

TRONDHEIM QUESTIONNARY

1. Are there any specific regulation on insolvency proceedings?

Yes.

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.

Generally the Master of the High Court is in charge of insolvency proceedings; however, he can refer matters to the magistrates' courts. The Labour courts are in charge of conflicts relating to employment law. There is however, a Commission for Conciliation, mediation and arbitration that attempt to settle the disputes before they go to the Labour Courts.

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?

Previously with the old section 38 of the Insolvency Act 24 of 1936 yes the contracts were terminated immediately, it was held that the reach of the Labour Relations Act halts once insolvency enters the picture, but section 38 of the Insolvency Amendment Act 33 of 2002 changed the tune. Now the contracts are suspended and consultative forums emerge with employees or their representatives (trade union) for various reasons which inter alia are: business rescues wherein employment can be preserved and/or selling of business as a going concern and transfer of those employment contract.

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?

They enjoyed limited preferent rights for compensation under section 100 of the Insolvency Act. They had a preferent claim against the free residue for salaries and wages to the maximum of Five Thousand Rand (R5000-00) and for a period not exceeding two months prior to the date of sequestration/liquidation. Each also had a preferent claim, limited to Two Thousand Five Hundred (R2, 500-00), for salaries and/or wages in relation to leave owed, not exceeding 21 days. The first improvement to the former employee's right in insolvency law came when section 100 was replaced by section 98A.

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?

The Liquidation/sequestration of the estate of the employer no longer terminates contracts of employment. The contracts of service of employees whose employer has been sequestrated/liquidated are suspended with effect from the date of granting of sequestration/winding up order. During the period

of suspension, the employees are not required to render services. Although they are not entitled to any remuneration or employment benefits, they are entitled to claim unemployment benefits due to them in terms of section 35 Unemployment Insurance Act 30 of 1966.

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

No privileges or preferences are granted to employment credits.

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

No.

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?

See 7 above.

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

See the above.

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

Yes if the business is being sold as a going concern cognisance of also transferring employment contract is taken.

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

Labour Relations Act, UIF and Basic Condition of Employment Act.

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