

Press Release

Redundancy, Bankruptcy and the Insolvency Payments Scheme

Law firm welcomes scheme – but does it go far enough?

1. Following the bankruptcy of Woolworths and the temporary scheme for payments to employees, the Minister for Employment and Social Security is consulting on a permanent scheme to work in tandem with statutory redundancy payments due to be introduced by an amendment to the Employment Law due in March 2010.

2. Jackie Woodworth, Associate at Le Gallais and Luce welcomes this development and comments that while the insolvency fund is very clearly intended to be a safety net and hardship fund rather than a guarantor of an employer's legal obligations, further reform to the bankruptcy law, bringing it into line with the UK, is necessary to protect employees fully in the event of their employer's insolvency.

Basis for the scheme

3. The permanent Insolvency Payments Scheme broadly follows the temporary scheme with regard to the qualifying criteria. However, it extends the time within which a claim may be made and greatly broadens the amount of claims which may be made. The temporary scheme only provided for payment of statutory periods of notice whereas the permanent scheme provides for unpaid wages and holiday pay, statutory redundancy pay and unpaid pension contributions in addition to notice pay. These payments will be subject to caps of probably £620 per week for redundancy pay and an overall cap of £10,000 for the total award.

Funding

4. The scheme will be funded by an increase in employers' Social Security Contributions, as the payments to be funded by the scheme are those which are properly the responsibility of the employer.

Who will qualify?

5. Employees who are dismissed before the formal insolvency is announced will qualify for a payment if their notice period takes their effective date of termination up to or past the date of insolvency – presumably to avoid additional administration no investigations as to whether their dismissal was due to the insolvency will be carried out. This could lead to an employee unfairly dismissed just before insolvency being entitled to a much smaller award than they would gain through the Employment Tribunal if the employer remained solvent. Equally, an employee fairly dismissed during the run-up to insolvency will receive an award from the insolvency fund that they would not be entitled to had the employer remained solvent.

6. Amendment 5 of the Employment Law, scheduled to come into force in March 2010, brings in a number of requirements for consultation if more than 21 employees are to be made redundant at any one time. If these are not followed, the Employment Tribunal may issue a so-called “protective award” of up to 13 weeks’ pay per affected employee.

7. Unlike in the UK, a protective award is not a preferential claim in a bankruptcy and so there will rarely be enough money remaining to pay it. In addition, the protective award will not be payable from the permanent insolvency fund.

8. In order to give the protective award legislation more “bite”, either the number of affected employees needed before the consultation requirements are triggered could be reduced to give a better chance of the award being made in respect of a solvent employer; or the bankruptcy legislation could be changed to give the award preferential status. This would give the affected employees a better chance of receiving the award through the bankruptcy proceedings while not affecting the amount paid out by the insolvency fund.

ENDS.

Jackie Woodworth is an Associate specialising in employment and property at Le Gallais & Luce. She acted collectively for the former employees of Woolworths Jersey after the insolvency of Woolworths Plc.

Note to Editors:

A copy of the consultation paper can be found at:

<http://www.gov.je/SocialSecurity/Employment/Employment+Relations/InsolvencyScheme.htm>