

# PROTECTION OF EMPLOYEES (COLLECTIVE REDUNDANCIES) BILL 2016

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*Mar a tionscnaíodh*

*As initiated*

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ACT REFERRED TO

Companies Act 2014

Protection of Employees (Employers Insolvency) Act, 1984

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PROTECTION OF EMPLOYEES (COLLECTIVE REDUNDANCIES) BILL 2016

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# Bill

*entitled*

An Act to provide for protections for employees in collective redundancy situations in which the employer is insolvent and to provide for related matters.

**Be it enacted by the Oireachtas as follows:**

## **Interpretation**

1.—In this Act—

“*employee*” means a person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, is express or implied, oral or in writing, and whether it is a contract of service or apprenticeship or otherwise, and “*employer*” and any reference to employment shall be construed accordingly;

“*Minister*” means the Minister for Social Protection.

“*related person*” : an employer is related to another person if—

- (a) that other person is its holding company or subsidiary; or
- (b) the employer is a company limited by shares and more than half in nominal value of its equity share capital is held by the other person and persons related to that other person (whether directly or indirectly, but other than in a fiduciary capacity); or
- (c) the employer and the other person are both companies limited by shares and more than half in nominal value of the equity share capital of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- (d) that other person or a person or persons related to that other person, or that other person together with a person or persons related to it, are entitled to control the exercise of more than one half of the voting power at any general meeting of the employer; or
- (e) the businesses of the employer and that other person have been so carried on that the separate business of each, or a substantial part thereof, is not readily identifiable; or

(f) there is another person to which both the employer and the other person are related, and “related person” has a corresponding meaning.

“*the court*” means the High Court established by section 2 of the Courts (Establishment and Consitution) Act 1961.

“*the act of 1984*” means the Protection of Emplpyees (Employers’ Insolvency) Act, 1984

“*trade union*” means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941.

### **Power of the Court to return assets which have been improperly transferred**

2.—(1) The court has the following power where, on the application of the Minister or the liquidator and/or a trade union or other employee representative in respect of a situation in which collective redundancies have arisen in circumstances in which the employer is insolvent, it can be shown that;

(a) The employer is unable to fully discharge the debts owing to the employees;

(b) any property of the company of any kind whatsoever was disposed of either by way of conveyance, transfer mortgage, security, loan or in any way whatsoever whether by actor or omission, direct or indirect, and

(c) the effect of such a disposal is to perpetrate a fraud on the company’s employees by leaving inadequate resources to discharge the entitlements of the employees who are subsequently made redundant as a result of the employers insolvency.

(2) The power of the court is to order, if it deems it just and equitable to do so, any person who appears to have-

(a) the use, control or possession of the property concerned, or

(b) the proceeds of the sale or development of that property,

To deliver it or them, or pay any sum in respect thereof, to the liquidator on such terms or conditions as the court thinks fit.

(3) If the Minister makes a payment to employees pursuant to Section 10 of Act of 1984 then the Minster shall have the right to make an application under *subsection (1)* of this section on order to recover the sum expended.

### **Preferential Creditor status for employees**

3.- (1) Assets or value accrued pursuant to section 2 form part of the assets of the employer for the purposes of the liquidation and shall be distributed in accordance with section 621 of the Companies Act 2014.

(2) Notwithstanding the generality of the foregoing payments due to discharge the entitlements of the employees who have been made redundant as a result of the employers insolvency shall have priority to all other debts.

### **Defences**

4.- (1) It shall be a defence to an application made under section 2 for an employer and/or transferee to produce a director's statement prepared at the time of the transaction to the effect that all accrued liabilities of the employer were quantified and assessed and the transfer was executed in reliance on a report of an actuary or an accountant to the effect that the employer was in a position to discharge all accrued employee entitlements after then transfer was implemented.

### **Power of delegation to Liquidator**

5- (1) If the minister wishes to make an application to the court pursuant to section 2(3) the Minister may delegate his power to pursue such an application to the Liquidator and may provide funds to the Liquidator for that purpose.

(2) The minister may exercise the power of delegation and the expenditure of au funds as envisaged in *subsection 1* once he is satisfied that the likelihood and value of a successful outcome justifies such an application.

### **Amendment to the Act of 1984**

6.-(1) The Act of 1984 is hereby amended by the insertion of the following subsection in section 10:

“(5) in pursuing the objectives of this section the minister shall have the power to delegate to a liquidator responsibility for making an application under section 608 of the Companies Act 2014 and may put the liquidator in funds for the purpose of making such an application once the Minister is satisfied that the likelihood and value of a successful outcome justifies the taking of such steps.”

### **Requirement for Consultation Period**

7. (1) The Act of 1984 is hereby amended by the insertion of the following section after section 14:

“14 A (1) Where a decision is in contemplation by a person in relation to an asset of significant value over which it exercises control and it is known, or ought to be known, that collective redundancies will arise in a related person in consequence of that decision, if implemented, that undertaking shall:

- (a) Inform the employer concerned of the proposal to take the decision,
- (b) Provide the employer concerned with such information as may be necessary for that employer to ascertain: -
  - (i) The number of redundancies that may occur
  - (ii) The timeframe within which the redundancies may occur
  - (iii) The financial and other resources that may be available to the employer from which debts to employees in respect to the matters referred to in section 6(2) of this Act can be met by the employer

(2) In the circumstances outlined in subsection 1 of this section the employer concerned should also be obligated to notify the Minister in accordance with section 12 of this Act.

(3) In the circumstances outlined in subsection 1 of this section the consultation period of 30 days prescribed by sections 9 and 12 of this Act shall apply.

(4) The consultation period referred to in subsection 3 of this section shall relate to the matters referred to at section 9(2) of this Act, as well as to the extent of the employer's liability in respect to the matters referred to at section 6(2) of this Act.

(5) Any decision to which subsection 1 of this section is applicable shall not be implemented until such time as the consultation period referred to in subsection 3 has been completed.

(6) A failure on the part of a related person in control of an asset to which this section is applicable to comply with its obligations under this section shall be guilty of a criminal offence and be liable on summary conviction to a fine not exceeding €5,000.

(7) A related person who fails to comply with provisions of this section may be found liable to discharge the accrued liabilities of the employer, including the claims of its employees, if the court finds it just and equitable to so find.

### **Commencement**

8. (1) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister

### **Short title and citation**

9.—This Act may be cited as the Protection of Employees (Collective Redundancies) Act 2016.