Table of contents

Prefac	re	7
Abbre	viations	XII
	I. Restructuring and M&A	
1. Key	7 terms]
1.1	Employers and employees]
	(a) Employee	1
	(b) Difference between employees and independent contractors	2
	(c) Executive employees	3
	(d) Employer	4
1.2	Operation, company and group	4
	(a) Operation/part-operation	4
	(b) Company	5
	(c) Group	5
1.3	Works council and works council agreements	5
	(a) Establishing works councils	5
	(b) Responsibilities of the works council	6
	(c) Co-determination via works council agreements	7
	(d) Expenses of the works council	8
1.4	Co-determination at company level	8
	(a) Supervisory board pursuant to the DrittelbG	8
	(b) Supervisory board pursuant to the MitbestG	8
1.5	Trade unions, employers' associations and collective bargaining agreements	9
2. Bas	sics of a dismissal	10
2.1	General requirements	10
	(a) Hearing of the works council	10
	(b) Notice of termination	1
	(c) Notice period	12
	(d) General protection against dismissal	13
	(e) Special protection against dismissal	14
	(f) Legal action against dismissal	14



VII

			(i) Court proceedings	14
			(ii) Court settlement	15
	2.2	Dis	missal for operational reasons	16
			Entrepreneurial decision	17
			No vacancies in the company	18
		(c)	Social selection	20
		• •	(i) Employees with special protection against dismissal .	20
			(ii) Comparable employees	20
			(iii) Social criteria	21
			(iv) Legitimate operational interests	21
			(v) List of employees to be dismissed	22
	2.3	Al	ternative ways to end employment	24
		(a)	Cancellation agreement	24
		(b)	Dismissal for operational reasons with proffered severance	
			payment (sec. 1a KSchG)	24
	2.4		mple employment documents	25
			Sample notice of termination for operational reasons	25
		(b)	Sample notice of termination with the option of altered employment conditions	26
		(c)	Sample notice of termination for operational reasons with proffered severance payment (sec. 1a KSchG)	27
		(d)	Sample of a works council hearing for a planned dismissal	
			for operational reasons	28
3.			of restructuring measures	31
	3.1	Re	structuring at the operational level	31
			Sale of the entire operation or a part-operation	31
		(b)	Closure and relocation of operations	32
			Outsourcing	33
			Other types of restructuring measures	33
	3.2		structuring by transformation of the company	34
			Merger	34
			Division	36
			Transfer of assets	37
			Change of legal form	37
			are and asset deal	38
	3.4	Ti	meline for asset deal (including employment aspects)	38
4.	Res	stru	cturing by company transformation	39
	4.1	Tr	ansformation agreement	20

		(a) Responsibility for entering into the agreement	39
		(b) Content of the transformation agreement	39
	4.2	Delivery of the merger/division agreement to the competent	
		works council	41
		Information of the economic committee	42
		Effects on works councils	43
		Effects on works council agreements	44
		Effects on collective bargaining agreements	44
		Sample employment document – merger agreement (excerpts)	45
5.		nsfer of business	49
		Historical background	49
	5.2	Requirements of a transfer of business	50
	5.3	Legal consequences for the employees	53
		(a) Transfer of employees	53
		(b) Employment conditions continue to apply	53
		(c) Transfer of pension obligations	53
	5.4	Legal consequences for collective agreements	54
		(a) Effects on works council agreements	54
	,	(b) Effects on collective bargaining agreements	56
		(i) Basic principles	56
		(ii) References to collective bargaining agreements	57
	5.5	Information of the affected employees and right to object	58
		(a) Employees' right to object	59
		(b) Employee information requirements	59
	5.6	Rights of employee representatives	61
		Liability of seller and purchaser	61
		Dismissal due to transfer of business	61
		Sample employment document – information letter pursuant	
		to sec. 613a BGB	62
6.		anges to the operation	67
		Prerequisites for changes to the operation	67
	6.2	Reconciliation of interests	69
		(a) Content of a reconciliation of interests	69
		(b) Reconciliation of interests proceedings	70
	6.3	Social compensation plan	71
		(a) Content of a social compensation plan	71
		(b) Enforceability of a social compensation plan	73
		(c) Conciliation board proceedings	74

Table of contents

		(d) Specifics of collective dismissals	75
		(e) Transfer company	76
		(f) Social compensation plans with trade unions	80
	6.4	Parties to negotiations on a reconciliation of interests and	
		social compensation plan	81
		(a) Competence of company works council vs. local works	
		councils	81
		(b) Practical advice on determining which works council is	on
		competent	82
	6.5	Timeline for negotiations on reconciliation of interests and social compensation plan	83
	66	Sample employment documents	84
	0.0	(a) Reconciliation of interests	84
		(b) Social compensation plan	87
7	3.50		93
٠.		A – employment aspects	93
		Due diligence	95
		Indemnities, representations and warranties (asset deal)	96
		Sample employment documents	99
	/ . -	(a) Due diligence request list – employment matters	99
		(b) Employment clause for sale and purchase agreement	"
		(asset deal)	102
		, ,	
		TI Design of the second	
		II. Restructuring in a crisis	
1.	Bas	sics of insolvency law	105
		otection of remuneration	108
		ecifics of dismissals and termination of works council	
٠.	agı	reements	110
		Termination of employment relationships	110
		Termination of works council agreements and social	0
		compensation plans	111
4.	. Ch	ange to the operation during insolvency proceedings	111
5.	. Ac	quisition of companies during insolvency proceedings	112

III. Selected laws

1. Civil Code	115
2. Act against Unfair Dismissal	123
3. Works Constitution Act	144
4. Collective Bargaining Agreement Act	228
5. Act for Co-determination of Employees on Supervisory Boards	234
6. Act for One-Third Participation of Employees on Supervisory Boards	250
7. Company Transformation Act	255
8. Insolvency Act	271
Glossary	281
Subject index	295