

# TRONDHEIM QUESTIONARY

## **1. Are there any specific regulations on insolvency proceedings?**

Starting with 1 January 2006, the Act 7/2005 on Insolvency and Restructuring, and on amendments to some laws has been in force and effect. It is a new regulation of insolvency proceedings, which replaces the previously applicable and effective Insolvency and Compensation Act 328/1991 Coll., as amended.

## **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?**

In the insolvency/bankruptcy matters, specifically in relation to the administration of assets subject to insolvency/bankruptcy proceedings, or operation of a bankrupt business, or realization of assets subject to bankruptcy, the creditors' committee and the courts are competent to proceed. After the insolvency proceeding has been declared in industrial relations then the receiver in bankruptcy is authorized to proceed in relation to the employees, and any potential litigation concerning the industrial law have to be dealt with by the courts. In general, in the matters of insolvency proceedings the courts are to try, as well as conflicts concerning the employment law have to be resolved by the courts.

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

After a declaration of opening of an insolvency proceeding, the employment contracts are still in force in compliance with Section 56 of Insolvency and Restructuring Act. Upon declaration of opening of an insolvency proceeding the competency to proceed in industrial relations, in relation to employees of a bankrupt, goes to the receiver in bankruptcy.

## **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?**

With regard to the previous answer, the question is redundant.

## **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 employee has no statutory right to the provision of a severance pay. The Labour Code stipulates in the provision of Section 76 that the employer **may** provide the employee with compensation, and in this case, it is based on the assumption that the collective agreement and/or employment contract can stipulate a more preferable way of providing the severance. The employee's entitlement to a severance pay shall arise only if the employee agrees to terminate the employment before the notice period commences to expire.

It follows from the above that the employer may provide the employee with a compensation provided that the employment terminates by giving notice for organisational reasons (Section 63 subsections 1(a) and 1(b) of the Labour Code), namely a severance pay amounting minimally to the double of the average monthly wage of the employee, although as it was already mentioned, only if the employee agrees to terminate the employment before the notice period commences to expire.

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

The applicable regulation does not stipulate any privileges or preferences to be 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?**

Yes, a guarantee institution is the Social Insurance Company, which provides the employee with a benefit of guarantee insurance, amounting to the respective entitlement (the entitlement to a wage, to a compensation for a wage for banking holidays and for barriers to work, to a compensation for the annual leave pay, the entitlement to a severance pay, entitlements to travel, moving and other expenses, etc.), to the extent of maximum three months in the last 18 months of employment preceding to the commencement of employer's insolvency, or to the date of employment termination for employer's disability. The benefit of guarantee insurance equals maximally to a triple of one twelfth (1/12) of the general base of assess, specified to the date of employer's insolvency occurrence. The benefit of guarantee insurance shall be paid within 30 days from reception of the application for such a benefit, at the latest.

**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?**

The Social Insurance Company may claim its subrogation rights in the course of bankruptcy proceedings as a receivable against assets in bankruptcy, which is allowable by the provision of Section 148 subsection 3 of the Social Insurance Act 461/2003 Coll., under which, after the benefit of guarantee insurance shall have been paid, the employer becomes debtor to the Social Insurance Company.

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

After the insolvency proceeding is declared, in obviously most cases it happens that terminated is the employment relationship with the employees who somehow participate directly in the bankrupt business, i.e. either in manufacturing, or selling, or others. It is rather exceptional that the administrator would continue in running the business, or he runs it to the necessary extent only, which inevitably leads to the termination of employment relationship with the employees who become redundant, as a result of business shut down or restriction. In most cases the receiver only carries out the assets management and the actions concerning the sale of property in order to satisfy creditors, therefore, he employs only the staff whose work is inevitable for the proper performance of the trusteeship.

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

When the whole or part of the enterprise is transferred there are no special authorizations regarding the employees' rights; in principle, the rights and duties arising out of industrial relations pass on the new employer, thus also the obligations resulting from the collective agreement which may stipulate more preferably, for instance, the conditions of the provision of a severance pay to the employees.

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

In our country, there is no special regulation protecting the employees in the case of either individual or mass dismissals.

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