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EMPLOYMENT PROTECTIONS ON INSOLVENCY

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Introduction

In most countries across Europe, Government support has been put in place to help businesses survive during the economic downturn caused by the Covid-19 pandemic. This has helped to protect many jobs which might otherwise have been lost. However, as we begin to slowly emerge from the worst of the pandemic and our economies begin to recover, Government support is expected to decrease. It may then be that the frequency of business restructurings or insolvencies and, consequently, employee redundancies will increase.

This briefing addresses six questions relating to the employment protections available to employees of insolvent companies in Finland, France, Germany, Italy, Portugal, Spain, Sweden, the Netherlands and the United Kingdom. For each question, the position in the various countries is set out separately, alongside a brief overview of the overall position.

1. Do employment protections vary according to the type of insolvency faced by the employer?

Overview

In certain jurisdictions, such as Finland, France, Portugal, Sweden, the Netherlands and the United Kingdom, employment protections vary (at least partially) according to the type of insolvency faced by the employer. In contrast, in Germany, Italy and Spain, there is generally speaking, no significant differences. Most jurisdictions have only two main types of insolvency process, whereas others including Portugal, the Netherlands and the UK have more than two types - with greater potential implications for employees.

1.1. Finland

There are two types of insolvency proceedings for business entities in Finland:

- The first is Bankruptcy, which in practice means a close down of the business (although it is possible that the business or parts of the business are sold or transferred during the proceedings). The key purpose of these proceedings is to realize company assets in order to pay the company's debts.
- The second type is Corporate Reorganisation, which is aimed at rehabilitating the business and ensuring its continuity by debt arrangement and other measures. During the reorganisation, the company usually continues its operations in accordance with a reorganisation programme.

Employee's pay security is based on the Pay Security Act, in accordance with which the state will ensure payment of employees' claims arising from an employment relationship in the event of the employer's bankruptcy or other insolvency. Thus, despite the differences of the insolvency proceedings, employees' pay security is arranged in the same way.

1.2. France

Whilst preserving employment is one of the major goals of French insolvency law, employment protections do vary depending on the type of insolvency faced by the employer.

Specific provisions relate to 'insolvency procedures' and not 'preventive procedures'. In the context of safeguard proceedings, as well as other preventive procedures, the protective rules of the Labour Code are maintained as normal. In contrast, whilst the procedural requirements applicable to economic dismissals are maintained, they are adapted to the specific situation linked with the insolvency procedure. For example, the time awarded to the Labour Authorities to agree the social plan is shortened, as well as the requirement to wait a certain time between the preliminary meeting (if required) and the notification of the dismissal.

1.3. Germany

Generally, the employer's insolvency does not affect the employment relationship. In Germany, there are two types of insolvency: (i) regular insolvency; and (ii) so-called insolvency in self-administration (*Insolvenz in Eigenverwaltung*). Insolvency in self-administration is the exception to regular insolvency and can be ordered by the responsible insolvency court. For this purpose, the debtor must have applied for self-administration and no circumstances must be known which would lead to the expectation that the order will result in disadvantages for the creditor.

In principle, employment-related regulations and rules (both statutory and contractual) continue to apply. In particular, the strict regulations regarding the termination of an employment relationship are not affected by the employer's insolvency and the insolvency itself does not constitute a ground for dismissal. The German Insolvency Act (*Insolvenzordnung*) merely provides for modifications in relation to certain aspects in order to harmonise the interests of employees and other insolvency creditors. Such modifications include, for example, notice periods in respect of employment agreements as well as facilitations for the benefit of the employer in respect of restructuring measures (for more details see sections 2.3, 4.3, and 5.3 below).

The only difference between the two types of insolvency is a potential change of the employer's position. In the event of a regular insolvency, an insolvency administrator assumes the position of the employer and exercises all rights and obligations associated therewith, whereas in the event of an insolvency in self-administration, the employer stays in his position but is supervised by a trustee (*Sachwalter*).

1.4. Italy

In Italy there is no variation; the general principle applying to all type of insolvency procedure is the continuation of employment relationships. This means that the opening of an insolvency proceeding does not cause the automatic suspension nor termination of employment relationships and it cannot constitute grounds for dismissal

(except from 1 September 2021 in case the business does not continue, see section 2.4 below).

1.5. Portugal

In general terms employment protection does not vary according to the type of insolvency. The Portuguese Labour Code ("PLC") expressly states that the insolvency of the employer does not entail the automatic termination of the employment agreement. The Portuguese Insolvency Code ("PIC") provides for various types of insolvency (e.g. voluntarily, compulsory, aiming at liquidation, with a view to the company's recovery, etc.) depending on the criteria used. The level of legal protection afforded to employment agreements is the same regardless of the type of insolvency at stake.

1.6. Spain

In Spain, the level of employment protection and the measures established to safeguard employees do not vary depending on the type of insolvency faced by the employer.

Broadly speaking, there are two types of insolvency proceedings: (i) voluntary (i.e. the insolvency proceedings are initiated by the debtor); or (ii) compulsory (i.e. the insolvency proceedings are initiated by creditors or other parties who, although not creditors, nevertheless have legal standing to file for the debtor's insolvency).

Regardless of the type of insolvency, the general principle in Spain is that a declaration of insolvency does not affect the company's contracts (including employment contracts), which remain in force. Consequently, insolvency proceedings do not lead to the automatic suspension or termination of employment relationships and cannot constitute a cause for dismissal (i.e. the economic, technical, productive or organisational grounds underlying the insolvency must be proven in order to justify the dismissals or suspensions implemented).

1.7. Sweden

There are two main forms of insolvency proceedings in Sweden: (i) corporate reconstruction; and (ii) bankruptcy. Although there are generally no significant differences in the employment protection rights between the two insolvency proceedings, there are two key exceptions. These are noted in sections 4 and 5 below.

1.8. The Netherlands

In the Netherlands there are 4 types of insolvency: (i) debt restructuring arrangements; (ii) suspension of payment; (iii) bankruptcy; and (iv) a factual insolvency (there is no court ruling yet, but the employer can no longer pay staff wages and creditors). Aside from the factual insolvency, which has no immediate legal implications for the employees, the three main types of insolvency have different implications for employees.

The protection of the employees barely changes during a debt restructuring arrangement. Certain important entitlements, including the right to receive a statutory severance payment (the transition payment) is lost in case of a suspension of payment. Bankruptcy is a more far-reaching insolvency proceeding and has, in contrast to the other types, multiple consequences for the protection of the employees. A company in the Netherlands can be declared insolvent if the company has ceased payment to at least two creditors. The request could be filed by a creditor or the company itself. The most drastic consequences for employees relate to the dismissal protection and more specifically (i) the loss of the extensive test of a reasonable ground for termination, (ii) shorter notice periods and (iii) the loss of the employee's entitlement to receive the statutory severance payment (the transition payment). This is discussed in more detail in section 2.8 below.

1.9. United Kingdom

In the UK, there are multiple different types of restructuring and insolvency procedures, ranging from terminal liquidation (or winding up) procedures, to a number of different forms of receivership, a standalone moratorium procedure and 'rescue' procedures such as administration, and various types of procedures to effect compromises or voluntary arrangements. The protection for employees on each type of insolvency process does vary for some purposes, but not others. The effect on the employment contract is different (see paragraph 2.9 below) as is the treatment under TUPE (see paragraph 4.9 below). However, access to the UK guarantee fund, the National Insurance Fund ("NIF"), simply requires that the employer has become insolvent (and the definition of insolvency for this purpose includes all the main types of insolvency procedure). The same is true for the preferential status of remuneration for the four months preceding the insolvency (capped at £800 per employee).

2. What effect does the employer's insolvency have on the employment contract?

Overview

The effect on the employment contract varies depending on jurisdiction. In certain countries (such as Finland, Italy and Spain) the effect is that the contracts are terminated, suspended or are substantially modified. In other countries (such as France, Germany, Portugal and Sweden) the general principle is that the employment contracts are preserved – albeit the notice period may be shortened in Germany and Sweden. In both the Netherlands and the United Kingdom, the effect differs according to the type of insolvency proceeding.

2.1. Finland

In practice, employment contracts are usually terminated soon after the company has been declared bankrupt. The bankruptcy of an employer itself is considered a lawful ground for termination. In reorganisation situations employers may terminate employment contracts if deemed necessary to avoid bankruptcy or if redundancies

derive from the reorganization programme. In both cases however, the employer must have redundancy grounds i.e. the amount of work has ceased or decrease substantially and permanently.

2.2. France

The key principle is the continuation of employment as usual. The commencement of the insolvency proceedings is not a cause for termination of the employment contract. These contracts remain in force and are governed by the same contractual conditions as those which applied prior to the opening of the proceedings. The exception is the case of economic dismissals during receivership and judicial liquidation. In the case of receivership/liquidation, economic dismissals will no longer be permitted without the prior approval of the bankruptcy judge or the Tribunal.

2.3. Germany

Except for the potential change of the employer (see paragraph 1.3 above), the employer's insolvency does not, in principle, affect the employment relationship. The contractual rights and obligations under the employment contract, applicable shop agreements and / or collective bargaining agreements continue to apply unchanged.

This is also true for the strict German statutory termination protection pursuant to which terminations of employment generally require a social justification. The employer's insolvency alone does not justify terminations. However, the decision to implement restructuring measures such as a partial or full closure of a business can be a justifying reason to terminate employment relationships.

German insolvency law does, however, affect the applicable notice period. Employment relationships can be terminated with a maximum notice period of three months to the end of the month, unless a shorter notice period applies. This is also true for employment contracts which could, without insolvency, not be terminated ordinarily, such as for example fixed term contracts. Similarly, the maximum notice period for shop agreements is also three months to the end of a month.

2.4. Italy

If the insolvent business aimed to terminate the employment relationship, a redundancy procedure (individual or collective) has to be carried out. However, a new Insolvency Code (the "Code") will be in force from 1 September 2021 and it provides that the opening of the winding-up procedure (so called "judicial liquidation proceeding") against the employer, although not constituting grounds for dismissal, in case the business does not continue, even temporarily, will automatically suspend employment relationships until the liquidator, with the authorization of the delegated judge, having consulted the committee of creditors, informs the employees that he will be taking over or withdrawing. The suspension of the relationships entails the freezing of every contractual benefit, first and foremost the salary, but also vacations, leaves of absence,

additional monthly payments, severance pay and any other benefits connected with company seniority.

The new Code also provides that, in case of continuation of the insolvent business, the bankruptcy trustee can decide whether to suspend employment relationships. In this scenario, if the bankruptcy trustee does not decide whether to terminate or not the employment relationships after four months from the date of opening of the judicial liquidation, the employment relationships will be terminated by operation of law, with no need for the collective redundancies procedure to be carried out.

2.5. Portugal

The judicial declaration of insolvency does not impact the employment agreements entered into by the insolvent company, meaning that the insolvency itself does not cause the automatic termination of the employment agreements. Termination of employment agreements will follow the same rules set forth for non-insolvent companies. For instance, collective dismissals may need to take place (because of the company's difficult financial situation) and the closure of the company's establishment will entail the termination of the employment agreements.

The declaration of insolvency by the insolvency court entails the appointment of an insolvency administrator (*administrador de insolvência*), who will carry out the activity of the insolvent's business and make the day-to-day management decisions. Additionally, the insolvency administrator receiver must fully satisfy the insolvent obligations towards its employees, until the respective establishments are definitely closed. The insolvency administrator may decide to carry out a cost-reduction plan, e.g. through the dismissal of employees whose functions are considered non-essential to the insolvent's activity.

It should be noted however, that the insolvency administrator's decision powers are limited. For instance, he/she cannot make standalone decisions that will ultimately increase costs and harm the interests of the insolvent's creditors. From a labour standpoint, this may make the hiring of new employees difficult.

2.6. Spain

Even if the general rule is that filing for insolvency does not affect employment contracts, in practice, the company is usually forced to carry out dismissals, temporary lay-offs, substantial modifications of employment conditions, etc. with the aim of restructuring its costs and restoring the company's financial health and profitability.

Once the insolvency has been declared, dismissals, substantial modifications of employment conditions, relocations, temporary lay-offs, temporary reductions of working hours for economic, technical, organisational or production grounds will be carried out in accordance with the rules established in Royal Legislative Decree 1/2020 of 5 May approving the Consolidated Text of the Spanish Insolvency Law ("Insolvency Law") when they are collective in nature. Labour legislation will apply in connection with all matters not covered by the Insolvency Law.

If there is a collective process (e.g. collective redundancy, temporary lay-off, etc.) underway when a company is declared insolvent, the insolvency judge will take charge. If an agreement has already been reached or the company's decision has been notified, the insolvency receiver will be responsible for implementing it.

2.7. Sweden

The employee's employment will continue as normal although the liquidator or assigned reconstructor may terminate the employment by observing the normal redundancy procedures (except for the requirement of trade union redundancy consultations in connection with a bankruptcy proceeding, see section 5.7 below).

A reconstruction may result in a reorganisation or renegotiations of employment terms and conditions (e.g. a lower salary, reduced working hours, new work duties etc.), but the employee's rights under the employment contract are not affected by the fact that it is a reorganisation or renegotiation in connection with an insolvency. The normal rules and restrictions apply to effect changes to the employment contract.

An employee's right to compensation under the employment contract remain throughout a reconstruction process or bankruptcy proceedings. However, given the insolvency, it is not unusual that the employer lacks funds to pay salaries and benefits. In such case, the state guarantee will, up to a certain amount and for a certain period of time, cover the salary costs. If the state salary guarantee is to cover notice pay, it will only cover the notice period set out in statutory law, regardless of what notice periods that are individually or collectively agreed. The employee is free to terminate the employment contract at any time during an insolvency process by observing the applicable notice period.

2.8. The Netherlands

The position varies depending on the type of insolvency.

During a debt restructuring arrangement there are no specific deviations. The employment agreements remain in place, a dismissal permit is still required and the notice period is also unchanged. The Employment Insurance Agency may only award temporary unemployment benefits to employees. In case of termination, the employer generally owes the employee a transition payment as a mitigation of the consequences of dismissal. This is the case if the employer terminates the employment contract, if a fixed-term employment contract is not continued on his initiative or if the employment contract is terminated by the employee himself as a result of seriously culpable actions by the employer. The compensation is intended to cover disadvantages and ease the transition to another job.

A suspension of payment results in some changes in employee protection. The employer acts jointly with a court appointed administrator following the suspension of payments. This implies that cooperation and consent of the administrator is required for any major decision. Employment agreements are typically sought to be terminated, but a dismissal permit to be obtained from the Employment Insurance Agency is still

required before notice can be given. The Employment Insurance Agency may award temporary unemployment benefits to employees. If the employment terminates during the suspension of payment (after the employer has obtained the required dismissal permit), no transition payment is due.

A bankruptcy means a significant loss of employee protection. After the declaration of insolvency, the supervisory judge appoints a bankruptcy trustee. With authorisation from the supervisory judge, the bankruptcy trustee – which is typically given automatically without any detailed testing of the reasonableness of any dismissal – is entitled to terminate the employment agreements without obtaining the dismissal permit from the Employment Insurance Agency. The applicable termination period depends on terms of the relevant employment agreement, but is capped following bankruptcy. The maximum is a period of six weeks. For these types of dismissal, the transition payment is no longer due.

2.9. United Kingdom

Some procedures, including administration and company voluntary arrangements (CVAs), have no automatic effect on the employment contract.

In an administration context, the administrator may well decide to make dismissals. They may otherwise be found to have "adopted" the contracts. There is a 14 day grace period, after which administrators should elect either to adopt or not. Continuing to pay salary would usually be enough to constitute adoption, as would claiming under the Coronavirus Job Retention Scheme (the "CJRS"), for example. If a contract is adopted, the wages of those employees must be paid in priority to the administrator's own fees and expenses.

On compulsory liquidation, the general principle is that employment contracts terminate automatically. There may be some exceptions to this, including where the liquidator continues to trade in liquidation.

On voluntary liquidation (both members' and creditors'), there is no automatic termination unless the employment contract provides for it (which it often will). With receivership, it depends on the type; court-appointed receivership results in automatic termination, but others don't.

3. What amounts can be claimed by employees from a state guarantee institution if the employer is insolvent (and what conditions apply to such a claim)?

Overview

In each jurisdiction, there is a type of state guarantee institution that may allow employees to claim unpaid amounts. However, the amounts and conditions differ according to the jurisdiction. In Finland, pay security is paid up to a current maximum amount of EUR 15,200. In France, coverage is limited in time/type of rights, up to a current maximum of EUR 82,272. In Italy, the entire severance payment is guaranteed. In Portugal and Spain, employees' unpaid labour credits are partially covered in insolvency. In

Sweden, a guarantee of approximately EUR 20,000 may be provided from the state guarantee institution. In the UK, up to 8 weeks' arrears or pay, up to 6 weeks' holiday pay, plus certain termination payments and unpaid contributions to a pension scheme are guaranteed.

3.1. Finland

The current maximum amount of pay security for one employee for work carried out for the same employer is EUR 15,200. The pay security authority will investigate the employer's insolvency and the conditions for paying pay security on the basis of an employee's application. Any claims the employer would be obliged to pay to its employee can be paid as pay security. An application for unpaid claims to be paid as pay security must be filed within three months of the date they fall due. Pay security is only paid to employees with a valid employment contract. The Unemployment Insurance Fund compensates the state annually for the difference between capital paid as pay security and capital collected from employers. The funds needed for the purpose are collected from employers in the form of unemployment insurance contributions.

3.2. France

There is limited coverage awarded by the guarantee institution called Assurance Garantie des Salaires ("AGS"). There are two key limits applicable to the coverage.

Firstly, the coverage of the AGS is limited in relation to both the type of rights and the time period for the claim. The AGS guarantees payments of:

- the sums due to the employees upon the judgment commencing reorganization or liquidation proceedings;
- the claims resulting from the termination of employment contracts which occurs during:
  - the observation period; within a month following the judgment approving the safeguard, reorganization or transfer plans;
  - within 15 days following the judgment pronouncing the liquidation; and
  - during the period when the debtor's activities may be continued; and
- In case of liquidation, up to one and a half month of salary, the sums due to the employees in consideration for the performance of the employment contracts during:
  - the observation period; the 15 days following the liquidation judgment; and
  - the period when the debtor's activities were temporarily continued.

Second, the total amount of insurance benefits each employee may claim, arising from the performance as well as the termination of employment contracts, is determined according to the length of service of the employees:

- for 6 months of service before the opening judgement for insolvency, the maximum is currently set at EUR 54,848;
- between 6 months and 2 years of service before the opening judgement for insolvency, the maximum is currently set at EUR 68,560; and

- for more than 2 years of service before the opening judgement for insolvency, the maximum is currently set at EUR 82,272.

3.3. Germany

In the event of the employer's insolvency, the employee can potentially claim two types of state allowances: (i) insolvency allowance (*Insolvenzgeld*); and (ii) *Gleichwohlgewährung*.

In an insolvency situation, employees may apply for an insolvency allowance by the competent employment agency. The purpose of the insolvency allowance is to secure the employees' outstanding compensation entitlements of the last three months prior to the opening of insolvency proceedings. This is to ensure that employees receive their outstanding salary for the period until the opening of the insolvency proceedings, which would otherwise be insolvency claims. The insolvency allowance corresponds to the employee's net salary and must be applied for within two months following the initiation of insolvency proceedings (or a rejection due to a lack of assets).

Further, in any case in which the employer does not pay the remuneration agreed under the employment contract, employees may apply for the so-called *Gleichwohlgewährung*, which means that the employees receive unemployment benefits despite being employed for the period in which they do not receive their contractually agreed compensation from the employer. To the extent that the employees in fact receive unemployment benefits, the employees' compensation entitlements are transferred to the employment agency by operation of law.

If the prerequisites for both claims (insolvency allowance and *Gleichwohlgewährung*) are met, the competent employment agency shall reduce the insolvency allowance by the amount received by the employee under a claim for *Gleichwohlgewährung*.

3.4. Italy

Italian law provides for a State Guarantee Fund (the "**Fund**") for the severance payment (the "**TFR**") and employment-related credits. This Fund guarantees the payment of the entire TFR to the extent that it is ascertained in the insolvency or individual proceedings opened against the employer.

For the employer subject to insolvency proceedings, the requirements for intervention by the Fund are: (i) the termination of the employment relationship; (ii) ascertainment of a state of insolvency and the opening of bankruptcy proceedings, composition with creditors, compulsory administrative liquidation or extraordinary administration; and (iii) ascertainment of the existence of a claim for severance indemnities and/or the last three months' salary. The assessment in bankruptcy, extraordinary administration and compulsory liquidation takes place with the admission of the claim to the statement of liabilities of the procedure, which determines the extent of the obligation of the Fund.

Moreover, the Fund guarantees the payment of the employment-related credits relating to the last three months of the employment relationship, up to a sum equal to three times the maximum measure of the extraordinary monthly salary integration treatment

net of welfare and social security deductions (approx. 80% of the employee monthly salary with a cap). Only employment-related credits (other than the TFR) having the nature of remuneration in the strict sense of the term, including thirteenth month's pay and other additional monthly payments (up to a maximum of three payments), as well as sums due from the employer for sickness and maternity benefits, may be charged to the Fund. On the other hand, the following must be excluded: the indemnity in lieu of notice, the indemnity for vacations accrued and not taken, the indemnity for illness paid by INPS that the employer should have advanced.

In order for the Fund to intervene the employment-related credit must be ascertained with: (i) judgment; (ii) injunction; (iii) decree of enforceability of the settlement agreement reached before the competent labour authority; (iv) warning issued by the competent labour authority.

3.5. Portugal

Employees may claim labour credits arising from the execution, breach or termination of the employment agreement. If the employer is not able to pay all labour credits, the Salary Guarantee Fund (*Fundo de Garantia Salarial*), partially covers these debts, subject to two limits.

Firstly, each employee may only claim credits up to six months' remuneration, considering a maximum monthly salary of three times the national minimum wage (currently EUR 1,995 for Portuguese mainland). Second, labour credits that became due in the six months prior to the request of insolvency have priority. Only when these credits do not reach the maximum limit guaranteed by the fund (i.e. six times EUR 1,995) or where there are no credits that vested during that reference period, may the employee claim credits that became due afterwards.

The Salary Guarantee Fund will only intervene at the employees' request, which must be submitted within one year after the termination of the employment agreement.

3.6. Spain

The Salary Guarantee Fund ("**FOGASA**") partially guarantees employees' unpaid salaries and severance payments in situations such as insolvency. The limits are as follows:

- salaries: 2 x daily national minimum wage ("**SMI**", which is currently EUR 36.94) x No. of days of salary owed (max. 120 days); and
- severance payments: maximum of one year's salary (the salary used to calculate them cannot exceed 2 x SMI).

FOGASA will be subrogated to the employees' creditor position.

3.7. Sweden

If the employer becomes insolvent (regardless of whether the company is under reconstruction or has filed for bankruptcy), the employee may be entitled to state salary

guarantee corresponding to a maximum of four price base amount (*Sw. prisbasbelopp*), up to a current maximum of approximately 20000 EUR.

The state salary guarantee covers salary claims relating to the period of three months before the filing of bankruptcy/reconstruction and up until one month after a formal decision is made on the reconstruction/bankruptcy (but only up to a maximum of eight months). Except for claims relating to notice pay, any claims relating to the period outside of this timeframe will be handled as a regular claim against the employing entity. The claim may relate to outstanding salary payments, certain pension contributions, vacation pay and/or other remuneration related to the employment.

In relation to notice pay, the state salary guarantee will cover salary and benefits (within the above mentioned limits) during the first month after a formal decision on bankruptcy/reconstruction is made, regardless of whether or not the employee works or is released from his/her work duties. For the remaining part of the notice period, the bankruptcy estate is responsible to pay salary if the employee works. If the employee is released from his/her work duties, the employee will be covered by the state salary guarantee (provided the employee is signed up as job applicant with the local employment office).

If the employer first initiates a reconstruction which subsequently fails and then files for bankruptcy, a new state guarantee "period" will apply to the bankruptcy proceedings.

3.8. The Netherlands

Salary claims that predate the insolvency date and arose within one year prior to that date are preferential claims. Preferential claims are claims that have a priority right to the proceeds of all or certain assets of the company. For example the claims of the tax and social authorities are preferential claims.

The salary and pension contributions between the insolvency date and the date of the termination of the employment agreement qualify as an estate claim. The same regime applies to a suspension of payment. Estate claims are direct claims against the company and have priority over all other claims. These claims arise by virtue of law. For example, rental payments during the insolvency. There are only two types of creditors that rank above the estate claims, they are called *separatisten*. These are Mortgage and Lien claimants. In conclusion, contractual severance qualifies as a non-preferential claim.

In practice, most of the employee's claims will be paid by the Employment Insurance Agency under the wage guarantee scheme. The Employment Insurance Agency will subrogate in the claims of the employees towards the company. It concerns the salary over the period of notice and also the salary for the period until 13 weeks prior to the insolvency date and certain other amounts, e.g. holiday pay. However, the transition payment does not fall under the scope of the wage guarantee scheme. The above mentioned regime also applies to a suspension of payment. Importantly, the wage guarantee scheme is not applicable to employees who have left employment before the insolvency date.

3.9. United Kingdom

In a liquidation, or an administration in which distributions are being made to creditors, the general rule is that claims for arrears of wages and benefits, or damages from wrongful or unlawful dismissal would rank as unsecured claims (meaning that in most cases they are unlikely to be recoverable in full). However, employees have preferential status for some of their claim, being sums owed for 'remuneration' (which includes wages or salary, sick pay, contractual/statutory maternity pay, contractual commission or bonus, overtime payments, employee contributions to occupational pension schemes, and certain other payments) in respect of the period of four months before the 'relevant date' (such date differs depending on the type of insolvency proceeding). Preferential debts have a higher ranking in the order of priority, and so the prospects of recovery are greater (although in any case recoveries will of course depend on the extent of the company's distress). However, the priority for an employee as a preferential creditor is limited, currently to a total sum of £800. Clearly, an employee may be owed a great deal more than this.

In order to provide further protection to an employee who finds themselves having to prove for the remainder of sums outstanding, the employee has a right to recover certain debts from the NIF.

Eligibility to claim from the NIF arises on the company's entry into a designated insolvency procedure. The other conditions are that: (i) the employee's employment has to have been terminated (although there are special rules where the employee has transferred under TUPE to deem a termination for these purposes); and (ii) on the 'appropriate date' the employee must have been entitled to be paid the whole or any part of any debt for which the protection of the state guarantee applies.

The types of claim that can be made on the fund are limited to: any arrears of pay up to a maximum of eight weeks and up to 6 weeks' holiday pay (both of which are subject to statutory caps), plus certain termination payments (statutory notice pay plus basic award for unfair dismissal, or statutory redundancy pay) and unpaid contributions to a pension scheme.

If the NIF meets any claim, then the Secretary of State has a matching (or subrogated) claim against the company in insolvency. If the claim is a preferential claim of the employee, the NIF will also have preferential status for that part of the claim.

4. What special rules for employees apply to the sale of an insolvent business?

Overview

In Finland, normal rules regarding transfer of undertakings apply during the reorganisation procedures as well as during bankruptcy. In France, Germany, Italy and the UK, TUPE regulations will apply with certain exceptions. In Portugal, the rules on transfer of undertakings within an insolvency proceeding will only apply if the insolvency was not instituted with a view to the company's liquidation. In the Netherlands, European rules on

the transfer of undertaking are not applicable in case of a sale during insolvency proceedings. In Sweden, no special rules apply for employees employed in an insolvent business that is being sold, except in the event of an ARD transfer, in connection with a bankruptcy.

4.1. Finland

Normal rules regarding transfer of undertakings apply during the reorganisation procedures as well as during bankruptcy. If the business or part of the business of a bankrupt estate is sold, the employees will transfer to the transferee if the special notice period of 14-days has not yet expired. If the employment contracts have been terminated by the bankrupt estate and the notice period has expired prior to the transfer, the employees will not transfer. Where a business is assigned by a bankrupt's estate, the assignee is not liable for the employee's pay or other claims deriving from the employment relationship that have fallen due before the transfer, except if controlling power in the bankrupt enterprise and in the assignee enterprise is or has been exercised by the same persons on the basis of ownership, agreement or other arrangement.

4.2. France

The first step is that the court may adopt a plan whereby the debtor's business will be transferred to a third party. In practice, several bidders will make offers to buy the company and will indicate *inter alia* how many positions they propose to take over and other commitments regarding working conditions and the continuation of employment.

The second step is that when adopting the transfer plan in the context of receivership or a liquidation procedure, the Tribunal may limit the number of positions to be transferred and therefore, approve the dismissals of some employees working for the business to be transferred. Such dismissals are an exception to the principle set by TUPE. Other TUPE provisions remain applicable, especially the maintaining of the contractual terms and conditions after the transfer and the consequence of the transfer on the collective status of the employees. However, it is up to the new employer to decide whether it will recognize rights that may have accrued prior to the transfer (such as holiday rights).

4.3. Germany

In principle, German TUPE applies to the sale of an insolvent business by way of an asset deal. However, under German case law, the purchaser is not liable for obligations that arose prior to the initiation of insolvency proceedings, including, in particular, pension contributions in respect of the period until the opening of insolvency proceedings.

Further, German insolvency law facilitates restructuring measures such as, for example mass redundancies or the closure of an establishment. Prior to an operational change, it is mandatory to conclude a compromise of interests (*Interessenausgleich*) and a social

plan (*Sozialplan*) with the competent works council. If a compromise of interests is concluded, which includes a list of the names of the individuals who shall be terminated due to an operational change, a legal assumption applies that the termination of the listed employees is in fact justified by overriding operational requirements. Therefore, in the event of a termination due to operational requirements as a result of insolvency restructuring measures, the listed employees bear the full burden of proving that the notice of termination is invalid. Additionally, the court's powers of review in relation to the selection of employees to be terminated based on social criteria is limited to material deficiencies.

Furthermore, the costs of mass redundancies will also be lower in an insolvency. In the event that a social plan is concluded after the opening of the insolvency proceedings, the maximum amount the employer is obliged to pay to the employees affected by dismissals due to the operational change under such social plan is limited to 2.5 x monthly salary. Additionally, no more than one third of the insolvency assets may be used for claims under the social plan. This even applies if the compromise of interests and social plan are concluded during insolvency but the restructuring measures shall only be implemented after the transfer of undertakings.

4.4. Italy

Depending on the purpose of the specific insolvency procedure (i.e., winding-up purpose or direct/indirect continuation purpose), the impact of the employer's insolvency on a transfer of business may vary.

If the insolvency proceedings have been instituted with a view to the liquidation of the assets, if a trade union agreement with the aim of safeguarding (even partially) employment is reached, TUPE protections do not apply, which means that: (i) only some of the employees working for the going concern can be transferred to the purchaser; (ii) no joint liability applies; and (iii) the transferee is entitled to apply worse economic and legal conditions than those applied by the transferor.

In the event, in the frame of the insolvency proceedings, the business continues, if a trade union agreement with the aim of safeguarding (even partially) employment is reached, only some TUPE protections do not apply, which means that: (i) no joint liability applies; and (ii) the transferee is entitled to apply worse economic and legal conditions than those applied by the transferor.

4.5. Portugal

The employment protections within a transfer of undertakings in the ARD do not apply where the transferor is the subject of a bankruptcy proceedings or any analogous insolvency proceedings instituted with a view to the liquidation of the assets, unless the Member States provide otherwise. Portuguese legislation has not provided otherwise, and this position has been confirmed in Portuguese case law. This means that, within an insolvency proceeding, the rules on transfer of undertakings will only apply if the insolvency was not instituted with a view to the company's liquidation.

4.6. Spain

There are special rules applicable to the sale of an insolvent business. For instance, an insolvency judge can rule that the acquirer is not subrogated to the obligations assumed by FOGASA.

Moreover, the main changes in the new Insolvency Law are aimed at preserving business and employment by facilitating the acquisition of production units from other companies:

- only the insolvency judge can declare there is a transfer of undertaking (this reduces uncertainties for the acquirer);
- the joint and several liability of the acquirer is limited to labour and social security debts associated with the transferred employees; and
- only severance payments for dismissals or terminations of employment contracts occurring after the insolvency petition are credits against the insolvency estate.

It is worth noting that the Spanish Government may have exceeded the scope of its powers by introducing the new provisions in the manner that it did (i.e. using the consolidation of the law's text, which should be limited to harmonising, and not amending, existing legislation). These new provisions may therefore be susceptible to legal challenge in the future.

4.7. Sweden

No special rules apply for employees employed in an insolvent business that is being sold, except in the event of an ARD transfer in connection with a bankruptcy. In the event of an ARD transfer in connection with a bankruptcy, employees do not have the right to automatically transfer to the transferor. However, the priority right to re-employment does transfer.

4.8. The Netherlands

European rules on the transfer of undertaking are not applicable in case of a sale during insolvency proceedings. Dutch insolvency law is based on the idea of liquidation of companies in order to pay off creditors, which leads to a maximum loss in terms of both economic activity and employment. However, this might be different in a pre-pack scenario, where currently employees can claim years of service at the buyer, which impacts amongst other things their severance entitlements. Therefore, the relaunch of a business could be risky for the entrepreneur, but it is still unclear when employees, under a pre-pack arrangement are protected, and when they are not. The Dutch Supreme Court has asked preliminary questions to the European Court of Justice about the position of employees in a transfer of an undertaking prepared by a pre-pack. In the meantime, a new Dutch law is being prepared to arrange that the transfer of undertaking protection could be applicable to pre-pack insolvencies.

4.9. United Kingdom

In respect of court-appointed receivership, fixed charge receivership and members' voluntary liquidation, TUPE applies as normal.

However, TUPE distinguishes between two types of insolvency processes:

- In respect of administration, CVAs, and administrative receivership, these are known as "Regulation 8(6) transfers". This means that TUPE applies as normal, save that certain debts do not transfer and are instead picked up by the NIF (these are the ones already discussed at paragraph 1.9 above). There are also extended rights for the transferor to make transfer-connected variations to terms and conditions, although these are very rarely used in practice.
- For compulsory liquidation and creditors' voluntary liquidation Regulation 8(7) applies. This means that most of TUPE does not apply - there is no automatic transfer of employment (or associated liabilities), and no restrictions on changing terms or dismissals. The obligations to inform and consult with employee representatives, and provide employee liability information) apply as normal - to the extent possible, given that there is no transfer of employment.

5. Do any special rules apply to redundancies in an insolvency context?

Overview

With the exceptions of Italy and the United Kingdom, different special rules apply to redundancies in an insolvency context in each jurisdiction. In Finland, the employment contract may be terminated by either party if the employer company is declared bankrupt. In France, different special rules apply to the "Safeguard Procedure" and "Receivership and Judicial Liquidation". In Germany, termination of employment in these circumstances generally requires a social justification. In Portugal, terminations occurring within an insolvency proceeding are considered termination by expiry, rather than redundancies. In Spain, the application for collective redundancy must be filed with the insolvency judge by the company, the insolvency receiver or the employee representatives. In Sweden, the liquidator may serve notice of dismissal without prior trade union consultations in the event of redundancies in connection with a bankruptcy proceedings. In the Netherlands, only a bankruptcy has consequences for the dismissal protection.

5.1. Finland

According to the Employment Contract Act ("ECA"), if the employer company is declared bankrupt, the employment contract may be terminated by either party regardless of its duration with a notice period of 14 days. This applies equally to fixed-term employment contracts. The bankruptcy itself is considered a lawful termination ground.

Under the Restructuring of Enterprises Act, the employer is entitled to terminate the employment contract with a notice period of two months regardless of its duration (including fixed-term contracts), if:

- the termination derives from an arrangement or measure to be carried out during the reorganisation procedure which is necessary to avoid bankruptcy and which causes the work to cease or decrease substantially and permanently; or
- the termination derives from a procedure in accordance with a confirmed reorganisation plan that causes the work to cease or decrease substantially and permanently, or if the termination derives from an arrangement in accordance with the plan, which is attributed to financial grounds established in the confirmed reorganisation plan, and calls for a reduction in personnel resources.

As a result of an employer's reorganisation, an employee may terminate his/her employment contract with 14-days' notice. This however does not generally apply to fixed-term contracts, unless it has been specifically agreed between the parties that the fixed-term contract can also be terminated with notice.

During reorganisation procedures, an employer has a "reduced" co-operation obligation regarding redundancies. The Co-operation Act applies to employers regularly employing at least 20 employees. The negotiation period during the reorganization, regardless of the type or scope of redundancies, is 14 days. In the event of bankruptcy, no co-operation obligation regarding the redundancies exists.

5.2. France

In respect of safeguarding procedures, the general rules of redundancies apply during the observation period. After the adoption of the safeguard plan, the general rules of economic dismissals also apply except for the time period granted to the Labour Administration to validate or approve the redundancy plan, which is reduced to 8 days.

In respect of receivership or judicial liquidation, an economic dismissal will only be authorized by the bankruptcy judge if it is "urgent, inevitable and indispensable" during the observation period. Certain obligations are waived, for example, there is no obligation to offer redeployment leave (but only a professional security contract) and no obligation to revitalize employment areas. There is also no obligation to comply with the Florange Law, which imposes an obligation on establishments of 50 employees or more to seek a buyer to take over the business before implementing the closure of an establishment which would lead to collective redundancies. In addition, certain consultation obligations are modified. For example:

- consultation of the works council (comité social et économique – CSE): the works council must give its opinion no later than the working day preceding the hearing adopting the recovery plan;
- elaboration of a redundancy plan does not necessarily have to be proportionate to the means of the group; and
- in respect of the validation or homologation of the redundancy plan, the time limit granted to the Labour Administration is reduced to 8 days in receivership proceedings and to 4 days in liquidation proceedings (starting from the last meeting of the works council).

Moreover, a specific obligation is added. The notification of the redundancies must take place within one month following the adoption of the recovery plan or within 21 days following the judgment of judicial liquidation or the end of the period of provisional maintenance of the activity in order for the employees to be covered by the AGS.

5.3. Germany

The strict German statutory termination protection provides that terminations of employment generally require a social justification. The opening of an insolvency procedure itself does not present a justifying reason for dismissal.

However, insolvency law provides for the following exceptions to the statutory protection regulations:

- in the event of a regular insolvency, only the insolvency administrator, having assumed the employer's rights and obligations, is authorised to terminate the employment contract; and
- in relation to all employment relationships, the maximum notice period is three months to the end of the month, unless a shorter notice period applies. This is also true for employment contracts which, in principle, cannot be terminated ordinarily, such as for example fixed term contracts or if the ordinary termination of the contract is excluded.

On a premature termination of the employment contract, the employee can claim for reimbursement of loss of earnings against the insolvency administrator.

5.4. Italy

Currently, there are no special rules for redundancies in an insolvency context. Therefore, the ordinary collective redundancy procedure applies (when an employer with more than 15 employees dismisses/intends to dismiss at least 5 employees in 120 days). In case of collective redundancy, a special trade union consultation procedure must be followed; this procedure is divided in two phases (one in front of the unions and one in front of the competent administrative bodies) and it lasts approximately 75 days. Moreover, the employees to be made redundant must be selected based on the technical, production and organisational needs of the company according to either: (i) the criteria agreed with the unions during the consultation procedure; or, if no agreement is reached (ii) the criteria envisaged by law (i.e., family burdens, length of service – last in, first out – and technical, production and organisational reasons).

Certain exceptions apply to collective redundancies in the context of a judicial liquidation; the main one is that, according to the new Insolvency Code, the collective redundancy procedure consists of only one phase (instead of two) and is completed in 10 days (instead of 75).

There are employer costs associated with the redundancy procedures, such as: (i) notice period pay; (ii) an end of service allowance, including TFR (which corresponds to approximately 7.4% of an employee's remuneration, accruing monthly throughout the employment relationship); and (iii) a contribution called "NASpI ticket" (which is a

payment due to the Italian Social Security Authority and represents the unemployment benefit the employee will receive from the Authority). The maximum amount per redundant employee is approximately EUR 1,500 if an agreement with the unions is reached, and approx. EUR 4,500 if no agreement is reached. For some employers, subject to certain conditions, the amounts are doubled.

Commonly employers will also pay an additional payment (the amount of which is a matter of negotiation) in exchange for the employees waiving their rights to bring any employment-related claims, and the unions generally require that the employees be paid for the waiver.

5.5. Portugal

Strictly speaking, terminations occurring within an insolvency proceeding (even if due to a collective cost-reduction procedure) are considered termination by expiry, rather than redundancies.

However, in practical terms, the proceeding set forth for collective dismissals must be followed (except in the case of micro-companies, i.e. companies employing less than 10 employees in the previous year). In this scenario, the only applicable special rule is the one that allows for severance compensation and labour credits to be paid after the end of the prior notice, as opposed to regular collective dismissals, where such payment must take place, in full, before the employment agreement is effectively terminated (otherwise, the dismissal may be deemed unlawful).

5.6. Spain

The application for collective redundancy must be filed with the insolvency judge by the company, the insolvency receiver or the employee representatives. The insolvency judge then instructs the company, insolvency receiver and employee representatives to start a consultation period (group companies may also be required to attend). At the end of the consultation period, the insolvency judge will be informed of the result:

- with agreement: the judge approves the redundancy (unless the judge finds evidence of fraud, coercion or abuse of rights);
- without agreement: the judge summons the parties to a hearing. Subsequently, the judge will issue a decision based on labour regulations.

Only the insolvency judge can approve the collective redundancy. This is a key difference compared with proceedings outside of the context of insolvency, in which case a company can carry out a collective dismissal without authorisation or approval from an authority.

5.7. Sweden

In the event of an initiated bankruptcy proceeding, the employer or liquidator may serve notice of dismissal due to redundancy without prior trade union consultations (consultations are otherwise required if the employer is bound by a collective bargaining agreement or if the employee is a trade union member). In the event of a

reconstruction, the employer must consult in accordance with the ordinary consultation obligations before serving notice of dismissal.

5.8. The Netherlands

Only a bankruptcy has direct consequences for the dismissal protection. With authorisation from the supervisory judge, the bankruptcy trustee is entitled to terminate the employment agreements without having to obtain a dismissal permit from the Employment Insurance Agency. Also, the transition payment will not be due in case of bankruptcy. This is also the case if termination follows after suspension of payment. See section 3.8 above for further information.

5.9. United Kingdom

There are no special UK rules which apply to redundancies in an insolvency context. Collective redundancy consultation is still required if 20 or more dismissals are proposed at one establishment within a period of 90 days or less. This is often simply not possible in a distressed scenario and the potential liability for directors and insolvency office holders can be a source of significant concern. Although there is a 'special circumstances' exception to this consultation requirement, the exception is very narrowly construed, and entry into an insolvency procedure is unlikely, of itself, to qualify. Insolvency may be a mitigating factor when the tribunal is determining the amount of the protective award (which is capped at 90 days' pay per affected employee).

In practice, collective redundancy consultation in an insolvency context remains a real issue – full compliance is often simply not possible. The government undertook a call for evidence on this issue in 2015, and announced that it intended to explore how consultation can be improved where collective redundancies are proposed in insolvency or near-insolvency situations, but no changes have yet been made.

6. Have any emergency protections been enacted in the context of the Covid-19 pandemic?

Overview

No emergency protections have been enacted in Spain, Sweden or the Netherlands in the context of the COVID pandemic. In Portugal, there are no specific emergency protections in an insolvency scenario, however other emergency measures that have been enacted have had the collateral effect of slowing down insolvency proceedings. In Finland, changes were recently made to the Bankruptcy Act which made it more difficult for creditors to file for bankruptcy. Similarly in France, Germany and the UK, insolvency rules have also been adapted to support businesses in response to the COVID-19 pandemic. In Italy, there is currently in force a temporary ban on dismissals, however, this prohibition does not apply to redundancies of employees of a bankrupt company, where business activity does not continue.

6.1. Finland

Changes were made to the Bankruptcy Act in Spring of 2020 which made it more difficult for creditors to file for bankruptcy. These changes were in force until February 2021 and the number of bankruptcies filed during this period decreased by 20 percent. New changes were made to enter into force at the same time the previous ones expired. The temporary changes in force until September 2021 prolongs the payment period before the creditor can file bankruptcy from seven to 30 days. The changes aim to give debtors enough time to make payment arrangements to eventually avoid bankruptcy.

6.2. France

The number of business insolvencies decreased by 35.9% in 2020 compared to 2019. This decrease can be explained by the measure allowing a company not to be regarded, legally, in a state of suspension of payments if it was not in such a state on 12 March 2020. The reduction of business insolvencies is also due to public interventions (for example, loans guaranteed by the State, partial unemployment).

Insolvency rules were adapted in May 2020 in response to the Covid-19 pandemic:

- the extension of the accelerated safeguard proceedings to small businesses (the minimum thresholds being 20 employees, EUR 3 million in turnover or EUR 1.5 million in balance sheet to allow the debtor to apply for accelerated safeguard proceedings);
- the possibility of extending currently existing continuation / safeguard plans; and
- new-money privilege (cash contributors during the insolvency proceedings can benefit from an additional guarantee in the event of subsequent liquidation).

6.3. Germany

As a reaction to the challenges for undertakings caused by the Covid-19 pandemic, the German legislator has taken a number of measures in order to prevent insolvency and redundancies. These include:

- temporary suspension of the obligation to file for insolvency for companies that suffered financial hardship due to the pandemic (although this suspension expired on 30 April 2021);
- easier access to the short-time allowance (*Kurzarbeitergeld*) – a governmental subsidy compensating loss of pay resulting from reduction of working hours; and
- financial support offered by the government as part of the Covid-19-Aid-Sceme (*Corona-Hilfsprogramm*).

6.4. Italy

Emergency legislation was enacted in response to the Covid-19 pandemic. Currently, this legislation enforces a ban on dismissals as follows:

- Industrial sector companies: from 1st of July, the ban applies only to companies that make use of the wage supplementation fund (called CIGO or CIGS) and only for the period of actual use of the fund;
- Specific industrial companies (textiles and clothing, leather, fur and similar items): the ban applies until 31st October 2021 regardless of whether the companies make use of the wage supplementation fund; or
- "Non-Industrial" sector companies (e.g., trade, travel and tourism, credit and insurance, air transport): the ban applies until 31 October 2021, again regardless of whether the companies make use of the wage supplementation fund.

However, such prohibition does not apply to redundancies of employees of a bankrupt company, if there is no temporary continuation of business activity. Another exception to the prohibition is dismissals motivated by the final and ultimate termination of the activity, consequent to the liquidation of the company. This is unless there is a total or partial transfer of the company, in which case the protection of Article 2112 of the Italian Civil Code is applied to each employee involved.

6.5. Portugal

The strategy of the Portuguese government to face the pandemic and avoid negative economic and social impacts has been to avoid insolvencies, redundancies and problems of liquidity amongst the Portuguese private economy by creating and granting state aids that help companies survive this crisis with the ultimate aim of protecting employment. Therefore, although there are no specific emergency protections in an insolvency scenario, other emergency measures that have been enacted have had the collateral effect to slow down insolvency proceedings. In this context, the following three labour measures are worth noting:

- Expedited lay-off procedures have been adapted to the Covid-19 pandemic, which enables employers to suspend employment agreements or reduce employees' working hours, complemented by state aids and partial exemption of social security charges.
- Covid-19 credit lines and moratoriums on bank credits have been granted.
- There has been a suspension of the duty of the debtor to file for insolvency.

6.6. Spain

No emergency protection for employees in insolvency situations has been enacted in the context of the Covid-19 pandemic. References to insolvency in Covid-19 regulation try precisely to avoid insolvency. For example, companies that have temporarily laid-off employees (with deduction in social security contributions) must maintain employment for six months unless there is a risk of bankruptcy.

6.7. Sweden

There are no emergency provisions in relation to insolvency. Certain measures have however been implemented by the government to financially support employers and employees, measures such as:

- short-time furloughs (applicable until September 2021)
- reimbursing employers for part of the sick pay paid during the period up until September 2021; and
- compensating employees for loss of income during qualifying day of sickness (Sw. *karensdag*).

6.8. The Netherlands

There are no specific changes to redundancies or insolvency procedures enacted due to the Covid-19 pandemic. However, the Dutch government introduced the temporary emergency bridging measure for sustained employment ("NOW"). Employers can apply for compensation if the employer has a substantial loss of turnover (at least 20%). The NOW is also applicable to subsidiaries that suffer a loss of 20% or more, even if the business group's total turnover loss is below this threshold. The compensation is meant for the payment of employees with a permanent, fixed contact, or flexible contracts. There are various conditions, among others the employers are required to pay the employees in full (100%) and it is forbidden to pay out bonuses or dividend. While the NOW initially contained a prohibition to terminate employment, this requirement was dropped relatively soon after the introduction of the scheme.

6.9. United Kingdom

In addition to the CJRS and several other COVID-related grant and loan schemes for businesses, a number of emergency insolvency provisions were enacted in the UK in spring 2020. These included temporary restrictions on the use of statutory demands and winding-up petitions, which are currently due to expire on 30 September 2021.

There have also been a number of new measures which are intended to be permanent, including the introduction of a new restructuring plan procedure and a freestanding moratorium. The new moratorium is a standalone procedure that distressed companies can access to provide 'breathing space' to formulate a rescue plan - in the form of restrictions on certain debts and security being enforced, and on insolvency proceedings being commenced.

The new moratorium has a number of implications for employment:

- During the moratorium there is a payment holiday from pre-moratorium debts, but this does not include wages and salaries of employees. This means that the company still has to pay both its pre-existing employee arrears as well as ongoing employee salaries and wages during the moratorium.
- There is also a prohibition on legal proceedings being initiated against the company without the permission of the court. There is however a carve-out for all employment tribunal proceedings, and any other legal proceedings between the employer and a worker.
- A new category of "super-priority debts" is created, if the company enters into administration or liquidation within 12 weeks of the end of the moratorium. These "super-priority debts" include employee wages and salaries relating to a period of

employment before or during the moratorium. These debts (in addition to the fees or expenses of the monitor), will rank ahead of all other claims, except those of fixed charge creditors.

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