L.N. 432 of 2002

EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002 (ACT NO. XXII OF 2002)

Guarantee Fund Regulations, 2002

IN exercise of the powers conferred by article 21 of the Employment and Industrial Relations Act, 2002, the Deputy Prime Minister and Minister for Social Policy has made the following regulations :-

1. The title of these regulations is the Guarantee Fund Regulations, 2002. Title.

2. (1) In these regulations - Definition.

"Act" means the Employment and Industrial Relations Act, 2002.

(2) Subject to the provisions of subregulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. These regulations shall apply to employees' claims for unpaid wages arising out of contracts of service and existing against employers who are in a state of insolvency as defined in regulation 4 of these regulations, but shall not apply to : Applicability.

(a) outworkers, unless they have a written contract of employment;

(b) private domestic servants;

(c) relatives of the employer, without a written contract of employment;

(d) the spouse of the employer;

(e) persons who normally work for less than 18 hours a week for one or more employers;

(f) the crews of sea-going vessels;

(g) an employee who on his own or together with the spouse or the children, was the owner or part owner of the employer's undertaking or business in the last five years prior to the insolvency.

Insolvency.

4. For the purposes of these regulations, an employer shall be deemed to be in a state of insolvency :

(a) where a request has been made for the commencement of proceedings for bankruptcy under Part III of the Commercial Code or after the Court has either appointed a provisional liquidator or administrator, or a liquidator after a winding up order in terms of the Companies Act; and; or

(Cap. 386).

(b) it is established *prima facie* by the Guarantee Fund Administration Board that the employer's undertaking or business has been definitely closed down and that the available assets are insufficient to cover the payment of the claims in accordance with regulation 6 of these regulations:

Provided that the Guarantee Fund Administration Board shall have the power to appoint experts to assist it in any matter under its consideration if required.

Endowment.

5. The Guarantee Fund (hereinafter referred to as 'the Fund') established by virtue of article 21 of the Act is hereby being endowed with the sum of two hundred and fifty thousand liri (Lm 250,000) which shall be paid out of the Consolidated Fund over a maximum period of five years, at a minimum rate of fifty thousand liri (Lm 50,000) annually.

Utilisation of Guarantee Funds.

6. The Fund shall be utilised to guarantee payment of employees' outstanding claims for wages resulting from contracts of service, as defined in the Act, provided that:

(a) the employee shall register a claim on the Fund by not later than one month after the onset of the insolvency of the employer as defined in regulation 4 of these regulations; and

(b) the employee provides certified evidence that he has registered a valid claim for the unpaid wages in the insolvency proceedings of the employer; and

(c) the maximum amount paid out of the Fund for every individual claim shall not exceed a sum which is equivalent to thirteen weeks' national minimum wage payable at the time of the

dismissal or termination, less any unemployment or social assistance benefits to which the employee may be entitled in accordance with the Social Security Act for the period starting from the date of termination of the employment and ending on the end of the thirteenth week after such termination, and (Cap. 318)

(d) the claim registered by every individual employee shall be limited to the unpaid amounts due for unpaid wages, which, for the purposes of these regulations shall consist of the basic wage, any overtime worked but unpaid, any leave which should have been paid and any notice money payable in accordance with the provisions of the Act; and

(e) the claim registered by every individual employee refers to unpaid amounts which were due for wages payable during the last three months of the contract of service occurring within a period of six months preceding the date of the onset of insolvency of the employer or preceding the notice of dismissal, where such notice of dismissal is given on account of the employer's insolvency.

Administration of the Guarantee Fund.

7. (1) The Fund shall be administered by a Guarantee Fund Administration Board which shall be composed of:

(a) the Director of Employment and Industrial Relations who shall act as Chairperson;

(b) the four representatives of employees appointed on the Employment Relations Board in accordance with sub-article 2(c) of article 3 of the Act;

(c) the four representatives of employers appointed on the Employment Relations Board in accordance with sub-article 2(d) of article 3 of the Act;

(d) a member nominated by the Minister of Finance;

(e) the Chairperson of the Employment and Training Corporation; and

(f) a person appointed by the Minister who shall be a member of the legal profession.

(2) The Guarantee Fund Administration Board shall regulate its own procedure.

(3) The Guarantee Fund Administration Board shall keep proper books of account and records regarding claims registered and paid out of the Fund as well as any refunds which are obtained by the Fund as a result of its subrogated rights.

(4) The Guarantee Fund Administration Board shall publish an annual report of its activities, together with the annual audited accounts of the Fund.

Subrogation of Rights.

8. On receipt of payment made by the Guarantee Fund, the employee shall sign a statement subrogating the Guarantee Fund into all the employee's rights for the unpaid amounts due and shall undertake to provide to the Guarantee Fund any and all evidence, proof or statements which validate the claim against the employer and which will allow the Guarantee Fund to proceed with the claim against the employer, including an undertaking to give evidence in any proceedings that may take place in connection with the insolvency of the employer or the liquidation and distribution of the employer's assets.

Offence.

9. Any person who is found guilty of registering a false claim for unpaid amounts or who is found guilty of acting in collusion with an employer or an employee in order to obtain payments from the Fund, shall be guilty of an offence and shall be liable on conviction to a fine which is equivalent to ten times the amount paid out of the Fund, together with any other punishment to which the offender shall be liable according to any other applicable law.

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