

GOOD PROJECT MANAGEMENT IN RESTRUCTURING PT. 2

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BEERG

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Law . Tax

AGENDA

- **NEGOTIATION**

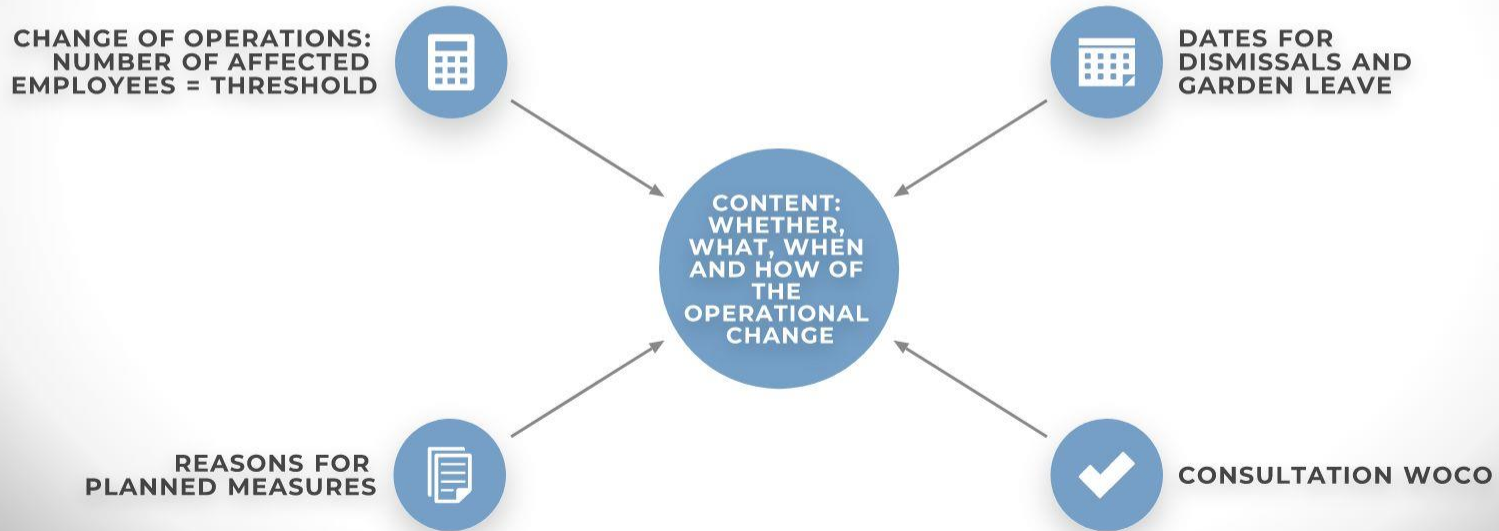
1. Balance of interests and social plan
2. Conciliation board
3. Negotiation tactic
4. Signing

- **IMPLEMENTATION**

5. Notification of mass dismissal
6. Individual measures
7. Regulatory approval for protected employees
8. Notice of dismissal, conclusion of termination agreements

1 BALANCE OF INTERESTS AND SOCIAL PLAN

Balance of interests

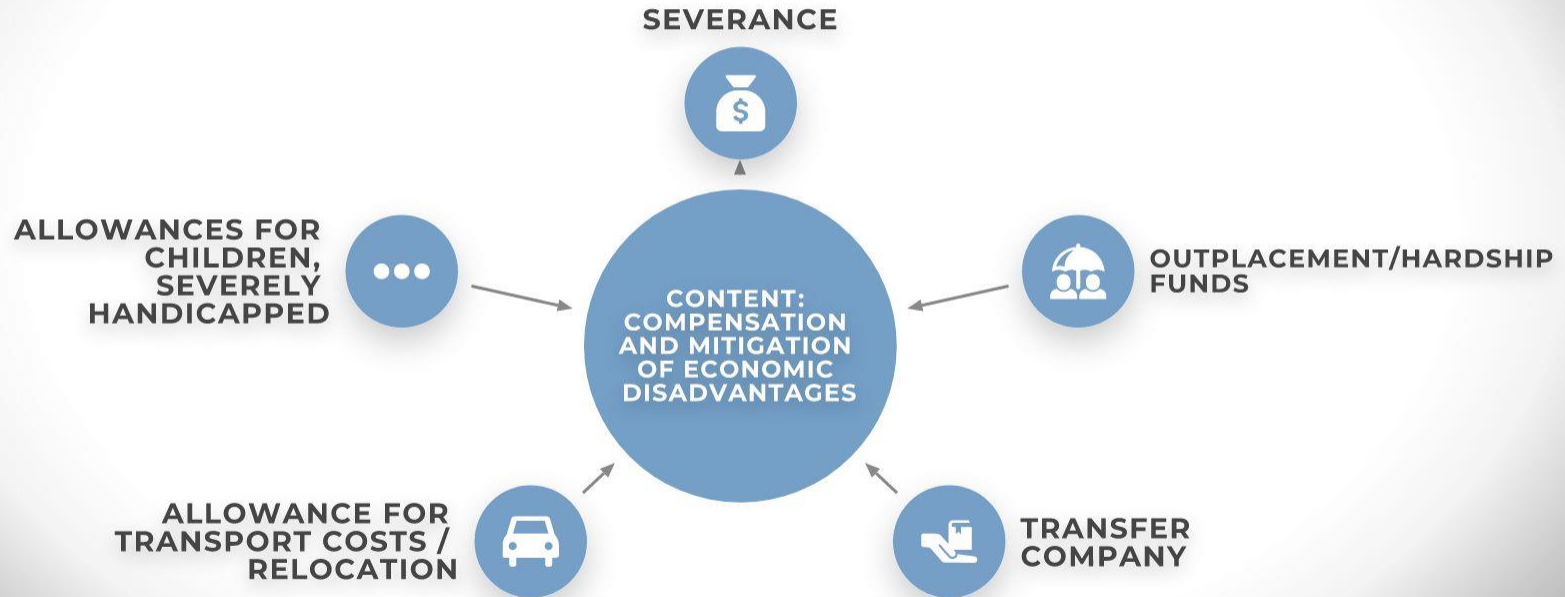


1 BALANCE OF INTERESTS AND SOCIAL PLAN

- **LIST OF THE EMPLOYEES TO BE DISMISSED?**
- **ADVANTAGE: CORRECTNESS OF DISMISSALS IS PRESUMED**
- **DISADVANTAGES:**
 - \$\$
 - Time
 - Full judicial review nevertheless

1 BALANCE OF INTERESTS AND SOCIAL PLAN

Social plan



1 BALANCE OF INTERESTS AND SOCIAL PLAN

Volunteer program

- **VOLUNTARY LEAVE PROGRAM**

- Double voluntariness - risk of departure of key players

- **SEPERATE WORKS AGREEMENT NEEDED**

1 BALANCE OF INTERESTS AND SOCIAL PLAN

Transfer company

- **TRANSFER OF EMPLOYEES TO ORGANISATIONALLY INDEPENDENT UNIT**

- Short-time work compensation for up to 12 months

- **ADVANTAGES FOR EMPLOYER**

- Partial financing by Employment Agency
- Termination agreement = litigation waiver
- End of employment relationship to certain date

- **ADVANTAGES FOR EMPLOYEE**

- Entitlement to unemployment benefits + top up
- Outplacement
- Retraining

1 BALANCE OF INTERESTS AND SOCIAL PLAN

Additional works agreements



**PREMIUM FOR WAIVER OF
CLAIM**



**“TURBO”-PREMIUM FOR
PREMATURE TERMINATION
AFTER RECEIPT OF NOTICE**

2 CONCILIATION BOARD

WoCo delays negotiations/refuses cooperation

- **PROBLEM:
IMPLEMENTATION OF
MEASURES NOT POSSIBLE**

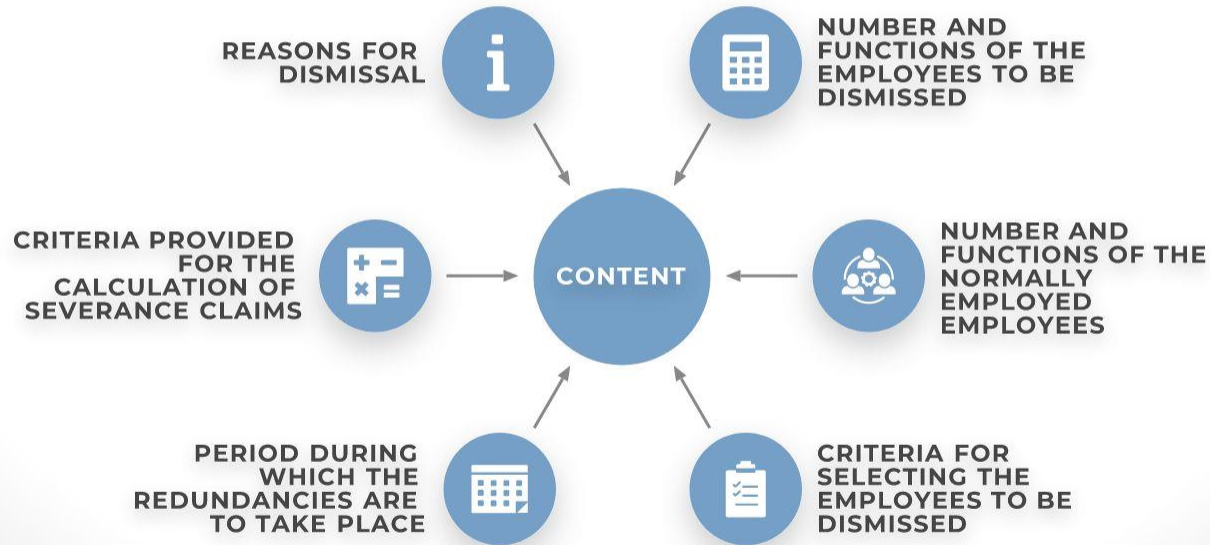
- Without Bol risk of:
- Claims for compensation of disadvantages
- Claims for injunctive relief

- **SOLUTION: CONCILIATION
BOARD**

- After 3 to 4 rounds of negotiation
- Requires complete and comprehensive information of WoCo
- If conciliation body decides upon failure of negotiations, measures can be implemented

3 NEGOTIATION TACTIC

Information obligation towards WoCo



WITHOUT DELAY AS SOON AS BUSINESS DECISION FOR DISMISSALS IS MADE

3 NEGOTIATION TACTIC

Consulting WoCo

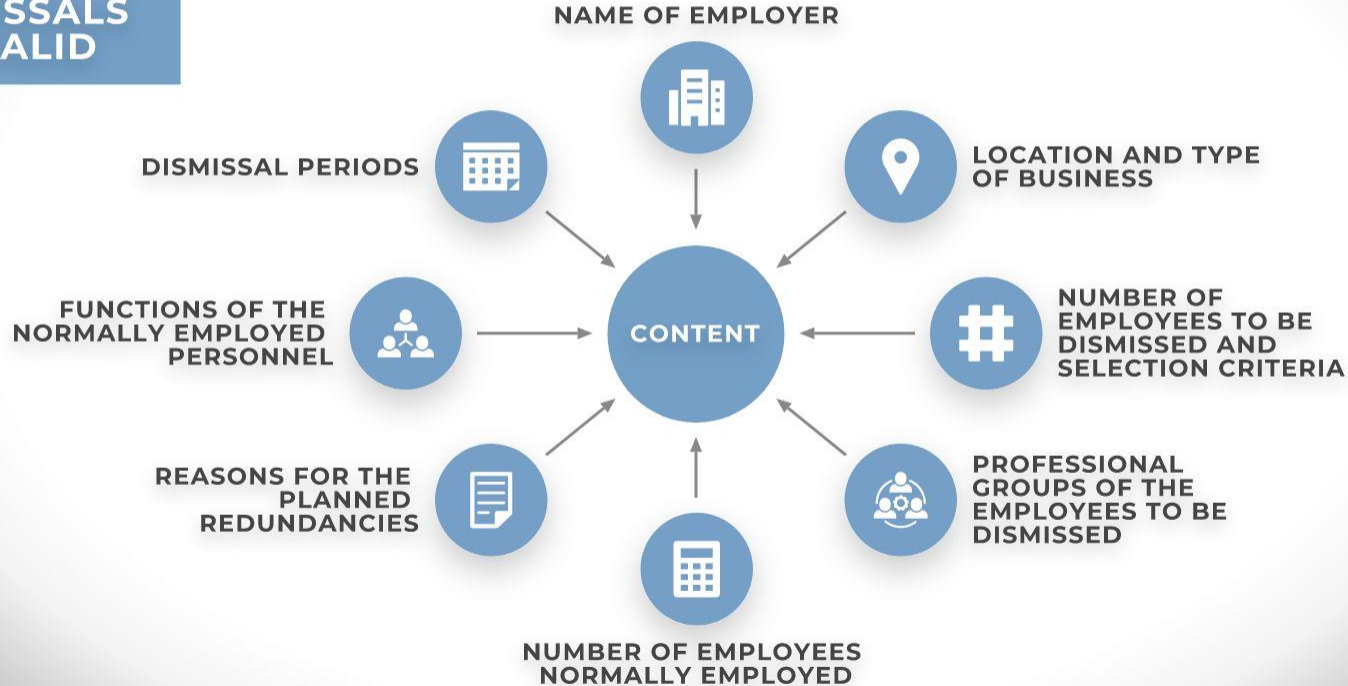
- **WAYS TO AVOID OR LIMIT REDUNDANCIES AND TO MITIGATE THE CONSEQUENCES**
 - WoCo should be able to make constructive proposals

4 SIGNING

- **COMMUNICATE NEXT STEPS TO EMPLOYEES**
- **PUBLIC RELATIONS WORK**
- **INVOLVEMENT OF TRANSFER COMPANY**

5 NOTIFICATION OF MASS DISMISSAL

**RISK =
DISMISSALS
INVALID**



6 INDIVIDUAL MEASURES

Change of work conditions based on employer's right to issue instructions

- **CHANGE OF WORK CONDITIONS**
- **INCLUDED IN RIGHT TO ISSUE INSTRUCTIONS**
 - Equivalent activity within employment contract

- **APPROVAL OF WOCO NEEDED IF CHANGE IS SUBSTANTIAL**
 - Change of work conditions without WoCo approval: void
 - Approval can only be refused for reasons mentioned by law
 - Approval can be replaced by Labor Court decision

6 INDIVIDUAL MEASURES

Dismissal with option of altered working conditions

- **DISMISSAL WITH OFFER TO CONTINUE EMPLOYMENT UNDER MODIFIED CONDITIONS**
- **POSSIBLE EMPLOYEE'S REACTIONS**
 - Acceptance
 - Refusal and acceptance of the termination
 - Acceptance under reservation
 - Complete rejection
- **REQUIREMENT OF SOCIAL JUSTIFICATION**
 - Like for regular dismissals

6 INDIVIDUAL MEASURES

Dismissal - social selection

REQUIREMENT: EXISTENCE OF COMPARABLE EMPLOYEES

IDENTIFICATION OF COMPARABLE EMPLOYEES

- Equivalent activity
- Equivalent qualification
- Employment contract related interchangeability

DETERMINATION OF SOCIAL CRITERIA

- Age
- Length of service
- Severe disability
- Alimony obligations

REMOVING INDISPENSABLE EMPLOYEES FROM SOCIAL SELECTION

- Continued employment is in company's legitimate interest

6 INDIVIDUAL MEASURES

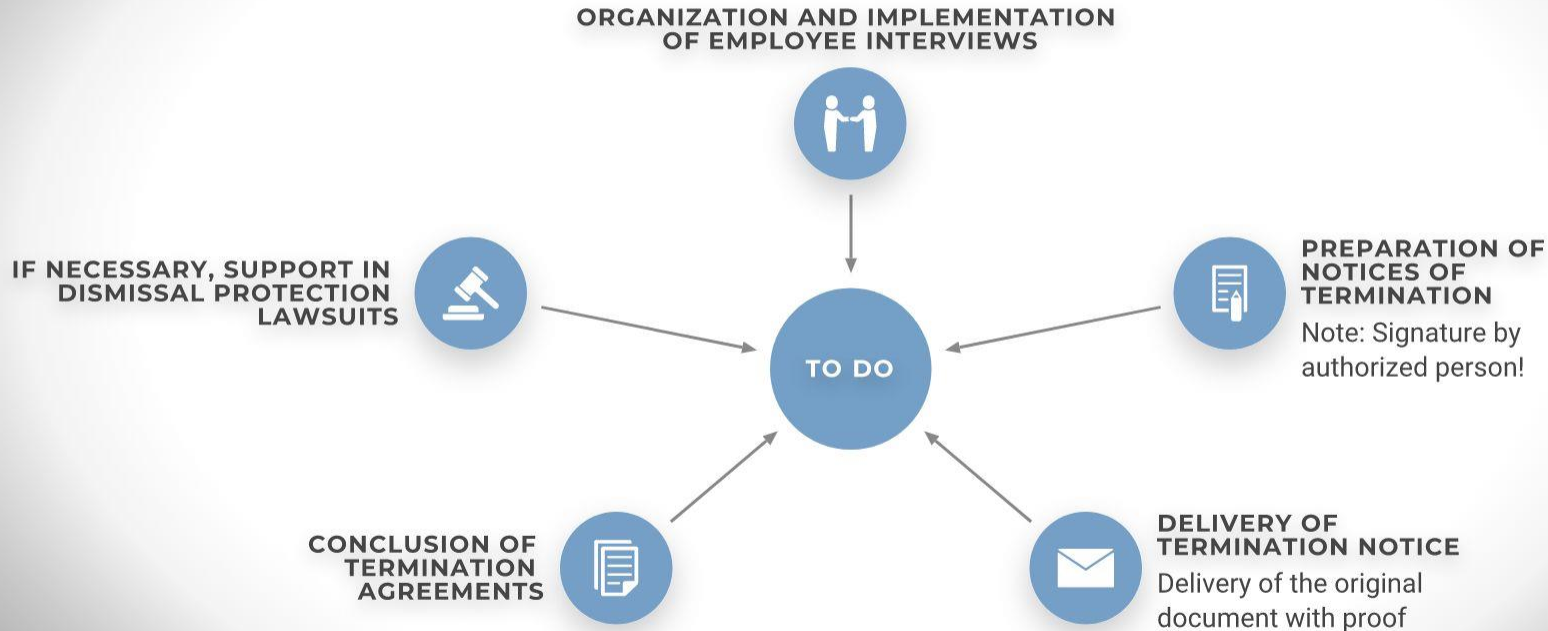
Dismissal - WoCo consultation

- **HEARING OF WOCO BEFORE DISMISSAL!**
 - Including social data and reason of dismissal
 - Reference to Bol is not sufficient
 - WoCo has one week to respond
 - Response is not binding for employer
- **IF CONSULTATION IS INCORRECT OR OMITTED: DISMISSAL VOID**

7 REGULATORY APPROVAL FOR PROTECTED EMPLOYEES



8 NOTICE OF DISMISSAL, CONCLUSION OF TERMINATION AGREEMENTS



THANK YOU!



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