



GUIDE TO REDUNDANCIES AND REDUCTIONS-IN-FORCE IN ASIA-PACIFIC



INTRODUCTION

Welcome to DLA Piper's Guide to Redundancies and Reductions-in-Force in Asia-Pacific!

Employers across Asia-Pacific are increasingly facing short-falls in work and reductions in demand in a competitive market. Many are having to conduct redundancy processes which ultimately result in decreasing their employee headcount and reductions-in-force. Multinational employers need to be aware that the process and tests for redundancy are not identical across borders, and any 'one-size-fits-all' approach to handling reductions-in-force, particularly in the Asia-Pacific region brings considerable risk to the business.

This Guide acts as a handy aid for employers, offering some insight into when a redundancy situation can be said to have arisen and what the local law requires for an employer to be compliant across the Asia-Pacific region. In particular, Australia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan and Thailand. The Guide summarises the key employment law issues in each jurisdiction and offers high-level, practical guidance for employers on how to handle the sensitive, and often complex procedures under different legal systems. However, we do suggest that specific local advice is sought before implementing any redundancy termination.



Pattie Walsh

Partner

Head of Employment

Asia-Pacific

T +61 2 9286 8197

pattie.walsh@dlapiper.com

AUSTRALIA

In Australia, the Commonwealth Fair Work Act 2009 (Cth) oversees most Australian workplaces and sets out the minimum procedure that an employer must follow. However, particular state legislation and industrial instruments (such as awards and enterprise agreements) may apply.

1	Criteria
	<p>A genuine redundancy situation occurs when, as a result of operational changes, an employer no longer requires an employee's job to be performed. In addition, an employer must:</p> <ul style="list-style-type: none"> ■ comply with any obligation contained in a modern award or enterprise agreement to consult about the redundancy, and (if retrenching 15 or more employees) comply with the consultation provisions of the Fair Work Act 2009; and ■ in order to minimise exposure to unfair dismissal claims, consider whether the employee can be redeployed into the employer's enterprise or into an associated entity.
2	Categories of employees for which redundancy termination is prohibited
	There are no specific categories of employees that cannot be terminated by reason of redundancy.
3	Process/Timing
	The employer should give the employee written notice of termination or payment in lieu of notice. The required amount of notice under the Fair Work Act is one to five weeks depending on the employee's period of continuous service with the employer and his/her age. The employee may have a more generous entitlement under their employment contract.
4	Payments
	<p>An employee who has at least one year of continuous service and who works for an employer that employs 15 or more employees (including deemed employees of associated companies), may be entitled to a redundancy payment of up to 16 weeks' pay under the Fair Work Act. A more generous entitlement may also apply under a contract, policy or award (including a former State award) or enterprise agreement.</p> <p>The amount of redundancy pay under the Fair Work Act is calculated using the employee's base rate of pay for their ordinary hours of work and is commensurate with the employee's period of continuous service with the employer. As this entitlement was introduced from 1 January 2010, service prior to 1 January 2010 is only counted if the employee had an entitlement to redundancy pay (e.g. under an award) before this date.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	YES , if 15 or more employees are to be made redundant. Consultation must occur prior to notice of termination being given.
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	NO

THE PEOPLE'S REPUBLIC OF CHINA

It is often very difficult for an employer to establish sufficient grounds for redundancy in the People's Republic of China (PRC). Where an employee is made redundant in the PRC, the provisions of the Employment Contract Law (ECL) must be complied with.

1	Criteria
	<p>An employer may terminate employees by reason of redundancy if:</p> <ol style="list-style-type: none"> 1) any of the following circumstances make it necessary to reduce the workforce by 20 employees or more, or by at least 10% of the total number of employees (where the number of employees is less than 20): <ul style="list-style-type: none"> ■ the employer restructures in accordance with the Enterprise Bankruptcy Law; ■ the employer encounters serious difficulties in business operations; ■ the employer changes the nature of its business, introduces a major technological innovation or revises its business methods and therefore needs to reduce the workforce; or ■ a major change occurs affecting the objective circumstances relied upon at the time of conclusion of the relevant employment contracts rendering them impossible to perform (i.e. an asset sale occurs) (article 41 of the ECL); or 2) an employer and an employee both agree to do so (article 36 of the ECL); or 3) an employer gives an employee 30 days' notice, but only if: <ul style="list-style-type: none"> ■ the employer is relocating, being absorbed through a merger or its assets are being transferred; ■ a major change in the objective circumstances relied upon at the time of conclusion of the employment contract renders it impossible to perform; and ■ after consultations, the employer and the employee are unable to reach agreement for amending the employment contract (article 40(3) of the ECL).
2	Categories of employees for which redundancy termination is prohibited
	<p>The following categories of employees may not be terminated by reason of redundancy:</p> <ul style="list-style-type: none"> ■ employees who suffer from an occupational disease or injury, and are confirmed to have lost or partially lost the ability to work; ■ employees who are under statutory medical treatment period for non-work-related illnesses or injuries; ■ employees who are pregnant, or for one year thereafter (constituting confinement and nursing periods); ■ employees who are engaged in operations exposing them to occupational disease hazards and who have not undergone a pre-departure occupational health check-up, or are suspected of having contracted an occupational disease and are being diagnosed or are under medical observation; ■ employees who have worked for the employer continuously for at least 15 years and are less than five years away from their legal retirement age; ■ employees who are still within their term as a union chairman, vice-chairman, or union committee member; or ■ employees who are still within their terms as collective bargaining representative during collective bargaining negotiations.

3	Process/Timing
	<p><i>Article 41 of the ECL</i> requires the employer to:</p> <ul style="list-style-type: none"> ■ explain the circumstances to its labour union or to all of its employees 30 days in advance of making the redundancies; ■ consider the opinions of the labour union or the employees; and ■ report the redundancy plan to the local labour authority. <p>The employer can submit/file a redundancy plan to the local labour authorities after the 30 day notice period expires. The employer cannot make payment in lieu of notice.</p> <p><i>Article 36 of the ECL</i> has no minimum notice requirement. There is further no specific legal obligation to carry out any consultation, but in practice the employer will need to consult and negotiate the terms of the mutual termination with the affected employees.</p> <p><i>Article 40(3) of the ECL</i> requires the employer to give all employees 30 days' notice, give its labour union advance notice of the terminations and advise the labour union of the reason for the terminations. If there is no enterprise level union, the employer must notify the upper level union. The employer may make payment in lieu of notice even if the right to do so is not expressly stated in the employment contract.</p>
4	Payments
	Employers must pay a statutory severance payment equivalent to one month's average income per year of service. For years of service after 2008, the average monthly income is subject to statutory cap which varies depending on the region in which the employee is employed.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	<p>Art. 41 ECL – YES, to the labour union <i>or</i> all employees. See above.</p> <p>Art. 36 ECL – NO</p> <p>Art. 40(3) ECL – NO, <i>but</i> the labour union <i>and</i> all employees must be notified. See above.</p>
2	Individual consultation required? If so, when?	<p>Art. 41 ECL – YES, to the labour union <i>or</i> all employees. See above.</p> <p>Art. 36 ECL – NO</p> <p>Art. 40(3) ECL – NO, <i>but</i> the labour union <i>and</i> all employees must be notified. See above.</p>
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	<p>Art. 41 ECL – NO</p> <p>Art. 36 ECL – NO, as there is no minimum notice requirement.</p> <p>Art. 40(3) ECL – YES</p>

HONG KONG

In the absence of any 'unfair dismissal' regime in Hong Kong, termination of an employment contract, including by reason of redundancy, is generally considered to be fairly straightforward. The relevant legislation is the Employment Ordinance, which sets out a statutory regime governing an employer's obligations in situations of lay-off and redundancy. The Employment Ordinance prescribes minimum statutory provisions and a statutory entitlement to a severance payment upon redundancy.

1	Criteria
	<p>It is lawful to terminate an employee by reason of redundancy in Hong Kong.</p> <p>There are three separate situations in which a redundancy may arise:</p> <ul style="list-style-type: none"> ■ where the employer has ceased (or intends to cease) carrying on business for the purpose for which the employee was employed; ■ where the employer has ceased (or intends to cease) carrying on business in the place where the employee was employed; or ■ where the requirements of the business for employees to carry out work of a particular kind (either generally or in the place where the employee was employed) have ceased, diminished or are expected to cease or diminish.
2	Categories of employees for which redundancy termination is prohibited
	<p>Employers are prohibited from terminating the contracts of certain categories of employees. These categories include an employee who is:</p> <ul style="list-style-type: none"> ■ pregnant and who has confirmed her pregnancy by medical certificate up until the date on which she is due to return to work on the expiry of her maternity leave, or the date of cessation of her pregnancy; ■ in receipt of sickness allowance under the Employment Ordinance (Cap. 57); or ■ entitled to employees' compensation under the Employees' Compensation Ordinance (Cap. 57).
3	Process/Timing
	<p>The minimum statutory notice period for terminating a continuous employment contract is seven days. However, where provided in an employment contract, the stipulated notice period should be given accordingly. No notice will be required where an employee's employment is terminated during his/her first month of probation.</p> <p>In addition, employers must not terminate the employment of any employees on a discriminatory ground – this includes race, family status, sex, disability, pregnancy and marital status.</p>
4	Payments
	<p>An employee who has been employed under a continuous contract for at least 24 months is entitled to a statutory severance payment where the employee is dismissed by reason of redundancy.</p> <p>The amount of statutory severance payment is two-thirds of the employee's last full month's wages or two-thirds of HK\$22,500 (ie HK\$15,000), whichever is less, for every year of service. An employer may offset against any severance payment amount any amounts which have been contributed by the employer's Mandatory Provident Fund or retirement scheme.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , with payment to be calculated by taking the employee's average monthly wages over the previous 12 months (or such shorter period where the employee has been employed for less than 12 months).

INDIA

In India, employers may terminate an employee's employment by reason of redundancy. In particular, the services of a workman can be terminated by redundancy in accordance with the Industrial Disputes Act 1947. The redundancy definition under the Industrial Disputes Act is quite wide and refers to the termination of workmen's services by the employer for any reason other than: a) terminations as a result of disciplinary action; b) retirement (whether voluntary or otherwise); or c) termination on grounds specified in a fixed term-contract (or the non-renewal of a fixed term contract).

1	Criteria
	Employers in India may terminate an employee's employment by reason of redundancy.
2	Categories of employees for which redundancy termination is prohibited
	Employers are prohibited from terminating the contract of a female employee at any time during maternity leave or pregnancy, where the employee would have otherwise been entitled to maternity benefit or medical bonus under the Maternity Benefit Act 1961.
3	Process/Timing
	Employers may obtain recommendations from a works committee on how best to deal with retrenchment. However, the employer is not obliged to follow any such recommendation, provided it meets the requisite retrenchment conditions set out in the Industrial Disputes Act 1947. Under Indian law, "workmen" are covered by protective legislation. Employees will be considered "workmen" as long as they are not employed in a managerial, administrative or supervisory capacity, or if their monthly salaries exceed Rs.10,000. An employer is required to provide one month's notice to any retrenched workman indicating the reasons for retrenchment. The notice requirements for all non-workmen employees are specified under the state-specific Shops and Commercial Establishments Act (S&CE Act). Most states usually require employers to provide at least one month's notice. Where the employment contract specifies a longer notice period, this should be applied instead.
4	Payments
	Employers are required to pay retrenchment compensation equivalent to 15 days' average pay for every year of continuous service to all workmen who are made redundant. For non-workmen, the amount payable is specified in the contract of employment or governed by the relevant S&CE Act. A gratuity payment is also payable under the Payment of Gratuity Act to all employees (whether "workmen" or not) with more than five years of service. Some states will also require that severance compensation must be paid.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , with payment calculations dependent on whether an employee is considered a "workman" or not, and thus which definition of "wages" is applicable.

INDONESIA

In Indonesia, the labour regulations do not contain provisions on redundancy notification and there is no specific definition of redundancy or layoff. Redundancy or layoff would be treated as dismissal without cause. Employers seeking to make employees redundant should ensure that they provide evidence as grounds for the redundancy.

1	Criteria
	Employers must attempt to negotiate a proposed termination with an employee or relevant labour union, and all dismissals in Indonesia require approval from the Industrial Relations Court (IRC). In a redundancy situation, the IRC will consider the financial position of the employer when making a decision as to whether to issue an employment termination order. In particular, the IRC will examine whether the proposed termination payment is fair and proportionate. An IRC order is not necessary where the employer and the employee are able to reach mutual agreement, which must be recorded in writing and registered at the IRC.
2	Categories of employees for which redundancy termination is prohibited
	Employers are prohibited from terminating the employment contract of an employee who is: <ul style="list-style-type: none"> ■ confirmed pregnant up until the date on which she is due to return to work on the expiry of her maternity leave, or until the date of cessation of her pregnancy; or ■ on sick leave until the employee recovers. <p>However, if such an employee agrees to the redundancy termination in a documented mutual agreement, the termination would be lawful.</p>
3	Process/Timing
	A consultation process must be completed before notice of termination is given to employees. The required period of notice is determined by reference to any employment agreement, company regulation or collective labour agreement made between the employer and any existing trade union.
	Any termination of employment will be lawful provided that employee consent is obtained.
4	Payments
	Where the IRC issues an employment termination order or the employer and employee mutually agree to terminate the employment relationship in a redundancy situation, the employer must pay the employee severance pay, service pay and compensation pay.
	The amount of severance to be paid to the employee who is made redundant is dependent on factors such as length of service and entitlement to any benefits provided under the employment agreement or company regulations. Depending on the reasons for the termination, severance pay will either be one month's salary per year (or part year) of service, capped at nine months' salary, or two months' salary per year (or part year) of service, capped at 18 months' salary.
	Whether the employee is entitled to a one month's salary calculation or a two months' salary calculation will depend upon the circumstances of the redundancy and the financial circumstances of the employer at the time. Service pay is calculated on a scale, ranging from two months' salary for an employee with three years' service, up to 10 months' salary for an employee with 24 years' service.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	YES , the Manpower Law requires consultation with employees that are affected by redundancies but do not specify whether consultation should be on an individual or collective basis. This will be dependent on the severity of the redundancy situation.
2	Individual consultation required? If so, when?	YES , see above.
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	NO

JAPAN

It is very difficult to dismiss an employee in Japan, even in a redundancy situation. Dismissal due to economic conditions is not prohibited in Japan, but the right to do so is severely limited by the Labour Standards Act (**LSA**), the Labour Contract Act (**LCA**) and court precedent. Japanese law provides that if a termination lacks “objectively reasonable grounds” and is not considered appropriate under “standard social norms”, it shall be deemed an abuse of an employer’s right to terminate the employee. Any termination, if challenged, will be examined by the Japanese courts in light of the whole context leading to the decision.

1	Criteria
	<p>As identified in Japanese case law, the following requirements must be satisfied in order to justify redundancy terminations due to economic conditions:</p> <ul style="list-style-type: none"> ■ there must be strong economic necessity to reduce the workforce; ■ methods other than dismissal were attempted; ■ the employees to be dismissed must be selected using a reasonable and fair standard; and ■ termination procedures must be reasonable and proper. <p>Given the considerable risk of courts finding unilateral terminations in a reduction in force unlawful, employers usually offer voluntary severance packages to employees and seek employees’ voluntary resignations rather than making them redundant.</p>
2	Categories of employees for which redundancy termination is prohibited
	It is generally not permissible to terminate employees who are on a leave of absence for work-related injury or illness, or on maternity leave.
3	Process/Timing
	If an employer unilaterally terminates an employee, the employer is required to give at least 30 days’ notice of dismissal or can choose to make a payment in lieu of notice. However, providing notice will not make an otherwise unjustified unilateral termination proper. In a reduction in force through the use of voluntary severance agreements, employees are usually first informed of the planned reduction in force and the severance packages that will be offered. Employees are then provided one to two weeks to consider the packages and apply for the severance program. This process generally commences several weeks prior to the planned last working day of the employees who will leave employer. In addition, there may be a need to make certain filings with the authorities 30 days before certain employees leave the employer.
4	Payments
	There are no specific rules regarding severance payments under Japanese law. It is common to pay a severance allowance at the time of termination, however this is not mandatory unless it is provided for in the employment contract or work rules, or if the employer has an established practice of paying such allowances.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO , but if an offer of alternate employment is not considered, attempts to terminate employees pursuant to a reduction in force would likely be deemed invalid.
5	Statutory right to payment in lieu of notice?	NO

KOREA

In Korea, the Labor Standards Act (**LSA**) provides that an employer may only terminate the employment of an employee for 'just cause'. 'Just cause' is not in fact defined in the LSA, but Korean court decisions have generally held that 'just cause' only exists in a few specified circumstances, one of which is in the situation where there is an urgent business necessity to try and save a failing business from imminent bankruptcy. In practice, however, the conditions set down for implementing redundancies tend to be very difficult to comply with.

1	Criteria
	<p>A redundancy is lawful in Korea provided that an employer can show that it is an "urgent business necessity". An employer must demonstrate that they have made their best efforts to avoid the termination and conduct an objective selection process.</p> <p>An employer must select employees who are to be made redundant based on fair and objective criteria. Such criteria may include the following: employee performance, degree of skill, service years, number of dependant family members, age etc. In addition, an employer is required to engage in a good faith consultation process with the employee representative or union, if one exists. There may also be express provisions outlined in the employer's rules of employment (ROE) or collective bargaining agreement which must be complied with.</p>
2	Categories of employees for which redundancy termination is prohibited
	<p>There are three categories of employees that cannot be terminated in Korea:</p> <ul style="list-style-type: none"> ■ an employee who is on sick leave due to a job-related illness or injury (and for 30 days after his/her return); ■ an employee who is on maternity leave (and for 30 days after her return); and ■ an employee who is on childcare leave.
3	Process/Timing
	<p>In certain circumstances, and depending on the number of employees to be made redundant, an employer may be required to notify the Minister of Employment and Labour of the proposed redundancy.</p> <p><i>Consultation:</i> Employers must give 50 days' notice to the employee representative or union (if one exists). A good faith consultation period should take place during this period. In practice, however, provided the consultation process is substantively undertaken, it does not have to continue through to the end of the 50 day period.</p> <p><i>Employee Notice of Termination:</i> An employer must provide an employee with 30 days' notice of termination or payment in lieu of notice. However, employment cannot be terminated before the 50 day consultation period ends. Accordingly, employers often serve notice after the initial 20 days of the consultation period.</p>
4	Payments
	<p>Korean law requires employers to pay statutory severance to an employee who, for whatever reason, is leaving their employment and has worked for at least one year. The legal minimum for statutory severance is 30 days' average wages per year of service. Where the employer's ROE provides more generous provisions these will apply instead. If an employer has a corporate pension plan, it may not be required to make statutory redundancy payments.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	YES , a company must engage in good faith consultation with the employee or union for 50 days prior to a dismissal taking effect.
2	Individual consultation required? If so, when?	YES , see above.
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , but only the 30 days' termination notice to the individual can be substituted with 30 days' ordinary wages in lieu thereof. The 30 days' ordinary wages in lieu of notice would be paid on the 50th day.

MALAYSIA

Termination of employees in Malaysia is governed by the Employment Act 1955 (**EA**). The EA is, however, only applicable to two categories of employees – (1) any person whose wages do not exceed RM 1,500 a month, and (2) any employee engaged in manual labour. Nonetheless, the EA principles are generally considered as guidelines for most employment relationships, particularly where there is no written contract of employment. The Employment (Termination and Lay-Off Benefits) Regulations 1980 (**Regulations**) also govern redundancy termination.

1	Criteria
	It is lawful to terminate an employee's employment contract by reason of redundancy provided that the termination/retrenchment is genuine.
2	Categories of employees for which redundancy termination is prohibited
	There are no categories of employees that cannot be terminated by reason of redundancy but law does provide that where an employer is required to reduce its workforce by reason of redundancy, such that the retrenchment of any number of employees is necessary, the employer shall not terminate the services of a local employee unless it has first terminated the services of all foreign employees employed in a capacity similar to that of the local employee.
3	Process/Timing
	<p>In a redundancy situation, employers should conduct an objective selection process of all employees within the same category. The following factors must be considered and adopted by employers in a redundancy situation:</p> <ul style="list-style-type: none"> ■ the need for the efficient operation of the organisation; ■ the ability, experience, skill and occupational qualifications of workers; ■ length of service and whether employees are casual, temporary or permanent; ■ the employee's age; ■ the employee's family situation; and ■ the "last in, first out" principle (i.e. that the last person employed should be the first person to be made redundant). <p>Employers are required to give the following notice periods:</p> <ul style="list-style-type: none"> ■ four weeks must be given to employees who have been working for less than two years; ■ six weeks if an employee has been employed for more than two years but less than five; and ■ eight weeks for those employees who have been employed for more than five years. <p>Employees who are not covered by the EA must provide the notice period which is specified in the employment contract.</p>
4	Payments
	<p>Under the Regulations, employees are entitled to at least 10 days' wages. The benefits payable start at:</p> <ul style="list-style-type: none"> ■ 10 days' wages for every year of employment under a continuous contract of service where an employee has been employed for a period of less than two years; ■ 15 days' wages where an employee has been employed for more than two years but less than five years; and ■ 20 days' wages for employees who have been employed for more than five years.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , the EA provides that this is an indemnity sum equal to the amount of wages which would have accrued to the employee during the term of such notice or during the unexpired term of such notice.

PHILIPPINES

The Labour Code of the Philippines (Presidential Decree No. 422) (**Labour Code**) provides that it is lawful to terminate employment by reason of redundancy subject to a number of restrictions. In a redundancy, the courts will look at the position and circumstances themselves, the nature of the services performed by the employee and the necessity of their position. Interestingly, Philippine law allows for redundancy where a “labour-saving device” is introduced into the workplace, as well as when there is a decrease in the volume of business or the over-hiring of workers etc.

1	Criteria
	It is lawful to terminate employment by reason of redundancy where the employer can show that the business no longer requires the employee to carry out work of the kind that he or she was employed to do. To demonstrate this, reference can be made to circumstances like a reduction in business volume or the dropping of a particular product line. This characterisation of an employee’s services as no longer necessary or sustainable is an exercise of lawful business judgment on the part of the employer.
2	Categories of employees for which redundancy termination is prohibited
	The Labour Code does not exempt any particular category of employees from termination of employment on the ground of redundancy.
3	Process/Timing
	Employers are required to exercise good faith and adopt fair and reasonable criteria in deciding what positions to make redundant. This includes consideration of preferred status, efficiency, and seniority of employees. Courts in the Philippines have also approved length of service and performance as reasonable criteria, and have stated that an employer may submit evidence to confirm a valid redundancy program. Such evidence might include a new staffing pattern, feasibility studies and a restructuring plan which has been approved by management. Unless specified in a collective bargaining agreement or contract, there is no obligation to carry out a consultation process. An employer is required to provide two written notices at least 30 days before the effective date of termination: <ul style="list-style-type: none"> ■ one notice to the employee; and ■ another to the appropriate Regional Office of the Department of Labour and Employment. The courts have also ruled that an employer cannot make a payment in lieu of notice.
4	Payments
	An employee is entitled to receive statutory severance pay, which is equivalent to one month’s basic salary for every year of service. For the purposes of calculating the length of service of an employee, any period of service of six months or more is considered as one whole year of service. Employees who are made redundant are also entitled to receive prorated 13th month pay.

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	NO

SINGAPORE

It is lawful to terminate an employee's employment by reason of redundancy in Singapore, subject to any restrictions under the contract of employment and collective agreement (if any). The 2009 Tripartite Guidelines on Managing Excess Manpower (**Guidelines**) issued by the Ministry of Manpower (**MOM**) are used for guidance in redundancy situations and are commonly followed by employers in Singapore, but such Guidelines are not legally binding.

1	Criteria
	<p>It is lawful to terminate an employee's employment by reason of redundancy. The MOM recognises a genuine redundancy in a number of circumstances including:</p> <ul style="list-style-type: none"> ■ recession/economic downturn; ■ high labour cost; ■ high business costs other than labour cost; ■ streamlining of operations; ■ automation/mechanisation/computerisation; ■ restructuring of business/company by reason of merger; take-over by another company; or outsourcing of functions.
2	Categories of employees for which redundancy termination is prohibited
	<p>Employers are prohibited from terminating the contract of a female employee on maternity leave. Further, where any retrenchment notice is given to a pregnant employee within three months prior to her period of confinement, additional payments may be due over and above any retrenchment benefit.</p>
3	Process/Timing
	<p>Any redundancy exercise should be implemented in consultation with a trade union (if the company is unionised). There is no obligation to carry out a consultation process prior to redundancy, unless specified in the employment agreement or collective agreement (if any), although it is generally advisable for an employer to hold a discussion with an employee who is to be terminated by reason of redundancy. Employers should also notify the MOM (Labour Relations & Workplaces Division) as soon as possible of their impending redundancy if a decision has already been made.</p> <p>The Employment Act (Chapter 91) (EA) applies to all employees in Singapore with the exception of employees employed in a managerial or executive position (EA employees). In addition, employees (other than workmen) whose basic salary is in excess of \$2,000 per month will also be excluded from the protection of certain provisions of the EA (relating to rest days, working hours and other conditions of service). Under the EA, specific notice periods must be provided to redundant employees. These range from one day's notice, for employees with less than 26 weeks' service, to four weeks' notice, for employees with a length of service of more than five years.</p> <p>Where a contract of employment provides for a notice period longer than the minimum periods prescribed in the EA, this must be observed. The employer may choose to make a payment in lieu of notice if preferred.</p>
4	Payments
	<p>Currently, there is no general law which compels employers to provide a redundancy payment in Singapore. However, payment will be subject to the terms of the employee's employment contract, employee manuals, collective agreement or union agreements (if any) or the employer's past practices, which may establish an entitlement to redundancy pay.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	NO , but an employer can still pay in lieu of notice, even if the employment contract does not expressly provide for it. The payment due would be the salary due for the remainder of the notice period being waived and/or any other contractual entitlements under the contract or collective agreement.

TAIWAN

In Taiwan, there is no legislation governing redundancy, however; redundancy is recognised as a necessary termination. It is lawful to terminate an employee's employment if a change in the business nature requires a reduction in employees and the particular employee cannot be assigned to another suitable position.

1	Criteria
	<p>Employers may terminate the employment of employees for redundancy only in the following circumstances:</p> <ul style="list-style-type: none"> ■ where the employer is ceasing business or the ownership of the employer is being transferred; ■ where the employer suffers a loss or is curtailing business operations; ■ where the operations of the employer are suspended for more than one month due to force majeure (i.e. when performance of contractual obligations are prevented by an event or circumstance outside the parties control); ■ where the business nature of the employer has been altered, a reduction in the number of employees is necessary, and there are no other suitable job openings for the redundant employees; or ■ where the employee is proven to be incapable of carrying out the work assigned to him/her. <p>Depending on the contracts, certain managers may be under "mandate" agreements, in which case they may be terminated at any time in accordance with the terms of the "mandate" agreement.</p>
2	Categories of employees for which redundancy termination is prohibited
	<p>There are no categories of employees that cannot be terminated by reason of redundancy. However, in line with Taiwan Labour Standards Act (LSA) requirements that the termination be a last resort, employees cannot be terminated if the intention is to simply hire them back as independent contractors or to hire others as independent contractors.</p>
3	Process/Timing
	<p>Under the Mass Layoff Protection Act, an employer must provide 60 days' notice to affected employees and engage in discussions within 10 days' of notifying affected employees of redundancy plans. Where an employer is required to give notice of termination of non-fixed term employment, the following notice periods apply:</p> <ul style="list-style-type: none"> ■ for an employee with more than three months but less than one year of service, 10 days' notice; ■ for an employee with more than one year but less than three years' service, 20 days' notice; and ■ for an employee with more than three years' service, 30 days' notice. <p>An employee is also entitled to paid leave of up to two working days per week during the notice period for the purpose of finding a new job. The employer may choose to make payment in lieu of the notice period.</p>
4	Payments
	<p>Employers are required to make severance payments within 30 days of termination of employment. The amount payable to a redundant employee will depend on whether the employee is a participant in the pension scheme under the Labour Pension Act (LPA employees).</p> <p>For LPA employees, severance pay is calculated at the rate of one month's pay for each year of service prior to commencing participation in the new pension scheme; and one half month's pay for each year of service thereafter. For non LPA employees, severance pay is calculated as one month's pay for each year of service.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	YES , where there is a mass redundancy, a consultation process with all employees in the same department or business unit may be required.
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , as provided by the LSA. The calculation of payment will be pro rata based on the employee's monthly wage.

THAILAND

In Thailand, the Labour Protection Act (No. 2) (1998) regulates termination of employment and is applicable for redundancy situations. The Labour Protection Act contains provisions relating to suspension, dismissals for cause, notice requirements and explains when an employer is liable to pay severance payments to their employees.

1	Criteria
	While Thai statutory law does not expressly provide that redundancy is a fair reason for termination, Thai courts have recognised redundancy as a lawful ground for terminating employment where the employer can demonstrate that it has sufficient justification to do so. Reorganisation, due to an economic situation, is likely to be considered "sufficient justification".
2	Categories of employees for which redundancy termination is prohibited
	Employees who are members of a welfare committee cannot be terminated by reason of redundancy. A welfare committee is a committee comprising of five employees set up under the Labour Relation Act who have authority to represent other employees in negotiating the terms and conditions governing an employee's employment relationship.
3	Process/Timing
	An employer must give written notice of termination to an employee at least one whole payroll period in advance (but not more than three months in advance), unless the employer is making a payment in lieu of notice. Where the employment contract provides a different notice period, this will apply instead.
4	Payments
	Severance payments are to be paid with reference to an employee's years of service: <ul style="list-style-type: none"> ■ 30 days' pay for employees with at least 120 days but less than 1 years' service; ■ 90 days' pay for employees with at least 1 year but less than 3 years' service; ■ 180 days' pay for employees with at least 3 years but less than 6 years' service; ■ 240 days' pay for employees with at least 6 years but less than 10 years' service; and ■ 300 days' pay for employees with at least 10 years' service. <p>An employer is required to pay an extra 60-days' pay as payment in lieu of notice in the event of termination as a result of the improving or restructuring of the organization or operation.</p>

Q&A CHECKLIST – STATUTORY OBLIGATIONS

1	Collective consultation required? If so, when?	NO
2	Individual consultation required? If so, when?	NO
3	Selection process required?	NO
4	Duty to offer alternative employment?	NO
5	Statutory right to payment in lieu of notice?	YES , assuming that the relevant employee is paid monthly, the payment in lieu of notice would be at least one month's pay, and could be up to (one day short of) two months' pay.

ABOUT DLA PIPER

DLA Piper is a global law firm with 4,200 lawyers located in more than 30 countries throughout the Americas, Asia Pacific, Europe and the Middle East, positioning us to help companies with their legal needs anywhere in the world.

This publication is a general overview and discussion of the subjects dealt with and is up to date as of 1 July 2013. It should not be used as a substitute for taking legal advice in any specific situation. DLA Piper or its Employment group accepts no responsibility for any action taken or not taken in reliance on it.

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

A list of offices can be found at www.dlapiper.com

Please note that as a foreign law firm, and notwithstanding the fact that we have offices in Shanghai and Beijing respectively, **DLA Piper UK LLP** (like all other foreign law firms with offices in the PRC) are not permitted under existing PRC law to advise on the laws of the PRC. In view of this, this publication would, insofar as the laws and regulations of the PRC are concerned, necessarily be based on our own research, experience and the advice of our correspondents in the PRC.

DLA Piper Singapore Pte. Ltd. is a foreign law practice, which means that we can only provide foreign law legal services and are not in general authorised under Singapore laws and regulations to advise on Singapore Law. Where advice on Singapore Law is required we can recommend a suitable Singaporean law firm to provide the required Singapore legal advice separately.

Copyright © 2013 DLA Piper. All rights reserved. | JUN13 | 2529027