

TIPS FOR NEGOTIATING INTERNATIONAL SEVERANCE AGREEMENTS

Before the assignment begin

1. **Draft documents with termination in mind** e.g.:
 - 1.1 notice periods for ending assignment and employment;
 - 1.2 interaction between documents;
 - 1.3 disapplication of severance-related policies;
 - 1.4 impact of termination on benefit arrangements;
 - 1.5 avoid ambiguity, e.g. on governing laws, tax equalisation or bonus;
 - 1.6 tax and social security;
 - 1.7 clarify repatriation arrangements;
 - 1.8 mitigate impact of early voluntary termination;
 - 1.9 consider including post termination restrictions (check host country rules and enforcement options);
 - 1.10 provide for post termination practical assistance, e.g. help with tax recovery.
2. **Employer:** Ensure the identity of the employer is clear and that underlying facts support this.
3. **Applicable laws:** Think about jurisdictions that are likely to be relevant to termination claims, e.g. home, host country, others. Ask for advice on termination at the outset. Can the arrangements be structured in a way that reduces risk? What are likely costs?
4. **Benefits:** How would termination affect benefits? Diarise key dates, e.g. lease renewal, share vesting.
5. **Appointments:** Think about removal from office, powers of attorney etc, e.g. avoid sole appointments.
6. **Accessibility:** Ensure information needed is accessible, e.g. copies of employment documents, share plans, leases etc, access to payroll records, information that may be relevant to determine applicable collective agreements, dates when assignment and employment began.

7. **Security:** Think about practical steps to increase security, e.g. are client/customer relationships in the hands of more than one person? Can computer access be denied quickly? How many people have access to paperwork and local advisers?

Planning

8. **What are the reasons** for proposed termination, e.g. redundancy; performance; job done; immigration permission expiry? Are there any special risk factors related to the employee, e.g. pregnancy, illness, history? Do reasons or risk factors affect freedom to dismiss in the host country?
9. **What do the employment documents say?** What has already been promised? E.g. repatriation expenses? Does tax equalisation apply to termination pay?
10. **How will benefits be affected?** Has accommodation been provided by the employer? Is the lease in the employee's name? Will early termination penalties apply? Are relevant documents to hand? Is there a deposit to be returned? How will termination affect bonus, share plans, school fees etc.
11. **What advice will be needed?** E.g. income tax, corporation tax, social security, pension, share plans and other benefits, employment law, immigration. Have appropriate advisers been identified/consulted? Will they be available when needed? Are any host country public holidays pending?
12. **Information for advice:** What else do you need to know in order to seek good advice? Do you have copies of employment documents, including bonus, share plan etc? Is information needed to determine whether collective agreements apply, e.g. seniority, responsibilities, role, job title, industry, location? When did the employment begin? Is there earlier group service? When did the assignment begin? What is the remuneration package? Are payslips/payroll records available? Is remuneration as documented or has it been varied subsequently? Will more than one employee be dismissed (will any collective consultation obligations be triggered)?
13. **Immigration:** Is the employee working under a work permit? Will the employee and dependents have to leave if the employment is ended? If so, when? What are the employer's responsibility, e.g. for returning permits etc?
14. **Authority to dismiss:** Who can technically dismiss for the employer? What is required technically in the host country to evidence of authority, e.g. evidence of appointment, apostille? Check the identity of the employer - is the paperwork consistent with the facts? Who are the appropriate employer representatives technically? Who is the best person to negotiate with the employee practically? Can they travel to the host country?
15. **Permission:** Is permission or approval by a Court or other public body required for dismissal? Does mutual termination make a difference? Are cooling off periods mandatory?

16. **Notice:** What are the contractual requirements for notice? Must notice for the assignment and employment be given separately? Can they run concurrently? Is there any mandatory minimum period of notice and how must notice be given, e.g. in person, registered post? Is payment in lieu of notice or garden leave possible?
17. **Severance pay:** Are any minimum severance payments due by contract, law or collective agreement? Ask advisers to differentiate payment from funds to which the employer has already contributed, i.e. where there is no cost.
18. **Appointments:** How can the employee be removed from any appointments, transfer or “powers”, bank mandates etc? Are new appointments needed?
19. **Business perspective:** Have continuity issues been considered? What are the competition risks? Will payment be required re covenants? Can the termination be timed to minimise disruption, e.g. if employee needed to sign off payroll or accounts or for a critical client win. Will it be possible to remove the employee quickly? How will security be managed? Is a replacement needed and if so how long would this take, e.g. time for immigration clearance? Will there be a need for interim arrangements?
20. **Employee’s perspective:** What is the employee’s personality and how is he likely to respond? Is he expecting this? Are there any critical times from the employee’s perspective, e.g. child sitting exams? Will the employee and/or family have to leave the host country immediately? How will this impact on each family member, e.g. schooling, partner’s employment, medical treatment?
21. **Repatriation before dismissal:** Would it be better to bring the employee home first?
22. **Alternative employment:** Has this been properly investigated?
23. **Privilege/discovery:** Do you understand any privilege/discovery issues and how will practicality and risk be balanced?

Negotiation

24. **Key bargaining points:** What will the employee be looking for? What will he not want to lose? What would win family support for a deal? What does the employer need to achieve? What can the employer afford to give away? **Never underestimate the impact of the family on expat decisions.**
25. **Costs:** Make sure you understand where big costs lie, e.g. housing and where giveaways are cheap (e.g. because money already spent).
26. **Be clear about value of offer**, e.g. tax impact.
27. **Who should do the negotiating?**

28. **More consensual style?** Is mutual termination needed? How will this affect other employees? Is co-operation needed from employee?

Severance agreement

29. **Technical requirements:** What is needed technically to effectively terminate in each relevant country? Do the documents meet minimum requirements in each country, e.g. for compromise agreement in the UK? Is this necessary? Check whether counterparts can be used and where documents can be signed? Will approval by a Court or public authority be required?
30. **Co-operation:** Include terms that may help later, e.g. co-operation with tax recovery.
31. **Repatriation arrangements:** e.g. flights, shipping etc.
32. **Clarity re package:** Be very clear about what will be given, currency, place of payment, who will pay etc, don't forget accommodation.
33. **Tax:** Consult specialist expatriate tax and social security advisers.
34. **Covenants:** Where will the client want to enforce?
35. **Confirm governing laws** for severance agreement.
36. **Language and translation:** Which document is authentic?