

TRONDHEIM QUESTIONNARY

1. Are there any specific regulation on insolvency proceedings?

Existe-t-il une réglementation propre aux procédures de faillite ?

Regulation on legal insolvency proceedings in Japan includes the following.

Regarding liquidation type proceedings, there are provisions of the Bankruptcy Act, which is a general law targeting juridical persons and individuals, and provisions under the Companies Act on special liquidation targeting stock companies.

Regarding rehabilitation type proceedings, there are provisions of the Civil Rehabilitation Act, which is a general law targeting individuals and juridical persons, and provisions of the Corporate Reorganization Act targeting stock companies.

Apart from these provisions on legal insolvency proceedings, there is also the Act on Specified Conciliation for Promotion of Adjustment of the Specified Debts and so on for promoting adjustment of interest concerning the monetary claims of the debtor, aimed at the economic rehabilitation of debtors who are facing difficulties.

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.

De manière générale :

- **quelles sont les institutions (organisations gouvernementales, juridictions, etc...) compétentes en matière de faillite ?**
- **quelles sont les institutions (organisations gouvernementales, juridictions, etc...) compétentes pour le règlement des litiges relevant du droit du travail?**

Courts are in charge of legal insolvency proceedings and specified conciliation proceedings.

With regard to conflicts related to employment, courts are in charge of litigations involving labor relationship and labor dispute determination proceedings, while there are also dispute resolution proceedings by administrative organs (the system of advice/guidance from the directors of Prefectural Labor Offices, the system of mediation by the dispute coordinating committee, etc.).

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?

La déclaration de faillite ou la fin de la procédure de faillite a-t-elle pour effet de mettre automatiquement fin aux contrats de travail ou ceux-ci demeurent –ils en vigueur ?

Even when a declaration of opening of an insolvency proceeding is issued, the employment contracts are not automatically terminated, but remain in force.

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?

Lorsque la déclaration de la faillite a pour conséquence de mettre fin automatiquement aux contrats de travail, le travailleur bénéficie-t-il d'indemnités de licenciement ou d'autres compensations ?

As mentioned above, the employment contracts are not automatically terminated in such a case.

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?

Peut-il être mis fin au contrat de travail d'un ou de plusieurs travailleurs postérieurement à la déclaration de la faillite ?

Pour quels motifs le curateur de la faillite peut-il mettre fin aux contrats de travail ?

Le travailleur est-il en droit de percevoir des compensations ou des indemnités de préavis ?

After a declaration of opening of an insolvency proceeding has been issued, the bankruptcy trustee, the rehabilitation debtor, etc., or the reorganization trustee (hereinafter referred to as the "trustee, etc.") may cancel the employment contract. In this case, however, the right of dismissal enforced by the trustee, etc. will be subject to regulation under the Labor Standards Act. Thus, a dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid (Article 18-2 of the Labor Standards Act). Nevertheless, it is generally understood that the enforcement of the right of dismissal by the bankruptcy trustee in the case of a bankruptcy is usually objectively justifiable.

There are no special provisions on benefits; however, similar to the case of an ordinary dismissal, the employee is entitled to receive allowances for failure to give an advance notice of dismissal and/or retirement allowances.

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

Le cas échéant, les travailleurs bénéficient-ils de privilèges ou d'avantages?

When the trustee, etc. has cancelled the employment contracts in insolvency proceedings, the wage credits and retirement allowance credits of the employees are offered their preferences in the proceedings over other credits in terms of their order and payment method.

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

Une institution est-elle tenue de garantir la prise en charge des dettes de l'employeur insolvable et, dans l'affirmative, dans quelle mesure ?

Yes. There is an Incorporated Administrative Agency called the Japan Labour Health and Welfare Organization (hereinafter referred to as the JLHWO).

When a declaration of opening of legal insolvency proceedings has been issued for a business operator, or when the director of a Labor Standards Inspection Office with jurisdiction has recognized that a small and medium sized enterprise has suspended its business activities in effect with no prospect for resumption and that it has lacked the capacity to pay wages, the JLHWO reimburses for unpaid wages on behalf of the business operator.

The scope of unpaid wages subject to the reimbursement by the JLHWO is an amount equivalent to 80% of the total unpaid wages including retirement pay; however, upper limits are set according to the age of the employees at the time of the retirement.

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?

**Cette institution est-elle subrogée aux droits et/ou aux privilèges accordés aux travailleurs ?
Peut-elle réclamer ceux-ci au cours de la faillite ?**

When the JLHWO has reimbursed on behalf of a business operator, it can be subrogated in the workers' wage credits and other claims pertaining to the payment it has made, and enforce those claims.

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

La faillite emporte-t-elle d'autres effets sur la relation de travail?

The insolvency proceeding has no other effects on the employment relationship.

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

En cas de transfert de tout ou partie de l'entreprise au cours de la faillite, existe-t-il des dispositions propres aux droits des travailleurs ?

In order to transfer the whole or part of the enterprise during an insolvency proceeding, the trustee, etc. must obtain the permission of the court, and when the court grants permission, it must hear the opinions of the labor union, etc. (Article 78(4) of the Bankruptcy Act, Article 42(3) of the Civil Rehabilitation Act and Article 46(3)(iii) of the Corporate Reorganization Act)

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

Existe-t-il des réglementations de nature à protéger les travailleurs en cas de fermeture d'entreprise ou de licenciement collectif ? Décrivez-les.

There are no such specific regulations; however, a dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid.