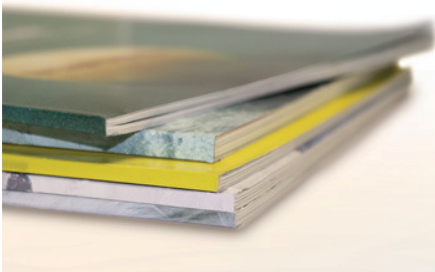


Insolvency Payments Scheme

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BY ALASTAIR DRUMMOND

On 3 December 2009, Jersey’s Social Security Minister published a white paper detailing a new statutory insolvency payments scheme (the “Scheme”) intended to provide Islanders with a degree of protection and financial security similar to that prevailing in the UK and the Isle of Man.

The proposed changes to the existing social security legislation are in line with the stated aim of the States of Jersey (the Island’s parliament) to provide support to the community during the current economic downturn. The intention of the Scheme is to ensure that employees receive at least a proportion of the moneys owed to them, by an insolvent former employer, and thereby mitigate the hardship which the immediate and unexpected loss of employment may cause.

The proposed Scheme, if brought into force, will be based largely on the temporary insolvency scheme already in place. The current temporary scheme only provides compensation for unpaid statutory notice periods, whereas the proposed statute-based Scheme would cover a range of other payments and statutory entitlements owed to employees.

Qualifying Criteria for Payments

Under the proposed Scheme individuals will be entitled to claim payments from a statutory insolvency fund, including work and holiday pay owed, statutory notice pay and statutory redundancy payments. However in order to make a claim potential claimants must meet the following five qualifying criteria:

1. the claimant’s employment with the insolvent employer must have ended due to the employer’s insolvency;
2. only claimants employed either wholly or mainly within the Island of Jersey are entitled to make a claim;
3. the Social Security Department must have received, or be due to receive, Class 1 contributions from the relevant employer in respect of the claimant in the quarter immediately prior to insolvency;

4. claimants must be employees as defined by the **Employment (Jersey) Law 2003** (the “Employment Law”); and
5. the employer must be formally insolvent (i.e. formal and/or legal insolvency proceedings must have been initiated).

Payments made to employees under the Scheme will be capped at a maximum of £10,000, in line with the upper limit of awards made by the Jersey Employment Tribunal. Also in line with awards made by the Jersey Employment Tribunal the payments would be made gross (i.e. the claimant would still have to account to the relevant authorities for Income Tax and Social Security). Employees may claim “wages” (as defined by the Employment Law). Wages can include basic pay, commission, overtime, bonuses, pay for any part of a notice period worked, but for which an employee has not been paid, and wages owed for statutory time off (e.g. to act as an employee representative). Pay in lieu of annual leave and public and bank holidays (where not included in the total contractual holiday entitlement) for the twelve months prior to the termination of employment may also be claimed.

Social Security Contribution Rates

In order to fund the Scheme, Class 1 employer social security contribution rates will be increased by 0.032 per cent. Schemes operated in the UK and the Isle of Man are based on national insurance which is funded from a number of sources, namely employers, employees, the self employed and interest from investments. In contrast, the States of Jersey contend that an additional annual levy solely on employers is justified because many of the costs involved (wages,

redundancy pay etc) are the responsibility of employers. At present the funding requirement is estimated to be £350,000 per year to include 5 per cent administration costs.

The Social Security Department will be responsible for administering, monitoring and general handling of claims in conjunction with the Viscount’s Department. Furthermore, under the Scheme, the claimant will have to assign their rights as a creditor in the underlying insolvency to the States. Thus, the States will act as a creditor in the insolvency of the employer when pursuing the assigned claim and take its share of any remaining assets of the insolvent company when distributed amongst its creditors. This should give the States the opportunity to recover some of the moneys paid out under the Scheme.

Eligible claimants will have to submit a payment claim to the Social Security Department within 40 days of the termination of their employment with the insolvent employer. Under the Scheme claimants will have the opportunity to appeal both their entitlement to payment and the value of payment by making a written request to the Social Security Department.

The introduction of a form of insolvency scheme was first mooted in the States in 1993, but it has taken the current economic downturn to focus peoples’ minds. The public consultation period closed on 5 February 2010 and few would now bet against draft legislation to implement the Scheme being introduced before the year is out.

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