

Act No. 27 amending Act No. 61 of 14 December 1973 to provide for a State guarantee for wage claims in the event of bankruptcy, etc. and certain other Acts (amendments to the Wage Guarantee Act, etc.), dated 15 May 1998

Proposal No. 38, Presentation No. 45, Decision No. 53 (1997-98). Submitted by the Communal and Regional Council on 30 April and 7 May 1998.

To amend the following Acts:

1. Act No. 86 respecting legal fees, dated 17 December 1982;
2. Act No. 58 respecting debt negotiation and bankruptcy (the Bankruptcy Act), dated 8 June 1984
3. Act No. 59 respecting the right of creditors to settlement (the Settlement Act), dated 8 June 1984
4. Act No. 44 respecting unlimited companies (the Companies Act), dated 13 June 1997

I

Act No. 61 to provide for a State guarantee for wage claims in the event of bankruptcy, etc., dated 14 December 1973, shall be amended as follows:

Section 1 shall read:

"The payment of claims for wages and other similar claims which cannot be covered due to the filing of a bankruptcy petition against an employer, shall be covered by the State under the provisions of this Act. The same shall apply in cases where insurance companies and banks are placed under public administration and in cases of the public winding up of insolvent estates and companies, as exceptions under section 13-2 of the Companies Act.

The guarantee shall cover claims for wages due and other compensation for work in respect of an employment relationship, including holiday pay, claims against the employer for pension entitlements and earnings from work which have been lost, and any interest and costs arising out of the recovery of any such claim. The guarantee shall also cover any costs incurred by a workers' organization in connection with the recovery of a worker's claims.

The claims shall be covered by the guarantee to the extent that they benefit from a priority right under Chapter 9 of the Act respecting the right of creditors to the settlement of their claims which, however, shall be limited in each individual case to a sum corresponding to three times the national insurance ceiling on the day of the time-limit. The provisions of rules in Chapter 9 of the Settlement Act shall apply in so far as possible in relation to banks and insurance companies under public administration. The time-limit shall be the date of the adoption of the decision of the public administration.

The guarantee shall also cover reasonable costs incurred by workers or workers' organizations in relation to a bankruptcy petition. The claims shall be covered to the extent they are claims against gross assets under section 9-2 (1) (2) of the Settlement Act, and where the estate itself does not have the means to settle them.

If a worker transfers a claim referred to in this section before the filing of a bankruptcy petition, the State wage guarantee shall not be applicable. The same shall apply if a third party, before the filing of bankruptcy procedure, in any other way intervenes in the claim against an employer after having resolved or settled the worker's claim. However, the guarantee shall not become invalid when a public authority takes over the claim. Nor shall the guarantee become invalid when other persons take over or replace the claim, and it is evident that this has not been effected by means of any concealed assets of the enterprise or any other misuse of the preferential wage guarantee."

Section 7 shall read as follows:

"A worker who agrees to be engaged in employment with an employer and who knows, or who should have known, that the employer is not able to cover current wage commitments, may be refused settlement. Settlement may also be refused in cases where workers know, or should have known, that the employment situation or condition, or a change in the employment agreement, is conditional on the claim being totally or partially settled by the State guarantee."

II

Act No. 58 respecting debt negotiation and bankruptcy (the Bankruptcy Act), dated 8 June 1984, shall be amended as follows:

A new third point, third paragraph, of section 78 shall read as follows:

"In cases where there are workers in the debtor's enterprise, the administrators shall also notify the employment office in the district in which the enterprise is situated and indicate the workers which have a claim to the estate."

III

Act No. 59 respecting the right of creditors to settlement (the Settlement Act), dated 8 June 1984, shall be amended as follows:

Section 9-3 (1)(3)(1) shall read as follows:

"The due date for the payment of a claim shall not be earlier than four months before the time-limit."

Section 9-3 (1)(3)(5) shall become 9-3 (1)(3)(4) and shall read as follows:

"The priority right shall not cover wage and other compensation for work during periods of notice which are greater in length than the periods of notice set out in section 58 (1- 4) of the Working Environment Act, unless longer periods of notice are provided for in a wage agreement concluded six months prior to the time-limit."

Section 9-3 (1)(1)(4) shall become 9-3 (1)(1)(5) and shall read as follows:

"The priority right shall only cover amounts in excess of other income earned by the claimant during the same time period in so far as it replaces income from the debtor enterprise. Daily cash benefits paid during unemployment under the terms of Chapter 4 of the National Insurance Act shall not be considered to constitute other income in this context. The public authorities may request the repayment by the estate of daily cash benefits with the same priority right enjoyed by the person whose claim they substitute."

Section 9-3 (1)(2) shall read as follows:

"Entitlements to holiday pay accumulated in respect of up to 30 months which are due to a worker who is not covered by point 1 (a-e) above. The entitlement must not have been accrued more than 24 months prior to the expiry of the time-limit, unless the validity of the entitlement is not more than four months prior to the expiry of the time-limit. Holiday pay in respect of a wage claim or other compensation for work shall only be settled to the extent the claim enjoys priority under point 1 (2, 4 and 5) above. A claim respecting entitlements to holiday pay arising out of wages or other compensation from work earned after expiry of the time-limit may enjoy priority under point 1 (3)(2) above."

Section 9-3 (2) shall read as follows:

"The claims referred to in paragraph one above shall enjoy a priority right where the due date for payment is over four months prior to the time-limit in cases where the claimant without any undue delay:

- 1) has endeavoured to obtain the claim but has not had the resources to press the claim, which the estate shall accept; or
- 2) has taken the action, referred to in section 63 of the Bankruptcy Act, to file a bankruptcy petition against the debtor's enterprise, but has not succeeded in having it granted within the time-limit of four months for bankruptcy petitions."

IV

Act No. 86 respecting legal fees, dated 17 December 1982, shall be amended as follows:

A new section 17 (1) (4 and 5) shall be inserted and shall read as follows:

"A worker who, on grounds of failure to pay wages, etc. has filed a bankruptcy petition against her/his employer, shall be exempted from paying legal fees. However, the probate court may order the payment of up to three times the legal fees if it finds that the worker has instigated the bankruptcy procedure with the aim of harming the employer, or in general where the petition has been filed without any reasonable grounds."

V

Section 21-3 (30) of Act No. 44 respecting unlimited companies, dated 13 June 1997, shall be amended and shall read as follows:

"In Act No. 61 respecting the State guarantee for wage claims in the event of bankruptcy, etc., dated 14 December 1973, section 1(1)(2) shall read as follows:

The same shall apply in the case of insurance companies or banks placed under public administration and in the case of the public administration of insolvent estates and insolvent companies as an exemption in accordance with section 16-15 and section 16-16 of the General Companies Act."

VI

This Act shall enter into force on the date to be decided by the King.