

Enhanced protection for employees in insolvency situations under new Irish collective redundancy legislation

Insights - 24/05/2024

The Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024 (the "**Act**") was signed into Irish law on 9 May 2024. The commencement date of the Act has yet to be confirmed. The drafting of the Act was initiated as part of the government's 2021 Action Plan which proposed to enhance the protections afforded to employees and ensure transparency in a collective redundancy situation where the company is insolvent.

| Key employment law provisions of the Act

1. Responsible person

The Act inserts a new definition of a "responsible person" into the Protection of Employment Acts 1977 – 2014 (the "**1977 Act**") which will include a Liquidator, a Provisional Liquidator, a Receiver or any other person appointed by the court where they assume full control of the business.

2. Duty to consult and inform

- **Consultation:** Employers' obligations to inform and consult with employees in a collective redundancy situation will now be extended to the responsible person. In that regard, the responsible person should initiate consultations with employee representatives and notify the Minister for Enterprise, Trade and Employment (the "**Minister**") of the proposed redundancies. The consultation period should commence at the earliest possible opportunity and no notice of dismissal should be given until at least 30 days of consultation after notifying the Minister has been completed. The Act also provides that a responsible person may continue a consultation already commenced by the employer.

- **Information:** The 1977 Act sets out the details which should be provided to employee representatives. The Act now extends the obligation to provide information to a responsible person.

3. Removal of the exemption to notify the Minister

In a collective redundancy situation, employers are not permitted to effect any redundancies until at least 30 days has lapsed since notifying the Minister. Previously, an exemption to this rule applied where the employer is insolvent and the court was being wound up pursuant to a court ordered liquidation. However, under the Act, this exemption has been removed meaning that even where the employer is insolvent, no redundancies must take effect until at least 30 days of consultation has taken place after notifying the Minister.

Failure to notify the Minister of the proposed collective redundancies is an offence and may result in a class A fine on summary conviction.

4. Means of notification to the Minister

Under the 1977 Act, notification to the Minister must be provided by way of registered post. However, the Act amends this section to provide for notification to be sent by electronic means i.e. email.

5. Redress

Should an employer effect a redundancy before the 30 day consultation period has concluded, an employee can now bring a claim to the Workplace Relations Commission (the "**WRC**"). This avenue of redress applies to all collective redundancy situations, not just in an insolvency scenario. If a finding is made that the employer or responsible person has breached their obligations to either consult with employee representatives, provide them with information or notify the Minister as required under the Act, they could be liable on summary conviction to a potential fine of up to €250,000 and an award of up to four weeks gross remuneration being made to the employee.

| Key company law provisions of the Act

The Act also aims to improve the quality and circulation of information to employees as creditors in an insolvency situation by amending the Companies Act 2014 as follows:

1. Duties of company directors

The Act introduces an obligation on company directors to notify all employees and employee representatives of a winding up petition *"at the time that petition is presented or as soon as reasonably practicable after such presentation."*

2. Provisional Liquidator

The Act provides that the High Court direct the appointed Provisional Liquidator to inform employees and employee representatives of his/her appointment, explain the process and invite them to provide information they have which they deem would provide a complete overview of the company's affairs.

3. Statement of Affairs

Within seven days of receiving the Statement of Affairs, the Act places an obligation on the Liquidator to notify employees and employee representatives of this fact.

4. Related companies

The Act provides that the High Court direct the appointed Provisional Liquidator to inform employees and employee representatives of his/her appointment, to explain the process and to invite them to provide information they may have which might be relevant to the Provisional Liquidator.

Conclusion

It is clear that where a company is insolvent, the Act attempts to ensure that consultation with employees in a collective redundancy situation is meaningful and transparent and not simply a box-ticking exercise. Should this situation arise, employers and responsible persons must ensure to familiarise themselves with their obligations under the Act. This is particularly so as they can no longer rely on the insolvency exemption to avoid their obligation to notify the Minister and the heightened responsibility to provide information to employees and employee representatives. Failure to do so may result in significant fines and numerous awards being made to each employee who brings a complaint to the WRC.

For further information on the Act or for assistance/guidance in managing a collective redundancy process, please contact our Employment or Dispute Resolution team via their contact details below.

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