

## TRONDHEIM QUESTIONNAIRE

**1. Are there any specific regulation on insolvency proceedings?**

There is specific Insolvency Law(or Bankruptcy Law), in addition to the Civil Law, governing the insolvent proceedings. The Insolvency Law applies to either natural person or legal entity. However, the legal entity herein does not include the public legal entity.

**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.**

According to the Insolvency Law of Taiwan, the court is the only authority in charge of insolvent proceedings. In other words, only the court has the legal capacity to declare insolvency of a particular party. As a party is filing for insolvency, the court will firstly appoint Insolvent Supervisor, who is usually a Certified Public Accountant or an Attorney. The creditors of such a party is permitted to appoint one or more Auditor(s), representing the creditors to monitor the proceedings of insolvency. Such Auditor(s) has the right to be reported by Insolvent Supervisor about the progress. The Insolvent Supervisor has to propose a plan of payment and schedule for the review of the Creditors Meeting. If the Creditors Meeting agrees with such a plan, the court will approval the plan so the Insolvent Supervisor will execute the plan accordingly.

If there is dispute relating to employment, the Labor Law provides the Council of Labor Affairs under Executive Yuan and their branch have the legal capacity to do mediation, even the employer is under insolvent proceedings. However, if the mediation fail to enable agreement, the court is the only recourse for dispute resolution.

**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?**

No, the declaration of commencing insolvency proceedings does not automatically terminate the employment contract. Except otherwise agreed by the Creditors' Meeting, the subject party cannot continue its operation of business. As such, the Article 11 of the Labor Law applies that the Party or the Insolvent Supervisor may terminate the employment contract. However, in practice and most of the cases, before entering into insolvent proceedings, the subject party is in the status of unpayment and incapable of payment. Usually the employees terminate their contract with their employer before their employer entering into insolvency proceedings.

**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?**

Not applicable.

**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 Insolvent Supervisor has the legal capacity to terminate the employment as long as following the requirement specified by the Labor Law. The opening of insolvent proceeding is

considered as one of the cause specified in Article 11 of Labor Law, which Article provides the permissible causes of employer's termination.

The employee is entitled to severance set forth in the Labor Law and to the unemployment subsidy provided by the social welfare. The pension is provisioned by employer to employee's individual account, and, therefore, the employer does not have capacity to use it in any case, including in insolvent proceeding.

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

The Article 28 of the Labor Law specifies the debt less than 6-month salary should be paid on top of any debt, while the salary debt more than 6-month has no privilege or preference.

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

Yes. There is an administrative Fund of Payment for Unpaid Salary. Every enterprise has to provision certain amount to such a Fund. Employee is entitled to apply for payment for their salary debt less than 6-month from such a Fund.

**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?**

Yes. Such a Fund subrogates the right (including privilege, because less than 6-month salary debt) to claim for the repayment managed by the Insolvent Supervisor

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

There is no other impact or effect on employment by Insolvency.

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

To transfer a part of the whole enterprise, the Insolvent Supervisor has to have the agreement from the Auditor, who is appointed by the Creditors' Meeting, members of which include employees if their salary is unpaid.

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

The Law of Protecting Employees Under Mass Dismissal is a special law to the Labor Law.

Under such a Law, the requirement and protecting employees are as follows :

1. The enterprise has to have the causes specified in Article 11 of the Labor Law ;
2. The enterprise has to submit its Mass Dismissal Plan to the authority, union and each and every employees 60 days earlier. After 10-day of such submission, the employer and employee shall negotiate. If there is no agreement, the authority has to involve in such a negotiation. The key points of negotiation is (1) the cause of layoff, (2) the subject department/division to be laid off, (3) headcounts to be laid off, (4) the criteria of selecting layoff subject, (5)the unpaid salary and severance, and (6) the proposal of transferring the employees to other employment.
3. The Mass Dismissal should not apply to citizen employees unless there is no foreign employees.
4. If the employer, who is going to recruit others for the same job in the future, shall recruit those who has the same job function and was laid off.

5. If the laid-off employees are more than 20, such employees may apply for attorney fee assistance if there is legal proceeding relating to severance claim.
6. The local government should put into their budget to provide job training and living allowance (6-month maximum) for those employees who was mass laid off.
7. If the employee after mass dismissal is going to start up his/her business, the government shall provide them low interest loan.
8. In addition to the above, the unemployed is entitled to unemployment subsidy.

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