

## QUESTIONNAIRE

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

1. Are there any specific regulation on insolvency proceedings? *Yes there is. The substantial aspects are regulated by the Commercial Code, that says that the judicial declaration of bankruptcy (opening the proceedings) determines the rights of creditors just as they were the day before that declaration. The procedural aspects are regulated by the Procedure General Code which refers to civil procedures and which has a chapter ("Title VII") called "Proceso Concursal" (Bankruptcy Proceeding). In that chapter the Code defines **Insolvency** as for the civil debtor, **Bankruptcy** as for businessmen and partnerships, and **Judicial Liquidation** as for stock companies or corporations. These two latter are regulated by both the Commercial Code and the Corporations Law of 1989.*

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.

*Since year 2002, the institutions that are in charge of insolvency proceedings are two Courts –in the capital city and belonging to the Judicial Power- that are specialized in those issues (insolvency, bankruptcy, judicial liquidations of corporations and debtor reorganization plans). Instead, the conflicts related to employment Law are solved in other courts: specialized labour courts in the capital city and, in the interior of the country, courts that are competent in every non-penal matter (civil, labour, commercial, family, etc.). There are also other institutions that deal with labour conflicts: the "Labour Offices" that exist in the whole national territory and depend to the Labour and Social Welfare Ministry (Executive Power), where Conciliation Hearings (mandatory opportunity to reach agreements previous to litigation) take place.*

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? *The employment contracts are not considered automatically terminated and can still go on.*

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? *It is not that way in Uruguay (answer 3).*

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 possibility of terminating the employment contracts is legal and totally possible. The reasons can be a lot, for instance that the company is not viable, when there is no chance of normal work. The workers have the right to be paid for the salaries they earned, year-end bonus, additional holiday wages, AND indemnification for Unjustified Firing. BUT those amounts of money are to be paid by the employer, not by the State or other institutions.*

6. What privileges or preferences, if any, are granted to employment credits? *The salaries are in the fourth place at the list of privileged personal credits.*

7. Is there a guarantee institution that takes charge of the debts unpaid by the insolvent employer and to what extent? *No there is not.*

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? *Please read answer 7.*

9. What's other effect has the insolvency proceeding on the employment relationship? *From a legal point of view, no other effects.*

10. When the whole or part of the enterprise is transferred during an insolvency proceeding, is there any particularity regarding the employees' rights? *No, usually a multi-part negotiation takes place.*

11. Are there specific regulations protecting employees if an enterprise is shut down or if there are mass dismissals? Describe them. *If the employees don't get another job, they are entitled to receive a certain amount of money (approximately 70% of their salary, during up to 6 months) from the Social Security State Bank. After those 6 months, if they can't go back to the company to work, they have to right to receive the indemnification and wages described in answer to question 5, that are paid by the owners of the company or by the trustee (named by the Judge to administrate and to be a sort of auditor during the bankruptcy or liquidation proceedings).*

**Board of Direction of the Uruguayan Association of Magistrates**

**[asodema@netgate.com.uy](mailto:asodema@netgate.com.uy)**