

**SUBSIDIARY LEGISLATION 452.84****GUARANTEE FUND REGULATIONS**

1st January, 2003

*LEGAL NOTICE 432 of 2002, as amended by Legal Notices 444 of 2004, 413 of 2005 and 427 of 2007.*

**1.** (1) The title of these regulations is the Guarantee Fund Regulations.

Title and scope.  
*Substituted by:*  
*L.N. 444 of 2004.*

(2) The object of these regulations is to provide for the protection of employees in the event of the insolvency of their employer insofar as to guarantee payment of valid outstanding claims of unpaid wages, and to give effect to the relevant provisions of Council Directive 80/987/EEC.

**2.** (1) In these regulations -

Definition.  
*Amended by:*  
*L.N. 444 of 2004;*  
*L.N. 413 of 2005.*  
Cap. 452.

"Act" means the Employment and Industrial Relations Act;

"Administration Board" means the Guarantee Fund Administration Board;

"liquidator" includes an executor, an administrator, the official assignee or a trustee in bankruptcy, a receiver or manager, or a trustee under an arrangement between an employer and his creditors or under a trust deed for his creditors executed by an employer;

"Member State" means a member state of the European Union or of the European Economic Area;

"occupational pension schemes" means any scheme or arrangement which, forming part of a contract of employment, provides or is capable of providing, in relation to employees in any description of employment, benefits, in the form of pensions or otherwise, payable to or in respect of any such employees on the termination of their employment or on their death or retirement.

(2) Subject to the provisions of subregulation (1), 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, but shall not apply to:

Applicability.  
*Amended by:*  
*L.N. 413 of 2005.*

- (a) private domestic servants;
- (b) share-fishermen; and
- (c) an employee who, on his or her own or together with his or her parents, spouse, children or siblings, was the owner or part owner of the employer's undertaking or business and had a considerable influence on its activities.

Insolvency.  
*Substituted by:*  
*L.N. 444 of 2004.*

**4.** (1) For the purposes of these regulations, an employer shall be deemed to be in a state of insolvency -

Cap. 13.

(a) where a request has been made for the commencement of proceedings for bankruptcy of the employer under Part III of the Commercial Code and the Court has established 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 7; or

Cap. 386.

(b) the Court has either appointed a provisional liquidator or administrator, or a liquidator after a winding up order in terms of the Companies Act.

(2) The date wherein an employer shall be considered to be insolvent shall be the earlier of the date -

Cap. 386.

(a) of adjudication of bankruptcy by the Court; or

(b) when a liquidator is appointed in accordance with the Companies Act.

Endowment.  
*Amended by:*  
*L.N. 427 of 2007.*

**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 five hundred and eighty-two thousand and three hundred and forty-three euro and thirty-five cents (582,343.35) which shall be paid out of the Consolidated Fund over a maximum period of five years, at a minimum rate of one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) annually.

Utilisation of  
Fund.  
*Substituted by:*  
*L.N. 444 of 2004.*

**6.** (1) The Fund shall be utilized, at the Administration Board's discretion, to guarantee payment of valid claims for employees' outstanding wages and for contributions to be paid by the employer in respect of occupational pension schemes resulting from contracts of service, as defined in the Act, when the Administration Board is satisfied that the employer of an employee to whom these regulations apply, has become insolvent:

Provided that the maximum amount paid out of the Fund to an employee shall not exceed a sum which is equivalent to thirteen weeks' national minimum wage payable at the time of the termination of employment of such employee.

(2) Without prejudice to subregulation (1), the Administration Board shall only take cognizance of a claim if -

(a) the employee has registered a valid claim for unpaid wages with the Administration Board within one month from the onset of the insolvency of the employer as defined in regulation 4, 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 with the Department for Industrial and Employment Relations, and

(c) 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 for the relevant unpaid period, any unpaid overtime, arrears for any leave entitlement for the current and preceding calendar year, and any notice money payable in accordance with the provisions of the Act; and

- (d) 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 notification of termination; and
- (e) the employee binds himself to reimburse the Fund with a sum equivalent to the amount paid out of the Fund by the Administration Board in respect of the claim made by the employee from any amounts retrieved from any court proceedings or from any settlement received from a liquidator, as the case may be.

(3) The employee shall, on registering a claim with the Administration Board, forward any documentation which may be necessary to enable the Administration Board to reach a decision as to the validity of the claim being presented and the Administration Board may request any information from any person to enable it to perform its obligations, and it shall be the duty of any such person to cooperate fully with the Administration Board.

(4) The Administration Board shall regulate its own procedure.

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

(6) The Administration Board shall have the power to appoint experts to assist it in any matter under its consideration, as may be required.

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

(8) The Administration Board shall have a distinct legal personality and shall be capable of entering into contracts, of suing and being sued, and doing all such things and entering into such transactions as are incidental or conducive to the fulfilling of its objectives.

(9) The legal and judicial representation shall vest in the Chairperson or in any other member of the Administration Board whom the Chairperson may authorize in writing for such purpose.

(10) The address of the Administration Board shall be any such address which may be in use from time to time as the head office of the Department of Industrial and Employment Relations, and any correspondence shall be addressed to the Chairperson.

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

Occupational  
pension schemes.  
Substituted by:  
L.N. 444 of 2004.

**8.** (1) If an employee or persons competent to act in respect of an occupational pension scheme, make a valid claim to the Administration Board and the Administration Board is satisfied that on the date of insolvency there were relevant contributions remaining to be paid by the employer to the scheme, the Administration Board shall, subject to the provisions of this regulation, pay into the assets of the scheme out of the Fund the sum which in the Administration Board's opinion is payable in respect of the unpaid relevant contributions.

(2) In this regulation "relevant contributions" means contributions due to be paid by an employer in accordance with an occupational pension scheme, either on his own account or on behalf of an employee:

Provided that for the purposes of this regulation a contribution of any amount shall not be treated as due to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.

(3) The sum payable under this regulation in respect of unpaid contributions of an employer on his own account to an occupational pension scheme shall be the lesser of the following amounts:

- (a) the balance of relevant contributions remaining unpaid on the date on which the employer became insolvent and payable by the employer on his own account to the

scheme in respect of the period of twelve months ending on the day immediately preceding that date,

- (b) the amount certified to the Administration Board's satisfaction to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer.

(4) Any sum payable under this regulation in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee's contributions to the occupational pension scheme during the period of twelve months ending on the day immediately preceding the date on which the employer became insolvent.

(5) The provisions of subregulations (6), (7) and (8) shall apply in a case where a liquidator has been appointed.

(6) Subject to subregulation (8), the Administration Board shall not, in a case referred to in subregulation (5), make any payment under this regulation in respect of unpaid relevant contributions until it has received a statement from the liquidator of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the liquidator shall, on a request made by the Administration Board, provide the Board as soon as reasonably practicable with such a statement.

(7) Subject to subregulation (8), an amount shall be taken to be payable under subregulation (3) or to have been deducted in the manner referred to in subregulation (4), only if it is certified by the liquidator as being so payable, or to have been so deducted.

(8) The Administration Board may, if the applicant so requests or, if the Administration Board thinks fit, without such a request, make a payment under this regulation, notwithstanding the fact that no statement or certificate referred to in subregulation (6) or (7) has been received, if -

- (a) a period of six months has elapsed since the application for a payment under this regulation was received by the Administration Board, but no such payment has been made,
- (b) the Administration Board is satisfied that a payment under this regulation should be made, and
- (c) it appears to the Administration Board that there is likely to be further delay before it receives a statement or certificate about the contributions in question.

**9.** On receipt of payment made by the Administration Board, the employee shall sign a statement subrogating the Administration Board into all the employee's rights for the unpaid amounts due up to the amount reimbursed to the employee by the Administration Board and shall undertake to provide any evidence, proof or statements which validate the claim against the employer and to proceed with the claim against the employer, including an undertaking to give evidence in any proceedings that may take

Subrogation of rights.  
Added by:  
L.N. 444 of 2004.

place in connection with the insolvency of the employer or the liquidation and distribution of the employer's assets.

Insolvency  
proceedings.  
Added by:  
L.N. 413 of 2005.

**10.** (1) Notwithstanding any other provision in these regulations, in the case of any state of insolvency, where a request has been made for the opening of collective proceedings based on insolvency of the employer as provided for under the laws, regulations and administrative provisions of a Member State, occurring and affecting an undertaking with activities in the territories of at least two Member States, the guarantee institution responsible for meeting any employees' outstanding claims made on or after the 8th October, 2005 shall be the institution in the Member State in whose territory the employees registering their claim habitually work, and the extent of the employees' rights shall be determined by the law of the Member State governing the competent guarantee institution.

(2) In the cases referred to in subregulation (1), where insolvency proceedings have been requested in a Member State other than Malta, any decision taken by the competent administrative authorities in that Member State shall be taken into account by the Administration Board in determining the employer's state of insolvency in respect of any valid claims registered with the Fund.

(3) For the purpose of facilitating the implementation of the provisions of subregulation (1), the Administration Board shall take the necessary measures to co-operate fully with the competent administrative authorities and the guarantee institutions in other Member States responsible for meeting any employees' outstanding claims in terms of Council Directive 80/987/EEC, and such measures shall include the request for and provision of any information considered necessary in any particular case.

Offence.  
Amended by:  
L.N. 444 of 2004;  
L.N. 413 of 2005.

**11.** 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 (*multa*) 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.

---