



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1278 of 21 February 2003
LEGISLATION

ORDINANCE 1 OF 2003

AN ORDINANCE
TO FACILITATE THE OPERATION IN THE SOVEREIGN
BASE AREAS OF A FUND ESTABLISHED IN THE
REPUBLIC OF CYPRUS FOR THE PAYMENT OF CERTAIN
AMOUNTS OF MONEY TO EMPLOYEES WHOSE
EMPLOYER HAS BECOME INSOLVENT

T. W. RIMMER
ADMINISTRATOR

19 February 2003.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:-

1. This Ordinance may be cited as the Employment Rights (Insolvency of Employer) Ordinance 2003. Short title.

2. -(1) In this Ordinance, unless the context otherwise requires - Interpretation.

“employee” means an individual who works for another person under a contract of employment or apprenticeship, but does not include anyone who provides services under a contract for services, and references to a person’s employer shall be construed accordingly;

“the Holiday Fund” means the Central Holiday Fund within the meaning of the Annual Holidays with Pay Ordinance 1973;

“the Insolvency Fund” means the Fund for the Protection of the Rights of Employed Persons upon the Insolvency of the Employer, established under section 7 of Republican Law No. 25(I)/2001 as such Law may be amended or replaced;

“wage” includes any pecuniary remuneration arising from an employee’s employment and any non-pecuniary benefit arising from such employment which can be ascertained in pecuniary terms, but does not include any exceptional or ex gratia payments.

(2) References in this Ordinance to an employer being insolvent are to be construed as references to an employer in relation to whom an application has been made to the appropriate Court for the making of –

Ordinance 10/1973
as amended by
Ordinances
12/1979 and
21/1980.

- (a) a receiving order, in the case of an individual;
- (b) a winding up order, in the case of a company,

and in relation to whom the Court has made such an order, or the Court has established that the person concerned has ceased to be engaged in any commercial activities, or that the assets of the person concerned are insufficient to justify the making of such an order.

Entitled and non-entitled employees.

3. - (1) An employee whose employment is terminated by reason of the insolvency of his employer, shall be entitled to payment from the Insolvency Fund, provided that he has been employed for at least 26 consecutive weeks prior to the date on which his employer became insolvent:

Provided that any employee who, in the Chief Officer's opinion, has special relations and common interests with his employer which lead to collusion between them shall not be entitled to payment from the Insolvency Fund.

(2) The following persons shall not be entitled to payment from the Insolvency Fund –

- (a) an employee who is a shareholder and director of a company which is in voluntary liquidation;
- (b) an employee whose usual place of residence is not in the Island of Cyprus, if his employer –
 - (i) does not have his usual residence in the Island of Cyprus and does not carry out activities in the Areas;
 - (ii) is a firm which belongs exclusively to non-permanent residents of the Island of Cyprus, the management and control of which is carried out in the Island of Cyprus, but the rest of whose activities are carried out abroad;
- (c) an employee who is not a permanent resident of the Areas and who serves as the master or a member of the crew of a Cypriot ship or as the commander or a member of the crew of a Cypriot aircraft, the owner or manager of which carries out most of his activities in the Island of Cyprus.

Amount of payment.

4. - (1) The payment to which an employee is entitled, in accordance with section 3(1) shall include –

- (a) the wages due for the last thirteen weeks of his employment falling within the period of 26 weeks immediately preceding the date on which his employer became insolvent;
- (b) where the employer has a certificate of exemption regarding the payment of contributions to the Holiday Fund, payment for the proportion of leave due to the employee for the last thirteen weeks of employment, falling within the period of 26 weeks immediately preceding the date on which the employer became insolvent:

Provided that the contributions due from the insolvent employer to the Holiday Fund in respect of wages referred to above, shall be paid by the Insolvency Fund to the Holiday Fund;

- (c) the proportion of the 13th and 14th monthly salaries or the 53rd to 56th weeks' wages (as the case may require) due to the employee for the last thirteen weeks of his employment and falling within the period of 26 weeks immediately preceding the date on which the employer became insolvent.

(2) In the determination of the weekly remuneration, any amount exceeding four times the amount of the weekly basic insurable earnings as prescribed under the Social Insurance (Facilitation of Republican Social Insurance Scheme) Ordinance 1980 shall be disregarded.

Ordinance 16/1980 as amended by Ordinances 5/1983, 1/1984, 5/1985, 17/1985, 6/1987, 24/1987, 14/1988, 4/1990 and 1/1993.

5. - (1) Where a person entitled to receive a payment from the Insolvency Fund does not collect it within six months of the first day on which the payment is receivable by him, his right to collect the payment shall lapse:

Time limit on collection of payment.

Provided that the above time limit shall be extended for a period not exceeding six months if the person who is entitled to a payment proves that he had reasonable cause for failing to collect the payment at any time during the initial period of six months.

(2) For the purposes of this section, the day on which a payment is receivable means the first day on which either cash is put at the disposal of the beneficiary, or a cheque made payable to him may be cashed for the purposes of the settlement of the payment due.

6. The Insolvency Fund shall have legal personality in the Areas and shall have power to enter into contracts, to sue and be sued and carry on any activity relating to the functioning of the Insolvency Fund in the Areas.

Status of Insolvency Fund.

7. - (1) The Administrator may make regulations for the more effective application of this Ordinance.

Regulations.

(2) Without prejudice to the generality of subsection (1) above, such regulations may provide for –

- (a) the manner in which any application for a payment from the Insolvency Fund is to be made;
- (b) the conditions subject to which any payment from the Insolvency Fund may be made;
- (c) any other matter which is expedient, necessary, consequential, supplementary or complementary to any of the matters mentioned in paragraphs (a) and (b) above.

8. The Insolvency Fund shall be exempt from –

- (a) payment of any dues or duties under any legislation relating to Customs on any machinery (including parts, components, spares or accessories), appliances, vehicles, apparatus, equipment or any other goods imported for use by the Insolvency Fund and not intended for sale;
- (b) payment of stamp duties under any legislation relating to stamp duties;
- (c) payment of any other tax or charge not expressly provided as being payable by the Insolvency Fund.

Insolvency Fund exempt from duties, taxes and charges.

Offences and penalties.

9. (1) Any person who –

- (a) knowingly or negligently makes any application for a payment from the Insolvency Fund, which is false in any material particular; or
- (b) knowingly or negligently makes an oral or written false statement in relation to such an application; or
- (c) presents for examination, in relation to such an application, any document which he knows to have been intentionally forged,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand pounds or to imprisonment not exceeding six months or to both such penalties.

(2) Any person who either knowingly or negligently helps any person to commit or attempt to commit any of the offences described in subsection (1) above shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand pounds or to imprisonment not exceeding six months or to both such penalties.

(3) Any fine imposed under this section shall be payable to the Insolvency Fund.

Miscellaneous provisions.

10. - (1) No payments shall be paid by the Insolvency Fund in respect of unlawful dismissals or notices of dismissal.

(2) The rights of an employee and of the Holiday Fund against an insolvent employer in relation to any payment made by the Insolvency Fund shall be transferred to the Insolvency Fund.

(3) The temporary liquidator or receiver of the assets of an insolvent employer shall notify affected employees in writing of the situation of their employer no later than within a month from the date of his appointment.

Disputes.

11. - (1) Subject to the provisions of this section, the Industrial Disputes Tribunal shall have exclusive jurisdiction to determine any dispute of a civil nature (including any ancillary or incidental matter relating to such a dispute) arising from the provisions of this Ordinance or of any regulations made under this Ordinance.

Ordinance 6/1960.

(2) Part III of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960 shall apply to disputes of a civil nature arising from this Ordinance, and for such purpose –

- (a) any proceedings in connection with such a dispute shall be treated as civil proceedings and, as appropriate, as an action or an appeal; and
- (b) the Industrial Disputes Tribunal shall be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic shall be treated as a District Court of the Republic; and
- (c) any corporation, company or other body corporate established in the Republic under the provisions of any Law of the Republic shall be treated as a Cypriot.

(3) An award by the Industrial Disputes Tribunal or by the Industrial Disputes Court of the Republic under the provisions of this Ordinance shall be recoverable as a civil debt.

12. This Ordinance shall come into force on the day of its publication in the Gazette. Commencement.

19th February 2003
(107/4/3)

J.C.A. JARVIS CBE,
Chief Officer.
