

## **Fourth Study Commission: Questionnaire for the 2007 Meeting**

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### **Fourth Study Commission Public and Social Law**

#### **QUESTIONNAIRE**

#### **THE RIGHTS OF THE WORKERS IN CASE OF A SHUTDOWN OF THE ENTERPRISE, WHATEVER ARE THE CAUSES**

### **Reply of ISRAEL**

1. Are there any specific regulation on insolvency proceedings?

Reply: Yes.

Insolvency of corporations is governed by the Companies Ordinance [New Version] of 1983.

Insolvency of individuals is governed by the Bankruptcy Ordinance [New Version] of 1980.

2. Which institutions (government agencies, courts, etc.) are in charge of insolvency proceedings generally and which institutions are in charge of the resolution of conflicts related to employment Law.

Reply: The District Courts have sole jurisdiction in insolvency proceedings.

The Official Receiver, which is a unit of the Ministry of Justice, is the government agency in charge of insolvency proceedings.

Labor Courts have sole jurisdiction in conflicts related to employment law. In cases of conflict related to employment law stemming out of insolvency, the governing jurisdiction lies with the District Court.

3. When a declaration of opening of an insolvency proceeding is issued, are the employment contracts considered automatically terminated or are they still in force?

Reply: The employment contracts are considered automatically terminated, when a declaration of opening of an insolvency proceeding is issued and the enterprise is shut down. The declaration is in the form of a court order for the winding-up of the company.

4. When an employment termination automatically occurs due to the opening of the insolvency proceedings, what benefit or severance could the workers be entitled to as a consequence?

Reply: When an employment termination occurs automatically due to the opening of an insolvency proceeding and there is no continuation of employment of the employee by the administrator, the employee is entitled to benefits and payments as if his/her employment was terminated by an employer. These include unpaid wages, vacation time, severance pay, used sick leave and payment in lieu of the law-mandated advanced notice period. These are all considered as part of the employer's debt for unpaid wages.

For collection of such unpaid wages debts, Israeli law grants employees in an enterprise's insolvency proceeding the status of preferred creditor up to a monetary limit of NIS 7,119 (approx. US\$ 1,700/€ 1,580). Thus, subject to the insolvent enterprise having enough assets, employees will be able to collect this debt (subject to the monetary limit stipulated above), before unsecured creditors but after fixed-security creditors.

The employee may be entitled to additional payments, such as for unused sick leave, according to his/her employment agreement. These are not considered as unpaid wages and do not grant the employee preferred creditor status.

Employees whose employment agreements were terminated because of the opening of an insolvency proceeding are eligible to receive a benefit from the National Insurance Institute for unpaid wages. See details hereafter.

5. Is there any chance to terminate the employment contract of one or more employees once the opening of the insolvency proceedings already occurred? What reason is considered fair in order to allow the administrator of the insolvency proceedings to terminate the employment contracts? Is the employee entitled to any benefit or severance?

Reply: The administrator of the insolvency proceedings is authorized to manage the corporation's business for the purpose of its winding-up. For this purpose – which in nature is limited in time and ends when the company is liquidated - he may hire employees and terminate their employment later. These actions of the administrator require approval of the insolvency court.

When the employment agreement of such employees is terminated, they are eligible to the same rights and benefits as other employees whose employment agreement was terminated by a solvent corporation (e.g., severance pay, unemployment benefits, etc.). In addition, monies owned to them for work done after commencement of the insolvency proceedings (e.g., unpaid wages) are deemed as insolvency expenditures. Priority-wise, payment of these monies comes after payment to secured creditors of the company but before payment to preferred and unsecured creditors.

6. What privileges or preferences, if any, are granted to employment credits?

Reply: Credit granted to a company before its insolvency for the purpose of paying wages to its workers is given a preferred status in insolvency. This status is limited only to the portion of such credit that had the effect of lowering the debt to the workers beneath the monetary limit of preferred creditor status granted in law to workers' unpaid wages.

7. Is there a guarantee institution that takes charge of the debts unpaid by the insolvent employer and to what extent?

Reply: Yes. The National Insurance Institute of Israel takes charge of unpaid wages debt (including vacation time, severance pay, used sick leave and payment in lieu of the law-mandated advanced notice period) owed by insolvent employers (either individuals or corporations). The debt covered by the Institute per employee is limited: it does (i) not cover a period in excess of 12 months, prior to the declaration of opening of the insolvency proceeding, for which wages were not paid; and (ii) does not exceed the amount of NIS 69,640 (approx. US\$ 16,580/€ 12,660). Pension funds are also eligible to receive from the Institute unpaid premiums owed by the insolvent employer, up to a limit stipulated in the law.

8. Is the guarantee institution subrogated in the rights and/or privileges granted to the worker, and may claim for them during the insolvency proceedings?

Reply: Yes. The National Insurance Institute of Israel may claim during the insolvency proceeding all the privileges granted to the employee. However, the subrogation of rights is not complete: the preferred creditor status given in insolvency law to employees for the collection of unpaid wages debt is given to the Institute for only part of the privileges granted to the employee.

9. What's other effect has the insolvency proceeding on the employment relationship?

Reply: There are no additional effects other than those described above.

10. When the whole or part of the enterprise is transferred during an insolvency proceeding, is there any particularity regarding the employees' rights?

Reply: In Israel, employment contracts are not deemed as assets which can be transferred as part of an ownership change of a corporation. Therefore, the transfer of enterprise (in part or in its whole) during an insolvency proceeding terminates the employment contract of the employees. The new owner of the enterprise is free to decide which of the employees shall continue to be employed. The general rule is that the new owner is not bound by the employment terms that were agreed between the workers and the previous owner. Nevertheless, for those employees who continue to work for the new owner, the law stipulates that the transfer of ownership of an enterprise does not

affect the continuity of employment with regard to various rights, the magnitude and availability of which are dependent on seniority (such as severance pay, sick leave, additional maternity leave and vacation time).

If insolvency is the reason for the transfer of ownership of an enterprise, the new owner has no obligation to pay unpaid wages owed by the previous owner to the employees.

11. Are there specific regulations protecting employees if an enterprise is shut down or if there are mass dismissals? Describe them.

Reply: If the enterprise can reorganize its debt through negotiation with creditors – in order to avoid shutdown and liquidation – then the court may issue a staying order for up to nine months in order to allow a process of reorganization of the corporation and negotiation with creditors. During this period an administrator is appointed to run the corporation and administer the negotiations. If this succeeds, dismissals may be avoided. If this is not viable, employees of an industrial enterprise which has been shut down are eligible to receive a loan from a special fund set up by the government and the largest workers' organization in order to purchase that enterprise.

If the shutdown of the enterprise is due to insolvency, the workers are eligible to the various rights and benefits detailed above. In addition, these workers are eligible to benefits granted to workers whose employment has been terminated by a solvent employer. These include unemployment benefits; income support benefits; the right to receive severance, unpaid wages and payment in lieu of the law-mandated advanced notice period and assistance in job placement from the Israel Employment Service.

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