

**178. Definition of inability to pay debts**

- (1) A company shall be deemed to be unable to pay its debts—
- (a) if—
- (i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due that equals or exceeds the specified amount, has served on the company a written demand—
- (A) in the prescribed form requiring the company to pay the sum so due; and
- (B) by leaving it at the registered office of the company; and
- (ii) the company has, for 3 weeks after the service of the demand, neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; (*Replaced 14 of 2016 s. 24*)
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.
- (2) Subsection (1)(a) shall apply to 2 or more creditors to whom the company is indebted in respect of unpaid wages, wages in lieu of notice, severance payments, pay for untaken statutory holidays or pay for untaken annual leave, as the case may be, or all or any of them if the total of that indebtedness exceeds the sum referred to in that subsection, as if those creditors were a single creditor, and a demand under that subsection shall be valid if signed by any one or more of those creditors. (*Added 12 of 1985 s. 29(3). Amended 48 of 1987 s. 8; 38 of 1989 s. 7; 7 of 2012 s. 10*)
- (3) For the purpose of subsection (1)(a), **specified amount** (指明款額) means the amount of \$10,000 or, where an amount is prescribed under subsection (4), the prescribed amount. (*Added 28 of 2003 s. 77*)
- (4) The Financial Secretary may, by regulation, prescribe any amount for the purposes of subsection (3). (*Added 28 of 2003 s. 77*)
- (5) In subsection (2)—
- pay for untaken annual leave** (未放年假薪酬), **pay for untaken statutory holidays** (未放法定假日薪酬) and **wages** (工資) have the same meaning as in section 265. (*Added 7 of 2012 s. 10*)

[*cf. 1929 c. 23 s. 169 U.K.*]