

Workforce restructuring in East Asia: Common pitfalls, best practices and employer strategies



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Today's session: South Korea, Hong Kong, China, Japan



- Key strategies, procedures, and requirements for redundancies
- Cost of redundancies: mandatory payments, ex-gratia payments, and MPF-offset abolition in Hong Kong
- Union/workforce engagement, including Korea's new Yellow Envelope Act
- Best practices and common pitfalls that can derail restructuring

Scenario

Client: Vaporware Electronics

Background:

- Falling APAC revenue for several years
- Rising costs
- Still profitable, but barely
- Discontinuing a less successful product line to stem losses

Management Mandate:

- Reduce headcount in APAC by approx. 10% each jurisdiction (approx. 10–20 EEs each)
- Specific roles identified for redundancy

Key Challenges

Hong Kong

- Termination for redundancy allowed unless there are “protected circumstances”
- Protected circumstances include: employees on statutory sick leave, employees who are pregnant or on statutory maternity leave, on grounds of discrimination e.g. disability

Japan

- Valid redundancy dismissal must satisfy all the following: (i) business necessity; (ii) exhaustion of efforts to avoid dismissal; (iii) reasonable and fair selection criteria; and (iv) procedural fairness (adequate explanation and consultation)
- Redundancy dismissal generally more difficult to justify than dismissal for poor performance.
- “Improving profitability” alone is not a business necessity.
- Worst-case scenario: court-ordered reinstatement and back pay.

Korea

- Termination for redundancy allowed only due to “urgent business necessity” (plus tough procedural requirements)
- Right to reinstatement
- Expectation of high ex-gratia payments

Mainland China

- No termination at will in China and a statutory cause must be established.
- Possible causes include: (i) “significant change in objective circumstances”; and (ii) “economic layoff”
- Pursuing either cause faces complicated procedures, heavy burden of proof and high risk of wrongful dismissal
- Reinstatement available for wrongful termination

Navigating Challenges

Hong Kong

- Negotiate an agreed exit with employees under protected circumstances
- Offer an ex-gratia payment to incentivize employees to sign a settlement agreement with a release for claims
- Ex-gratia payments can also be a useful mechanism to ensure a smooth exit for employees who are not protected

Japan

- Do not start with dismissal – courts require real efforts to avoid termination
- Step 1: Launch a voluntary retirement program
- Step 2: If needed, conduct individual separation discussions
- Implement parallel cost-saving measures (hiring freeze, bonus suspension, etc.)
- Only if these efforts fail may redundancy dismissal become defensible

Korea

- Develop an appropriate plan given the circumstances: financial circumstances, workforce size, number/type of redundancies
- Voluntary-only (mutual separation) or VSP plus layoffs; individual negotiations vs. open VSP; “plan B” if no layoffs
- In appropriate cases, consider possibility of longer-term corporate restructure, or possible business closure
- Consider potential union issues

Mainland China

- Pursuing mutual separation in the primary approach and planning a unilateral termination case is the backup plan
- Carefully preparing the mutual separation package
- Statutory severance is a must, and ex-gratia compensation is very common to achieve mutual separation

Thank you for joining



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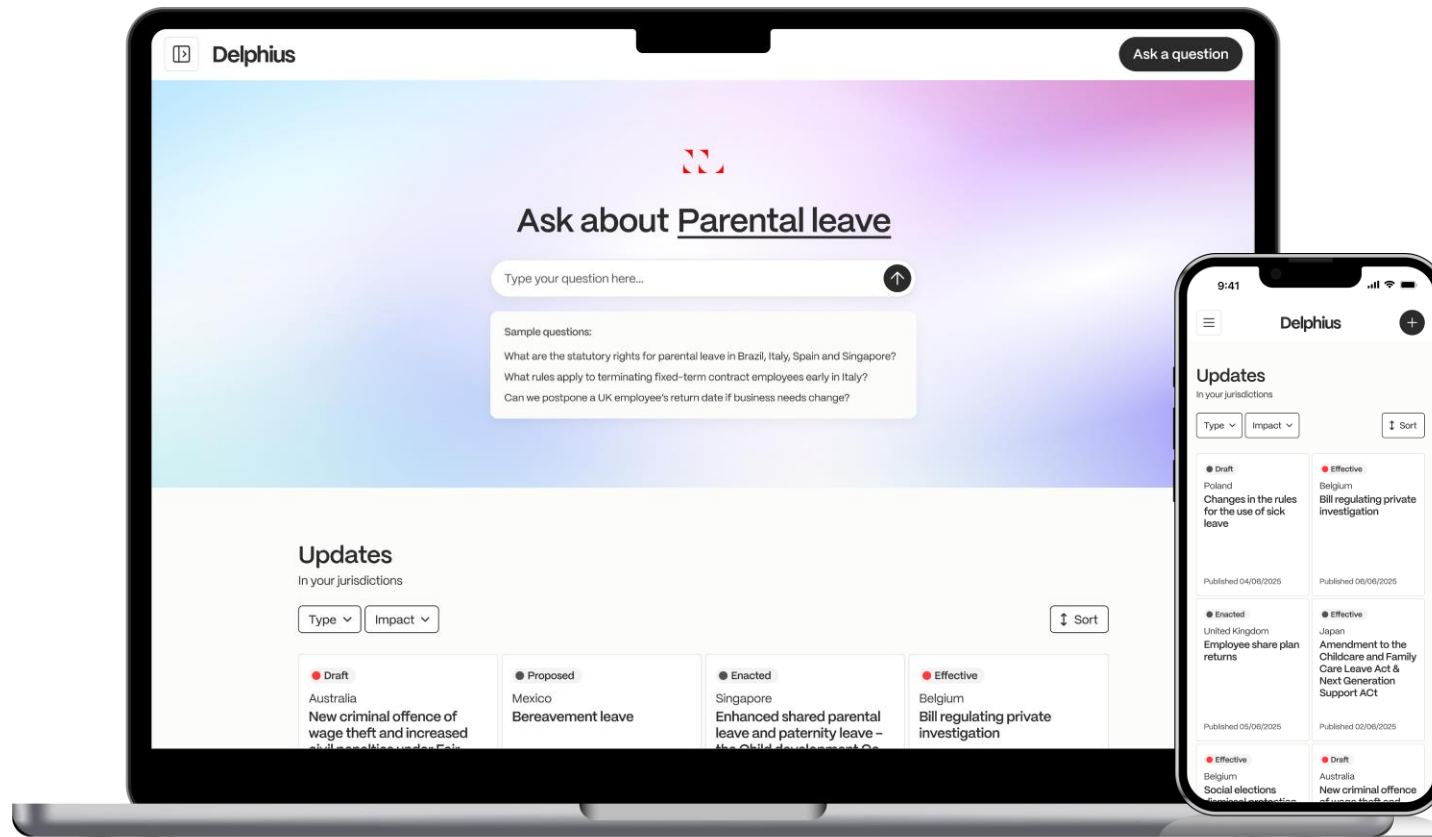
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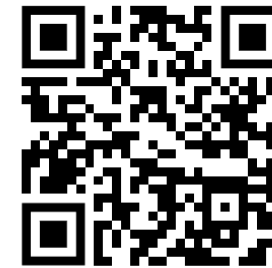
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