to the EBRD of planned workforce reductions and, where requested by the EBRD, a copy of the proposed plan for collective dismissal.

\* Collective dismissals are multiple dismissals for economic, technical or organisational reasons, or other reasons unrelated to performance or personal issues.

# 1. What is “collective dismissal” under PR2?

EBRD requirements on collective dismissal apply to all situations in which a client carries out multiple dismissals for economic, technical or organisational reasons, or other reasons unrelated to performance or personal issues.

In most of the economies in which the EBRD invests, national law will set specific thresholds to define collective dismissal and contain provisions relating to notification, consultation and other means of effecting them. Where a client undertakes multiple dismissals that trigger national legal requirements, the client must follow national law.

Where the number of people being dismissed falls below national legal thresholds for collective dismissal, or where there are gaps between national law and PR2, clients must follow PR2, including in relation to developing a collective dismissal plan and consulting with workers and their organisations.

## 2. Clients’ roles and responsibilities

EBRD clients will have different roles and responsibilities in a collective dismissal situation, depending on their position as current employer or incoming operator, and also depending on whether they are a private-sector employer or a state-owned enterprise (SOE). The latter sometimes have implied obligations to worker welfare and active labour-market policies beyond legal compliance.

Client situation	Client role and responsibilities in workforce restructuring
<b>State-owned enterprise</b>	<p>The transfer of SOEs commonly brings with it the need for workforce restructuring. In many cases, the state, in its capacity as employer, will reduce the headcount of the undertaking prior to the transfer or concession, particularly where the facility or operation requires significant investment. In such a case, the SOE, as employer of the workforce at the time of collective dismissal, has full and exclusive legal liability for undertaking the exercise in line with statutory and agreed norms.</p> <p>As an EBRD client, there are three key ways for an SOE to minimise the negative impacts of workforce restructuring in line with PR2:</p> <ul style="list-style-type: none"> <li>• manage the restructuring process transparently and with the involvement of workers</li> <li>• support active measures that help redundant workers to find alternative income-generating opportunities, including the use of employment-agency resources to support labour market reintegration, reskilling and broader support measures</li> <li>• engage with incoming operators (see below) to provide ongoing support for the most appropriate social impact mitigation approaches, potentially including priority rehiring.</li> </ul>
<b>Private company</b>	<p>While the EBRD’s policy in no way inhibits workforce restructuring, there is a strong case to be made that private-sector enterprises should act in a way that optimises the legacy of restructuring, thereby safeguarding their reputation.</p> <p>As an EBRD client, a private company must follow PR2, including:</p> <ul style="list-style-type: none"> <li>• managing the restructuring process transparently and with the involvement of workers</li> <li>• in the case of larger-scale redundancies, identifying and seeking partners to deliver active measures to reduce the impact of redundancy on workers and their households.</li> </ul>
<b>Incoming operator</b>	<p>While liability for the redundancy resides solely with the employer at the time of the restructuring, an incoming operator should seek to ensure that workforce restructuring is undertaken in a lawful and professional way, including:</p> <ul style="list-style-type: none"> <li>• The operator must adhere to any national legislation on transfers of undertaking. In many jurisdictions, this may limit the scope for lawful dismissal as a direct result of change of ownership and is likely to limit the unilateral modification of the terms and conditions of employment.</li> <li>• The incoming operator has a responsibility to create and maintain a “social licence to operate”. This licence can be closely related to the way in which restructuring and redundancy are carried out, even where the operator is not legally liable for the redundancies. This is likely to entail close coordination with and support for active measures to support those workers whose posts are made redundant, as well as broader community support measures in the case of larger-scale redundancies.</li> </ul>

### 3. Compliance with national legislation and collective agreements

Collective dismissals should always be carried out in accordance with the provisions of national law and applicable collective agreements.

National law will often contain clauses relating to due process, notification, consultation and other means of effecting the dismissals. Collective agreements often have clauses relating to consultation and may include the agreed methods for selection. Both will normally include clauses relating to the level of payments to be received by those made redundant.

### 4. Planning and analysis of alternatives to collective dismissal

In many cases, workforce restructuring need not involve compulsory redundancies and it is, therefore, important to ensure that all potential alternatives have been considered in advance. Even when compulsory redundancies are necessary, the alternatives listed below may help to reduce the number of workers affected.

Possible alternatives will depend on the provisions of national legislation and collective agreements, but may include the following.

- **natural attrition:** not replacing workers who leave the company (for example, due to retirement or resignation)
- **business restructuring:** shedding non-core activities or contracting them out

- **workforce management:** managing payroll to remove any “ghost workers” (workers who are recorded on the payroll system, but do not work for the firm) and retiring workers of pensionable age
- **workforce restructuring:** redeploying workers to another part of the entity, and training or re-training workers to meet identified skills shortages
- **reorganisation of working time:** offering unpaid voluntary leave, reducing working hours or the work week and reducing overtime
- **early retirement/voluntary redundancies:** offering early retirement packages to volunteers to avoid the need for compulsory redundancies (in close coordination with active skills management to ensure that the rights skills profiles are maintained within the organisation).

### 5. Collective dismissal plan

PR2.20 states that collective dismissals should be conducted according to the principles of consultation and non-discrimination. Preparing a collective dismissal plan is the best way to ensure that all potential problems and issues have been considered and that appropriate responses can be devised and implemented. A plan will also provide a clear programme on which to base consultations.

The collective dismissal plan can also clarify the process of restructuring. A clear description of the process can help to strengthen the outcome, minimise damage to EBRD clients’ operations and reputations, and underpin the legitimacy of the restructuring among external stakeholders, including the Bank and national stakeholders. In short, the plan can be beneficial in explaining how a well-executed workforce reduction can help the business better deliver on its objectives.

A collective dismissal plan will normally include:

- the reasons why job losses are necessary
- the timescale for collective dismissal
- who will be consulted and when
- 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, where applicable.

The scope and level of detail of the collective dismissal plan will vary from case to case, depending, among other things, on the number of anticipated job losses and associated socioeconomic impacts. Where collective dismissal plans are required by law, clients should ensure that their plan meets regulatory requirements.

## 6. Reasonable notice of planned redundancies

Where redundancies are planned, there should normally be a due process, including reasonable notice to both workers' representatives and, where required by law, national authorities. This will often be required under national law and EBRD clients should always comply with these provisions.

In any event, the notice period should be of sufficient length to allow workers' representatives to:

- assess the likely impact of the redundancies on the workforce and the community
- seek independent advice
- communicate and consult with the workers they represent
- propose alternatives to mitigate the impact of the redundancies and discuss these with the company
- put other appropriate actions in place.

## 7. Consultation

Talking through the options surrounding proposed redundancies is an important part of the process and consultation with trade unions and workers' representatives will often be a requirement of national law. It is certainly always good practice. Workers' representatives may come up with alternative suggestions that lead to fewer job losses and greater efficiency gains. Consultation is most beneficial when it takes place as early as possible and when the scope of the consultation is clearly set out in advance.

At a minimum, consultation should include a discussion of ways to avoid collective redundancy or reduce the number of workers affected, as well as ways to mitigate the consequences of collective dismissal.

It is also good practice to consider other areas for consultation, such as selection criteria for workers to be dismissed and the amount and payment of severance.

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

## 8. Selection criteria

PR2 requires that any selection criteria be "transparent [and] based on fair, objective, consistently applied criteria". 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 (excluding maternity)
- knowledge and qualifications.

In many jurisdictions, there are protections against termination of employment, including redundancy for economic reasons, for certain categories of worker: these may include pregnant women, women on maternity leave and, in some cases, trade union representatives.

Selection criteria should be carefully examined to ensure that they do not lead to "indirect discrimination" by having a disproportionate impact on a particular group.<sup>1</sup> This can happen, for instance, if part-time employment is used as a selection criterion. Women are much more likely than men to

work part time, so selecting candidates for dismissal based on part-time working is likely to affect women disproportionately and, thus, discriminate against them.

EBRD clients should aim for their collective dismissal process to have a gender-neutral impact. To this end, careful attention should be paid to the representation of women and men in certain functions or positions within a company's workforce. For example, women may be over-represented in administrative positions, so if redundancies are focused on administrative streamlining, they may have a disproportionate effect on women.

EBRD clients should try to prevent the burden of the collective dismissal process from falling disproportionately on a particular group of workers, wherever possible. This can potentially be done by carefully analysing various scenarios and their associated gender impact when developing a collective dismissal plan. However, in the event that no alternatives are found and the collective dismissal process disproportionately affects women (or men), the client should put in place active mechanisms to support the employability of those workers being made redundant (see section 10 on 'retraining and active measures').

<sup>1</sup> Indirect discrimination occurs when a practice, policy or rule appears to be neutral, as it applies to everyone in the same way, but in practice disadvantages certain groups.

## 9. Grievances and appeals

There should be an effective grievance mechanism in place to allow workers to appeal against their selection for redundancy. Any grievances should be dealt with quickly and transparently.

Although the collective dismissal process is a mass exercise, each individual has the right to put forward reasons why he or she should not be selected for redundancy or to raise complaints about the way in which the process has been handled.

Having an appeal and grievance procedure ensures a sense of fairness and consultation at individual level. It may also lead to the identification of other ways to avoid job losses, or at least mitigate their effect.

Key elements of an effective appeal or grievance procedure are:

- The process should be transparent and communicated to workers in writing.
- All workers should have the right to initiate an appeals or grievance procedure.
- The process should be completed promptly.
- Where possible, a manager other than the one who effected the redundancy should hear the appeal or grievance.
- Retrenched workers are usually entitled to severance payments and it is vital to check the relevant requirements of national law. For example, most national legislation stipulates that minimum amounts of severance are paid to each worker made redundant in a collective dismissal; this can vary depending on length of service, wage or salary level, or special hardship payments. Collective agreements may also specify severance payments in excess of those provided for in national law.
- The employer implementing redundancies should be able to inform the EBRD how severance payments were calculated and the amount of severance payment being offered to each worker. 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.
- In addition to severance pay, employers must also ensure that all outstanding back pay, social security benefits and pension contributions are paid. This should usually happen before or at the point at which working relationships are terminated, although other arrangements are possible if agreed in advance with the worker or through a collective agreement.
- In some jurisdictions, employers may be required by law to transfer certain payments to specific institutions, such as pension fund administrations or health funds. In such cases, EBRD clients will not provide payments directly to the worker, but will make contributions directly to the appropriate institution for the benefit of the worker. The client, however, will provide the worker with evidence of such payments. In cases where payments to certain institutions are optional, the client will provide options to the worker, who may choose a direct cash payment or payment to a defined institution.



## 10. Retraining and active measures

It is good practice to actively provide support measures for any employees losing their jobs. This is particularly important for workers with fewer formal qualifications or older workers for whom alternative income-earning opportunities may be limited.

Active support measures aim to help employees being retrenched to find alternative sources of income, minimise social costs, increase efficiency and prevent a negative atmosphere for remaining workers.

The first step in developing active support measures is to undertake an assessment of the workers being retrenched and of the local labour market, to see whether the skills and aspirations of the retrenched workforce tallies with real skills requirements. The client can then begin to devise avenues of intervention, which can include any or all of the following:

- **Job search assistance** to optimise opportunities to re-enter the labour market. This can include placement help (employment intermediation) to match workers with opportunities in the job market, time off for job searches prior to termination of employment, and help building skills and confidence to find a new job (interview skills, personal skills assessment, writing job applications, job clubs, and so on).
- **Training**, including retraining and skills upgrading, so that displaced workers can find new paid employment elsewhere, as well as training in starting small businesses or microenterprises or helping redundant workers become self-employed and/or identify other income-earning opportunities.
- **Business skills development**, including starting new small and medium-sized enterprise (SME) start-ups, so that workers can potentially subcontract to their former employer.
- Basic **financial skills training** for all employees, to ensure that severance compensation is appropriately managed.
- **Counselling**, which, in addition to advice on services and support available to the displaced worker, may include elements of psychological counselling.

Active measures such as the above will add to the cost of restructuring, so any decision to support such interventions must take into account their likely cost effectiveness. Equally, this cost must be viewed in light of the value of a continued “social licence to operate” (that is, preserving the reputation of the company by retaining the trust of remaining employees and the wider community).

Some active support measures need a permanent structure with people assigned to it (either internally from the human resources department, sub-contracted or jointly with internal and external resources). Financial resources for creating and implementing the measures should be provided for in the company’s financial plan and in calculations of operating profit.

To assess the feasibility of delivering active support measures, it will be necessary to identify and evaluate potential partners to assist in their delivery. In many economies where the EBRD invests, there are a number of private agencies and government-run agencies (such as the national employment agency), which specialise in such training and would be well placed to assist with this.

Particular attention should be paid to the needs of women workers who are made redundant, particularly those with few formal qualifications. These workers may experience additional challenges in finding alternative employment, exacerbated by care responsibilities, mobility restrictions and societal norms. In such cases, vocational and entrepreneurship training should be accompanied by soft skills training (such as leadership), as well as referral to other opportunities for women-to-women networking and or mentoring.



# 11. Implementation and follow-up

Implementation can commence only when formal statutory notifications have been made to worker representatives and government agencies and when tools and procedures have been prepared to effect the collective dismissal, including an appeal or grievance mechanism.

Once consultation has occurred, an announcement can be made on the number of redundancies that will be made and the manner in which employees will be selected. If possible, it is highly desirable to carry out interviews with every person affected by the collective dismissal and to be prepared to review individual selection in light of new information that affects the candidate's status or capacity to meet selection criteria. Severance payments must be made in a timely manner.

Active support programmes must be brought to the attention of retrenched workers and a direct link created for them to service providers.

The redundancy plan should be implemented in accordance with the law and in a way that ensures that there is no discrimination. Implementation should also include a "compliance check", documenting the process and timing of informing workers and authorities, verifying the objectivity of selection criteria, offering alternative posts and gaining trade union consent. It is also important to put in place some form of monitoring to ensure that the process is compliant and to assess whether particular groups are more adversely affected than others. It is good practice to carry out an evaluation of and draw lessons from the process, for example, six months after completing the exercise.

# 12. Notification and reporting requirements to the EBRD

## Advance notification

As a material factor relating to its investment, the EBRD requires at least one month's notice of the implementation of any proposed collective redundancies covered by PR2. Such notification should include the reason for the proposed collective dismissal, the number of workers affected and the time frame. In the case of large-scale redundancies, typically where either more than 25 per cent of the workforce or more than 500 workers are to be dismissed, or where otherwise requested by EBRD, clients

are also required to provide the EBRD with an advance copy of the collective dismissal plan. Additional or alternative requirements may be agreed on a case-by-case basis.

## Subsequent reporting

The client's annual environmental and social reports to the EBRD should include information on the implementation of all collective redundancies that occurred during the reporting period, as well as on any grievances raised in relation to the redundancy process.

# 13. Corporate distress, insolvency, workplace closure and employee debt

Where a client is in extreme financial difficulty, the company may cease to trade. Insolvency practitioners will then be responsible for ensuring 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 certain creditors.

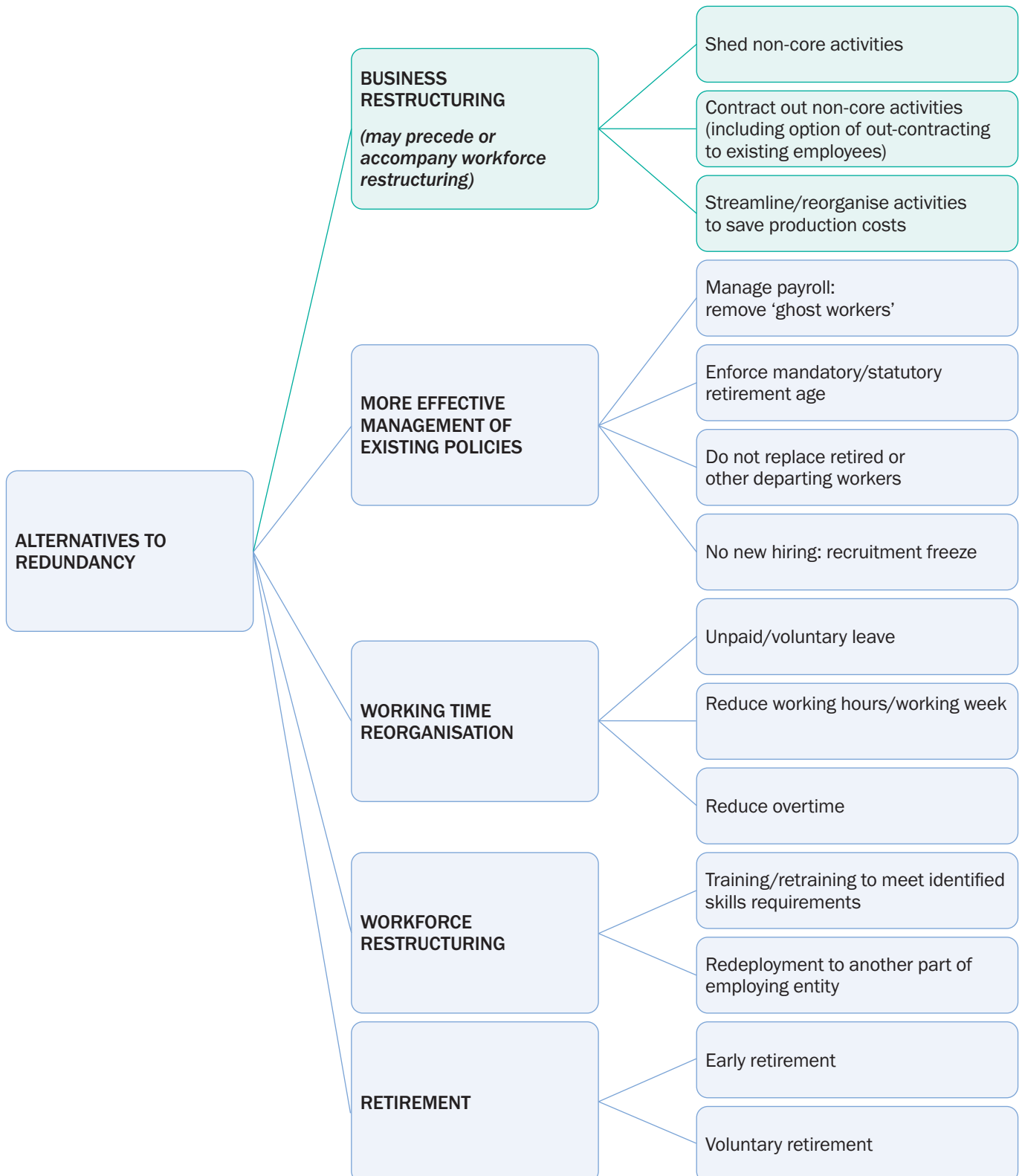
Where the client is at serious risk of ceasing to trade, job losses may be inevitable to protect the company's trading position. In such circumstances, any job losses should be kept to a minimum and should be carried out in accordance with the guidance in this note.

# 14. Support and further guidance

The EBRD's Environment and Sustainability Department can provide assistance and guidance on all of the matters set out above. Clients dealing with large-scale job losses should not hesitate to request further support if needed.

## Module A: Analysis of alternatives to collective dismissal

In many cases, workforce restructuring need not involve compulsory redundancies. Substantial reductions in workforce numbers can often be achieved through natural attrition (workers leaving through retirement or resignation and then not being replaced), particularly if there is a significant number of older workers on staff. Natural attrition smooths the restructuring process, helping to maintain workforce morale.



## Module B:

# Legal and process compliance checklist

	Response
Is the enterprise/sector covered by a collective agreement and, if so, what are the provisions with respect to collective dismissal?	
Is the enterprise/sector covered by another binding agreement or statute, such as a decision of council of ministers? If so, what are the provisions relating to collective dismissal?	
In the context of privatisation, are there other redundancies that establish a (good practice) precedent with regard to process and mitigation measures?	
What are the national provisions on transfer of undertaking and do they apply in this case?	
How much scope is there under national legislation to reduce working hours and overtime as an alternative to job cuts?	
Is governmental permission required to proceed?	
What are the requirements for consultation with trade unions or other worker representatives on redundancies?	
Were the selection criteria developed in consultation with workers' representatives and are they objective and non-discriminatory?	
Is voluntary severance/early retirement a possible legal alternative?	
How are minimum severance payments to be calculated?	
How much notice must be given to each worker?	
What are the individual requirements that must be observed in relation to each worker's dismissal?	
Is there specific legislation relating to women or other protected groups, such as minorities?	
What statutory protections are there for workers on maternity leave, parental leave or long-term sickness leave?	
What legislation, if any, covers unemployment insurance and other aspects of social security, or regulated welfare funds, pension funds childcare and other social systems of workplace support?	
What rights do workers have in the event of transfers to other employers ("transfer of undertaking") and outsourcing? What employment obligations are binding on the new operator?	
What state-agency procedures exist in relation to dispute resolution, including conciliation and mediation?	
What laws are in place on the rights of "atypical" workers, such as temporary, part-time, self-employed, seasonal and home-based workers?	
Are public and private pension arrangements "portable" from one employer to another?	
Are there any rules that require preferential treatment for retrenched workers in respect to future employment?	

## Module C: Proposed structure for collective dismissal plans

### 1. Background and rationale

Business rationale for redundancy	
Anticipated timeframe	
Characteristics of workforce	<i>(Number of men and women employed by skill level and type of contract – see summary table in section 12 below)</i>
Adequacy of current workforce – staff numbers and skills – and need for redundancy	
Size of the planned redundancy	<i>(Number of men and women to be retrenched by skill level and type of contract – see summary table in section 12 below)</i>

### 2. Relevant economic context

Local labour market summary	
Importance of the enterprise in the local economy	
Main trends in sector (such as projected growth, level of employment, wages, foreign and domestic investment)	

### 3. Analysis of alternatives to collective redundancy

Description of alternative	Advantage	Disadvantage	To be used? Yes/No
(Redeployment, reduction in working hours, early retirement, and so on)			

Explanation of why collective redundancies are chosen instead of, or in addition to, alternatives above:

## 4. Legal/institutional framework

Legislation applicable to collective dismissal	
Provisions on collective dismissal included in collective agreement	
Confirmed compliance of planned redundancy with applicable legislation and collective agreement(s)	
Coverage of redundant workers by unemployment insurance or other social-security programmes	<i>(Such as unemployment payments for jobseekers or economic aid for individuals)</i>
Eligibility of part-time or contract workers for benefits or support	

## 5. Consultation schedule (attach minutes of consultation meetings as annex)

Consultation meeting/session	Themes	Participants	Information/data to be prepared	Time/day

## 6. Selection mechanism and criteria for dismissal

Mechanism	Explanation of how mechanism works	Criteria	Affected workforce	Dismissal schedule
<i>(Name of mechanism – for example, skills-based, voluntary, last-in-first-out)</i>		<i>(Such as performance, length of service)</i>	<i>(Estimated number of workers affected, with list of individual workers in a separate document)</i>	<i>(Planned last day of work for affected employees)</i>

## 7. Management arrangements

Nominated person responsible for redundancy process	
Description of grievance and appeal procedures	

## 8. Anticipated impacts on workers and communities

Form of impact assessment undertaken: date, consultant, terms of reference	
Summary of prospects for redundant workers (market demand for skills, alternative sources of income/ employment)	
Eligibility of retrenched workers for unemployment or other benefits	
Impacts on wider community and remedial measures proposed	

## 9. Active support measures for workers made redundant

Activity	Time	Conducted by (employer, national employment agency, and so on)	Type of workers in receipt of support
(For example, training for dismissed workers, career support)			



## 10. Redundancy budgets (please add/modify line items as appropriate)

Type of cost	Amount
<b>Severance budgets</b>	
Statutory entitlement (severance pay)	
Wages paid for untaken annual leave	
Wages paid for time off	
SUBTOTAL	
<b>Measures to mitigate effects of redundancy:</b>	
Such as cost for careers counselling and training on new skills for dismissed workers	
Cost for training in financial management or small business development	
SUBTOTAL	
<b>Alternatives to redundancy</b>	
Such as early retirement package	
Gratuity benefit for voluntary resignation	
SUBTOTAL	
TOTAL	

## 11. Monitoring of the redundancy process

Indicators to be monitored	<i>(such as payment of severance, outcomes of support provided)</i>
Frequency of monitoring activities	
Party or parties that will carry out the monitoring activities	

# 12. Summary table

	Current workforce			Workforce reduction by alternative means (see section 3 above)			To be made redundant		
	Full time	Part time	Other	Full time	Part time	Other	Full time	Part time	Other
Total									
Men									
Women									
Aged 18-40									
Aged 41-60									
Aged over 60									
By occupation/department									
-									
-									
-									
-									

## Module D: Workforce information and consultation

### 1. Legal requirements

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 notification, consultation and other means of effecting such dismissals. Collective agreements often have clauses relating to consultation and may also include agreed methods for selection.

In terms of timing, where redundancies are planned, reasonable notice should normally be given to both workers' representatives and the national authorities. This will often be required under the terms of national law and these provisions should always be complied with. In any event, the duration of the notice should be sufficient to allow workers representatives to:

- consult with the workers they represent
- assess the likely impact of the redundancies on the workforce and the community
- seek independent advice
- propose alternatives to mitigate the impact of the redundancies, taking into consideration different impacts based on gender
- discuss these with the company
- put in place other appropriate actions.

### 2. Why consult?

The purpose of consulting with workers is to stimulate better cooperation between managers and employees, reduce uncertainty and lead to better decision-making. When faced with a redundancy situation, workers and their representatives may be able to suggest acceptable alternative ways of tackling the problem and of minimising hardship. Consultation is a two-way process and involves listening as well as talking. Management should seriously consider all proposals put forward by workers with the aim of reaching an agreement.

### 3. Who should be involved in consultations?

The main partner for an employer in consultation is the workforce and its representatives. However, consultation may also include local, regional or national government agencies (most frequently the Labour Ministry) and communities affected by large-scale restructuring. From the management side, it is important that partners in the consultation include those with responsibility for making decisions on the restructuring process (for example, the senior management team). Beyond the "usual players", the consultation process should involve active efforts to seek the input of those who might not have the representation, voice or confidence to participate in consultation without active engagement and support

#### Trade unions

If there is a recognised trade union either at the workplace or named in national law, this will be one of the key consultees. If there is more than one recognised trade union, it is important to ensure that all recognised trade unions are able to participate in consultations. Where possible, trade-union representatives involved in the consultation process should include women and men.

#### Consultation with individuals

When it comes to individual consultation, employees must be made aware of the contents of any agreed procedure and of the opportunities available for consultation and for making representations. All individuals who are to be made redundant must be consulted, irrespective of length of service.

Even where there is no ongoing relationship with a trade union, if workers wish an existing and relevant trade union to be consulted on their behalf, this may well be the appropriate course of action.

In the absence of a recognised trade union and of a worker request to be represented by a trade union, there are two alternatives: organising an election of worker representatives or consulting with everyone in the workplace individually. The latter can be time-consuming and difficult, so an appropriate form of collective consultation is normally the best route.

## 4. How to consult?

The actual process and calendar for consultations should be agreed by management and workers. The consultation process should allow worker representatives to:

- fully understand the issues
- meet and report back to workers
- meet with management
- request, receive and consider information about the situation.

Redundancy can be a traumatic experience for an employee. Announcements of redundancies will invariably have an adverse impact on morale, motivation and productivity. The negative effects can be reduced by sensitive handling of redundant employees and those remaining.

Holding meetings in a transparent manner, in accordance with a defined timetable, is an important way of seeking to safeguard employee participation and trust in the process.

## 5. What to consult on?

The law spells out what consultations should cover at a minimum. This may include:

### Ways of avoiding collective dismissal

This can include working-time reductions, flexible working patterns, pay freezes and cuts in pay.

Ways of reducing the number of workers affected

Where redundancies are inevitable, consultation can seek to mitigate their effects in a number of ways, such as looking for voluntary redundancies and candidates for early retirement.

### Mitigating the consequences of collective dismissal

This can include a range of measures to help those who are losing their jobs, including redeployment, either within or outside the enterprise; training and other measures aimed at increasing employability; outplacement services tailored to the needs of the individual; guaranteeing priority of re-hire for redundant workers; and investment in the local economy to encourage new employers to move to the region and create jobs to replace those lost. All measures should take into consideration differences based on gender (in terms of access to training, redeployment opportunities and so on).

In addition to those areas outlined in national labour codes or other relevant legislation, management should also consider consulting the workforce on:

- the selection criteria for workers to be dismissed (see section 8 on “selection criteria”)
- the method used to calculate the amount and means/timing of payments of redundancy compensation
- criteria for re-hiring and mechanisms for monitoring implementation
- the dismissal schedule (timeframe) and arrangements for workers to take time off to seek new employment.

## 6. Management checklist: workforce information and consultation

	Yes/No
Are all managers aware of existing legal and collectively agreed provisions on consultation between employers and employee representatives with regard to restructuring?	
Are the reasons for restructuring (such as privatisation, liberalisation, and technological change) clearly stated and commonly understood by managers and workers?	
Has the process of consultation on restructuring been planned and agreed by management and workers prior to discussion?	
Are there social dialogue structures – such as trade unions or an employee council – that are appropriate for consultations on restructuring?	
Are there third parties that could or should be involved in the process of social dialogue – for example, local, regional or national public authorities?	
Have trade unions or other worker representatives had the opportunity to suggest alternatives to restructuring or to redundancies in the process of restructuring?	
Do employee representatives have adequate time away from the workplace to prepare and to consult with their constituencies?	
Will organisational change affect contractor, agency or temporary workers and are they adequately represented within the process?	
Have managers and workers considered a range of possibilities, such as support in finding new jobs, to mitigate the possible effects on employment during and after organisational change?	
Have managers considered any gender gaps in the information and consultation process? (This may include, for example, the different ways in which women and men are likely to access information or participate in consultative processes or grievance mechanisms.)	

## Module E: Selection criteria for dismissal

### 1. What are selection criteria?

Once it has been established that there is no alternative to job losses, it is important to move on to determining the method and criteria for selecting employees for dismissal. This, of course, applies to situations other than a total closure of the workplace, although selection criteria may still be relevant in a total closure where phased dismissals are expected.

There are several ways in which a selection process can be organised, but it is important to ensure that it is:

- transparent
- based on fair, objective criteria
- applied consistently
- subject to an appeals or grievance procedure.

Having clear and objective criteria will help to ascertain that the process is fair and not subject to interference or patronage.

### 2. How to establish criteria?

When developing selection criteria, the enterprise should assess which criteria will best serve the future requirements of the organisation. This may be informed by the objectives and business plans of an incoming operator. For example, what balance of skillsets and functions will be needed?

Once the criteria have been decided, the next step is to consult with employee representatives on their proposed implementation. This will involve clearly setting out the proposed criteria, explaining how they will be implemented and listening to any concerns or suggestions. Subsequently, a management procedure should be put in place to ensure that the criteria are accurately applied to all employees considered for dismissal.

### 3. What are fair selection criteria?

The general test of the fairness of selection criteria is that they are **sufficiently objective to prevent abuse**. Much as criteria such as “worker potential” and “commitment to the business” may seem attractive, they are almost always based on a subjective assessment of an individual without the support of objectively verifiable facts. Criteria that are generally accepted as fair in redundancy situations include:

- length of service
- performance record
- disciplinary record
- absence record (excluding maternity/parental leave)
- skills
- knowledge (including qualifications).

Fairly applying these criteria often requires having formal and objective systems already in place to support decision making. For example, selection based on performance should be anchored in a formal performance management system (that is, regular, structured meetings with an employee to discuss individual performance, including any identified problems or gaps) rather than a subjective assessment of worker productivity. Likewise, any assessment of skills should ideally be based on the results of tests or qualifications. It is also important to ensure that the relevant documentation is in place to support these decisions, that the criteria are clearly communicated to the workers involved and that an appropriate grievance mechanism is in place.



## 4. What are unfair criteria for selection?

Criteria that breach national law are not considered fair and cannot be used to select employees for redundancy. Labour laws commonly prohibit discrimination in employment based on:

- sex
- age
- ethnicity
- skin colour
- religion
- political beliefs
- nationality
- social origin
- family relation
- physical or mental disability.

Examples of other unfair selection criteria, though not always expressly included in laws, include:

- union membership or activity
- pregnancy and/or maternity status (such as employees currently on parental leave or likely to take it in the near future)
- HIV status.

In some cases, labour laws may provide express protection from collective dismissal for certain categories of employee (such as trade union members, young mothers and so on). The collective dismissal process must comply with these statutory protections.

Criteria that seem neutral should be carefully examined to ensure that when they are applied, they do not have an indirect discriminatory effect. Indirect discrimination in redundancy selection occurs where a selection method has a disproportionately adverse impact on a particular group. One example is part-time employment. In many cases, women are far more likely than men to work part-time. Therefore, if part-time employment is used as a criterion to select workers for redundancy, this is likely to disproportionately affect women and thereby indirectly discriminate against them.

## Module F:

# Active measures to mitigate impacts of redundancy

## 5. What are active measures?

Severance payments undoubtedly play an important role in mitigating the impact of redundancy. However, these are passive measures that do not actively help individuals to find alternative employment. It is important that restructuring is accompanied as much as possible by **active measures** to promote labour-market reintegration for those workers affected by redundancy.

The main types of active measures include:

- pre-dismissal advice and counselling
- job-search assistance
- training
- employee enterprise (“outsourcing”).

## 6. Pre-dismissal advice and counselling

Advice on services and support may be made available to the displaced worker and potentially to their family members also. This may include elements of financial and life counselling.

Counselling and pre-layoff support can be effective as a mechanism to provide information to workers if delivered efficiently and in a timely manner (that is, before severance). It is most useful as a screening mechanism to identify workers most likely to benefit from training or other support.

## 7. Job-search assistance

This can include placement help to match workers with opportunities in the job market, time off for job interviews prior to termination of employment and help in building skills and confidence to find a new job (such as interview skills, personal skills assessment, writing job applications/CVs and job clubs).

Job-search assistance/placement is best suited to labour-market contexts where there is demand for labour, where the skills mismatch between workers and vacancies is not too large and where workers and employers trust the public employment service to offer effective employment intermediation services.

## 8. Training and re-training needs and costs

Training is a vital tool in mitigating the social impact of restructuring, so that workers faced with losing their jobs are equipped with the skills they need to find alternative employment. Experiences in several of the economies in which the EBRD invests suggest that, in the context of larger-scale restructuring, the most effective approach is to create a taskforce or unit that brings together the client enterprise (and the incoming operator where relevant), national and local government and community organisations.

Training and employability-enhancing measures can take a range of forms. Some are provided by the employer and targeted at specific types of employee that hope to acquire specific skills. Others can be arranged on a sectoral basis, following agreement by the social partners at sectoral level.

Training measures often involve an external training provider that works in partnership with the employer. Training is often the biggest element of a redundancy programme and usually the most costly. Training (commonly referred to as “retraining”) needs to be targeted and demand driven if it is to be effective in terms of cost and outcome.

## Mapping labour market service providers

In many of the economies where the EBRD invests, there are a number of private and government-run agencies that specialise in training retrenched workers to develop skills to match the requirements of the labour market and to seek employment more effectively.

Depending on the local context, key actors are likely to include the national employment service (or equivalent) that is responsible for employment service provision – registering those who are unemployed, paying unemployment benefits to those entitled to them, guiding and counselling job seekers and delivering active labour-market programmes. There may also be a parallel series of state-run vocational training centres.

Any mapping of labour-market service providers should take into account the different kinds of training and support that may be needed to assist those who are retrenched, including the needs of different categories of vulnerable worker (such as older workers or women). The client may wish to consider engaging external experts to conduct the mapping of labour-market service providers.

## Identifying labour-market opportunities

Training should focus on providing relevant and in-demand skills. For this reason, it is often necessary to develop a detailed analysis of the local labour market to identify potential opportunities for workers being made redundant. This analysis should take into account any particular barriers to employment and participation in training (such as childcare constraints) that are faced by women and other vulnerable groups.

The supply of and demand for labour and skills relevant to the workers leaving an enterprise will form the core of the labour-market analysis. The analysis would typically include assessments of:

- the capacity of the labour market to provide new formal jobs based on estimates of job creation and labour turnover in the economy
- trends in formal and informal employment and areas of job growth and decline
- alternative employment opportunities, including levels of wages and benefits and any trends
- the probability of finding formal and informal sector employment
- patterns of employment in the private sector, including changes in hiring practices and skills requirements
- any barriers (including those based on gender) to entry into and exit from formal employment.

The labour-market analysis needs to consider both the formal job market and the informal sector, because the latter is often a major source of employment.

## Re-training for employment

Retraining courses usually combine a mix of practical and theoretical training and include:

- short-term (one to six months) vocational courses for unskilled and semi-skilled workers in areas such as driving, basic carpentry, or catering
- short-term technical courses for more skilled employees
- in-service training and on-the-job training, which often provide the most effective way for workers to enhance or extend their skills by working as an “apprentice” to a skilled worker
- training programmes, which can work with employers to provide on-the-job training, and a commitment to hire a proportion of trainees.

## Guidance for job seekers

Training should not be limited to vocational skills alone – it should also include skills such as how to create a CV, how to interview effectively, how to answer questions, how to dress for an interview, how to present one’s strengths and how to react in stressful situations. Both the company and the departing employee can only gain from this: the employee will find new employment faster and the company will benefit from finding solutions for redundant employees in a timely manner, thereby retaining the goodwill and morale of employees who are remaining with the company. Contents of a typical workshop for job seekers can include:

- how to choose your new direction
- where to find job vacancies
- knowing your skills and strengths
- writing successful letters and CVs
- interview techniques and preparation
- practical advice, including how to cope with change and managing finances.

## Other training and advice

Capacity-building and training on soft skills such as leadership, personal development, communication, IT or functional literacy might be useful for certain types of low-skilled workers. In particular, women often find these kinds of courses useful in building the confidence needed to find new employment.

## Managing finances

Basic financial literacy courses and advice can also help workers manage their severance payments and re-invest them for productive purposes. Examples of actions could include:

- Employing an independent advisor or NGO to explain financial matters to employees
- Supporting a local advice centre
- Supporting trade union financial advice projects
- Working with local banks and community-based financial projects.

# 9. Employee enterprise and financial management

Within any group of workers made redundant, there may be some people who have entrepreneurial aspirations and who, given the right opportunity and support, would like to try to launch their own company. “Employee enterprise” is where the (former) employer creates jobs by outsourcing services it needs to newly separated workers or supports the development of new, small enterprises by providing resources, services and facilities, from simple workspaces to more sophisticated “business incubators”.

This is a key area where a third party, such as the new owner-operator of a facility, can productively participate in mitigating the social impacts of restructuring to maintain and assure their “social licence to operate”. Organisations can offer help by outsourcing, providing management skills training, technological training and access to credit and financial support.

Employee enterprise tends to work best when the (former) employer has the potential to outsource services (such as construction, facilities maintenance, infrastructure maintenance and minor works) and is committed to developing a flexible workforce and helping contractors succeed.

## What services need to be provided?

Services provided to workers can include:

### Enterprise support

- initial assessment of the aptitude and skills of workers to start businesses
- developing business plans
- advising on accounting, financial, legal, marketing and sales services issues
- assisting in liaison with local authorities
- short-term training (usually 1-2 weeks) and other consulting services to unemployed entrepreneurs.

### Small business incubator services

- workspace on an affordable and temporary basis
- secretarial/administrative support
- shared use of office equipment
- business guidance for incubator tenants
- facilitating access to financial support mechanisms (including micro-credit/SME credit lines/credit lines specifically for women, such as the EBRD’s Women in Business programme)
- facilitating access to information sources

## Outsourcing

Outsourcing services is one way to encourage employee enterprise and reduce unemployment among displaced workers. The enterprise awards limited-term, outsourced subcontracts to firms set up by former employees. Those new small businesses may then create jobs themselves. Contracts are usually awarded with an exclusivity period that is long enough (typically no more than two years) to provide a secure environment for the new business to learn the disciplines required of private enterprise. Examples include travel services, transport and administrative support. In this case, either the activity is subcontracted to an existing company, or former employees create a new company, with or without temporary capital sharing, and possibly with a decreasing subcontractor agreement to encourage the new company to look for other customers.

## Making it work

Not all departing employees will be suited to running their own business and not all the new companies will succeed. The prospects of creating sustainable new employee enterprises can be improved by:

- engaging business development advisers to screen and select employees with the aptitude to become small contractors
- providing professional support to selected employees through access to business start-up training and microenterprise training (with a mandatory minimum level of basic business training) and taking into consideration the different needs of women and men
- reducing the costs of initial business start-up by providing free or low-cost access to basic facilities and allowing workers to keep and take the tools of their trade with them into their new enterprise
- providing an initial period (1-2 years) of guaranteed employment or exclusivity to allow the new enterprises to get going.

## Accessing credit

Any new business requires capital. To ensure that the entrepreneurial efforts of redundant workers are not impeded by lack of access to finance, it is important that enterprise and self-employment training encompass information on the lending options available and guidance on appropriate borrowing practices.

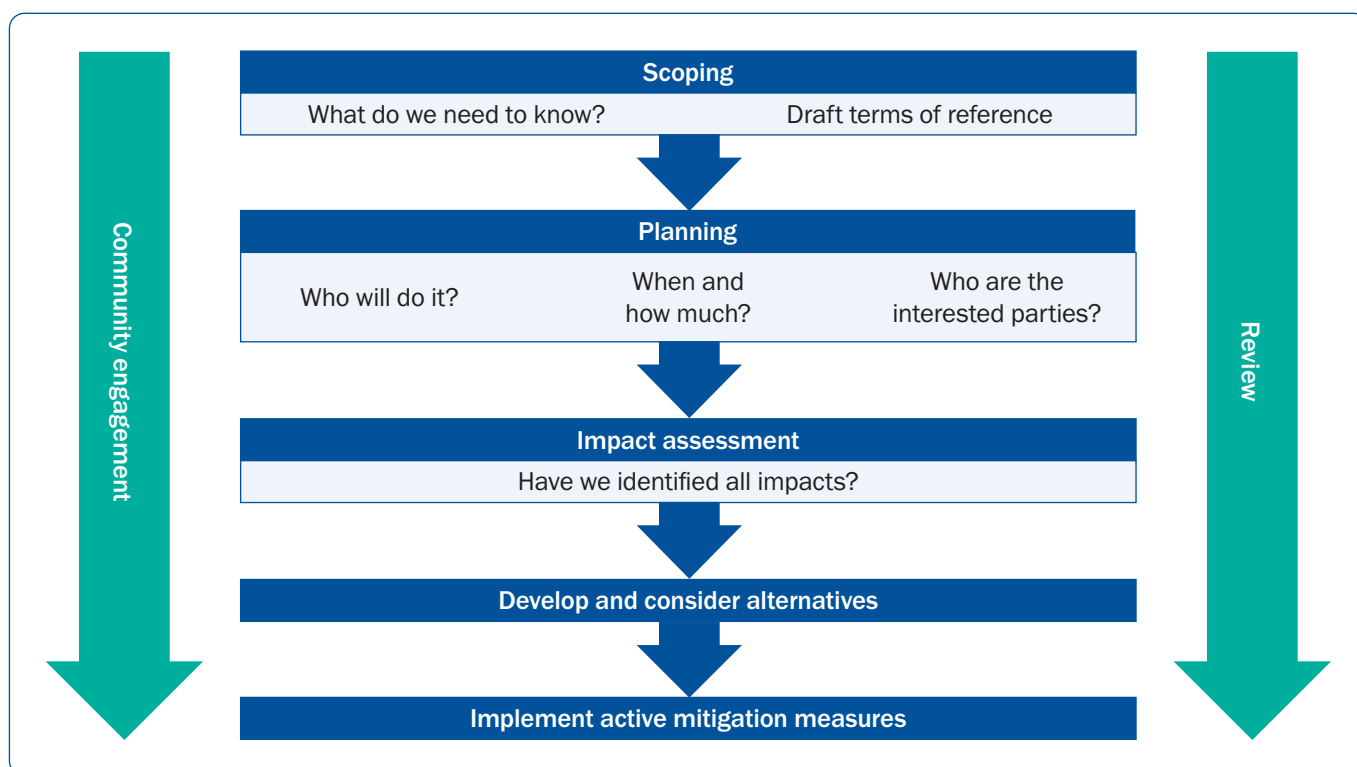
Microfinancial institutions, in particular, can assist in facilitating access to credit for redundant workers. In this case, a cooperation agreement must be established by the (former) employer and the service provider, setting out specific activities to be undertaken. In addition, a specific contract should be developed between the beneficiary (redundant worker) and the service provider so the latter can monitor the set-up process and strengthening of the new enterprise.

## Module G: Assessing community impacts of collective dismissal

A community impact assessment serves to identify the potential effects of redundancy and the people that will be affected. It can provide the information necessary to design

interventions to support workers being made redundant. SOEs may wish to consider engaging external experts to conduct such an assessment.

### 1. Identifying affected parties



The first task of an assessment is to identify and characterise the population affected by the redundancy. This includes not only the workers themselves, but their families and, possibly, the surrounding community. The impact assessment should identify the most vulnerable groups. The assessment process should engage a range of stakeholders, including communities, local governments and non-governmental organisations, in defining priority issues for the community, establishing the means of minimising negative impacts and assisting communities during the transition.

The key principle of any impact assessment is to identify and anticipate the effects of a planned course of events. The timing of a community impact assessment is, therefore, crucial. The assessment should be commissioned and completed in time to enable modifications to the proposed collective dismissal plan and to inform the design of active support measures for workers being made redundant.

A community impact assessment should also aim to establish a framework for monitoring the effectiveness of proposed measures to mitigate impacts. This can be done by undertaking or commissioning a subsequent continuous social impact assessment to provide an independent assessment of the redundancy mitigation measures in place, their equitable distribution and the appropriate targeting of vulnerable groups, including women.



## 2. “Social benefits” provided by the company

Many companies provide a range of social benefits, such as housing, travel allowances, subsidised childcare and healthcare, to their employees. Community impact assessments should give consideration to how the loss of these benefits is likely to affect workers and their families and how this could be mitigated. Examples of potential mitigation strategies include ensuring a continuation of social benefits for a given period of time after redundancy or linking workers with alternative service providers.

## 3. Formulating a community impact assessment

The types of social issue and possible impacts associated with a redundancy can vary considerably. The table provides an overview of the types of issue that may be considered during the impact analysis process.

CONTEXT ANALYSIS	
<b>Representatives of local communities</b>	<ul style="list-style-type: none"> <li>• Have all key stakeholder groups been identified and engaged?</li> <li>• What level of knowledge do community groups have of the projected redundancy?</li> <li>• How do they think the company can prioritise and target mitigation and assistance efforts?</li> <li>• Are women’s specific needs represented in stakeholder consultations?</li> </ul>
<b>Institutional capacity</b>	<ul style="list-style-type: none"> <li>• Is there sufficient capacity in local government and regulatory structures to cope with supervising and monitoring the redundancy?</li> <li>• Will a lack of organisational capacity lead to limited local involvement in decision-making processes – for example, on the part of trade unions – and cause legitimacy problems?</li> <li>• Is there sufficient capacity in local labour-market institutions (employment service offices) to cope with the demands of supporting a number of newly unemployed people?</li> <li>• Are there state or private agencies that can assist with career guidance, vocational training/retraining and support with SME creation?</li> </ul>
<b>Community dependency</b>	<ul style="list-style-type: none"> <li>• Has the company taken on roles or responsibilities – in particular, the provision of social infrastructure and services – beyond direct employment?</li> <li>• Which services or infrastructures, including social and medical services, are provided by the company?</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>• Do local governance structures and processes pose an impediment to the transparent and equitable completion of the redundancy?</li> <li>• How will the redundancy/closure affect local governance structures?</li> </ul>

IMPACT ANALYSIS	
<b>Local enterprises</b>	<ul style="list-style-type: none"> <li>• If a locally or regionally significant employer ceases operation, will this have knock-on effects – both in terms of employment and commerce – for local businesses, particularly service providers and suppliers?</li> <li>• Is there scope for redundant workers to create small enterprises – for example, working on contract with their former employer?</li> </ul>
<b>Vulnerable groups</b>	<ul style="list-style-type: none"> <li>• Will certain groups – such as women or older workers – be affected differently or require special assistance or consideration?</li> <li>• What is the gender and age profile and family status of those workers likely to be made redundant?</li> </ul>
<b>Short-term cash injection into the local economy</b>	<ul style="list-style-type: none"> <li>• What are the risks associated with workers receiving large lump sums of cash (as a result of severance payments)?</li> <li>• What measures can be put in place to minimise the negative effects of a short-term cash injection into the local economy?</li> </ul>
<b>External investment</b>	<ul style="list-style-type: none"> <li>• What consequences will the redundancy have for the economic vibrancy and attractiveness of the region for other investors/employers?</li> <li>• How will the redundancy affect the “social licence to operate” of enterprises in the same sector/region?</li> </ul>
<b>Demographic shifts</b>	<ul style="list-style-type: none"> <li>• Will redundancy result in a change in the size or composition of the population in the local region?</li> <li>• Will the redundancy entail significant out-migration?</li> </ul>
<b>Local labour markets</b>	<ul style="list-style-type: none"> <li>• What will be the immediate and medium-term consequences of the redundancy for the local labour market?</li> <li>• What are current local unemployment (and under-employment) rates?</li> <li>• What are the skills of the workers likely to be made redundant?</li> <li>• Are there labour-market opportunities locally that match the skillsets of workers to be made redundant?</li> <li>• To what extent is the local labour market “open”? What are the typical employment/recruitment pathways?</li> <li>• Are there any known patterns of gender discrimination in local labour markets?</li> </ul>
<b>Stability and conflict</b>	<ul style="list-style-type: none"> <li>• Does the redundancy risk create or exacerbate community tensions – either within parts of the community or between the community and the enterprise making the redundancies/the new operator?</li> </ul>
<b>Gender impact</b>	<ul style="list-style-type: none"> <li>• What impact will the collective dismissal have on different groups of women in the community (including women workers, family members, vulnerable women, women employed in indirect jobs linked to the company and their employees)?</li> <li>• Are there likely to be any specific impacts on men? This may include risks of depression, alcohol and drug abuse and gender-based violence, and may differ by age group.</li> </ul>

1543 Performance Requirement 2 guidance note series

© European Bank for Reconstruction and Development

Five Bank Street  
London E14 4BG  
United Kingdom

[www.ebrd.com](http://www.ebrd.com)

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder.

Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

Terms, names, maps and charts used in this report to refer to geographical or other territories, political and economic groupings and units, do not constitute and should not be construed as constituting an express or implied position, endorsement, acceptance or expression of opinion by the European Bank for Reconstruction and Development or its members concerning the status of any country, territory, grouping and unit, or delimitation of its borders, or sovereignty.