

## 11. Workers' Rights in Bankruptcy and Corporation Liquidation

### A. General

The Workers' Rights in Bankruptcy and Corporation Liquidation branch (or in brief, Bankruptcy branch) was established in 1975, after a large number of workers suffered due to the collapse of various businesses and the start of bankruptcy and liquidation processes. These workers lost not only their jobs and the balance of their salaries, but also the compensation to which they were entitled under their work agreements. Their social rights were also adversely affected since, in most cases, their employers had no financial sources or assets left with which to finance the balance of the debt owed to the workers and to the provident funds.

The Bankruptcy branch, through its benefits, pays the workers the balance of the bankrupt employers' debt for salaries and compensation and maintains continuity of social rights in the provident funds.

The benefits of both workers and provident funds in the Bankruptcy branch are financed through employers' insurance contributions (in 2007, at a rate of 0.02% of the employee's monthly salary, up to the income ceiling for which contributions are payable), as well as through government contributions at the same rate (in the framework of indemnification by the Ministry of Finance).

The Bankruptcy branch allows full separation between payments to employees and those to provident funds, and realization of assets of employers who are undergoing bankruptcy or liquidation. The benefits both to employees and to provident funds are linked to changes in the *basic amount*<sup>1</sup>.

### B. Some of the definitions in the National Insurance Law

1. **Employer undergoing bankruptcy or liquidation:** all types of corporations against which a bankruptcy or liquidation order has been issued and whose employees or provident funds have not received amounts owing to them: self-employed workers, corporations, partnerships, collective associations and NPO's.
2. **Employee:** any person who worked for an employer at the time of issue of a bankruptcy or liquidation order who has not yet received his salary and compensation. This definition encompasses employees who are resident of Israel, foreign residents and residents of the territories employed under a valid work agreement.

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1 The amount on which basis most benefits are calculated since January 2006. This amount is updated on January 1<sup>st</sup> each year, at the rate of the Consumer Price Index increase in the preceding year. The *basic amount* has three different rates for the purpose of updating the various benefits. For most benefits, the *basic amount* in 2007 was NIS 7,240; for child allowances it was NIS 152, and for old-age and survivor's pensions it was NIS 7,352.

- 3. Provident fund:** any body to which – in accordance with the instructions of any collective agreement, work contract, or other agreement between the employee and employer and according to the consent of that body – the employer must transfer monies of his own or the employee's salary for their accumulation or to safeguard the worker's rights associated with his employment, when terminated, or when he retires or in social insurance.

## C. Benefits paid under National Insurance Law

### 1. Employee benefits

**Salary:** sums not yet paid to the employee for his work – wages, overtime, convalescence fees, redeeming vacation pay, holiday pay and clothing allowance – including any sum deducted from the employee's salary not under law, and which has yet to be transferred to its destination. If the salary does not exceed the minimum wage (in January 2007 – NIS 3,710 a month), the employee is entitled to receive the minimum wage as determined in law.

**Dismissal compensation:** compensation to which the employee is entitled, up to the time of termination of his employment, for seniority accumulated during his years of employment with the employer. In 2007 a maximum benefit was determined for salary and dismissal compensation of up to 10 times the *basic amount* (NIS 71,520).

- 2. Benefits for provident funds:** to ensure continuity of workers' rights. The benefits are limited to a ceiling twice the *basic amount* (NIS 14,304 in 2007).

## D. Problems with implementation of the law

Despite the significant progress made in protecting the salaries and rights of workers, there remain a number of problems, as follows:

1. The law requires the issue of a liquidation/bankruptcy order. This process is normally protracted and often delays payment of the balance of the money owed to the worker.
2. The high legal costs involved in the employer's liquidation process may exceed the amount that the employer owes the employee. Thus, there is no reason for the employee to initiate such proceedings and he is unable to exercise his rights in this area.
3. The workers who have accumulated long periods of seniority, in most cases receive the maximum benefit, which is a small amount compared with the employer's actual debt to them.

## E. Employers in bankruptcy or liquidation

Table 1 shows figures regarding the number of new employers in bankruptcy or liquidation processes, as well as claims of workers and provident funds for benefits in the Bankruptcy branch in 2003-2007. The figures indicate the impact of the economic slowdown between 2003 and 2005 and of the economic changes in 2006 on the scope of activity in the branch.

In 2007, liquidators of 450 new employers who underwent bankruptcy or liquidation submitted claims to the branch on behalf of the workers and the provident funds – a moderate rise (of 2.5%) compared with the previous year.

In 2007, 8,400 employee claims were approved, representing an increase of 31.3% over the previous year – as a result of expedited handling of the claims accumulated from past years.

In 2007, a total of 1,060 provident fund workers' claims were approved – a decrease of 70% compared with 2006.

Table 1  
**New Employers in Bankruptcy and Liquidation Proceedings,  
 Workers' Claims Received and Approved,  
 and Provident Fund Claims Approved, 2003-2007**

Year	New employers	New workers' claims		New provident fund claims		
		Received	Approved*	Received	Approved*	Workers for whom provident funds were paid
2003	395	6,500	7,100	170	230	1,350
2004	425	7,500	8,400	220	190	1,440
2005	520	9,000	7,600	330	310	3,220
2006	440	7,500	6,400	330	290	3,470
2007	450	7,000	8,400	180	190	1,060

\* Including approvals of claims received in previous years.

Table 2 indicates the distribution of new employers in 2003-2007 by the number of workers' claims handled in each employer file. The table indicates that between 1 to 5 claims per file were approved for half the employers whose files were received in the branch.

Table 2  
**New Employers, by Number of Claims Handled in each File  
(not including Provident Fund Claims), 2003-2007**

Year in which file was received	Absolute number of employers	Number of claims per employer, as percentage of total employers		
		1-5	6-25	26+
2003	386	47.9	36.8	15.3
2004	408	44.6	39.0	16.4
2005	504	51.2	36.9	11.9
2006	424	55.9	32.8	11.3
2007	349	68.8	26.9	4.3

Tables 3 and 4, respectively, indicate the breakdown of new employers whose files were received in the branch and that of new workers whose claim was approved, by economic sector. In 2007 these employers featured in the following economic sectors: commerce (34.2% of total), services (30%) and infrastructure construction (15.1%). Of all new workers whose claims were approved in that year, service workers comprised 45.7% and workers in commerce – 24.4%.

Table 3  
**New Employers in the Rights of Workers in Bankruptcy Branch,  
by Economic Sector, 2003-2007**

Year	Absolute numbers	Thereof: by sector, as percentage of total						
		Textiles	Metals and electricity	Various industries	Construction and infrastructure	Commerce	Transport	Services*
2003	395	3.0	7.1	16.5	17.5	23.0	4.8	28.1
2004	425	4.0	9.2	11.5	14.1	29.9	4.7	26.6
2005	520	4.4	6.9	11.5	17.5	29.8	3.9	26.0
2006	440	1.4	7.3	14.8	15.2	31.6	3.2	26.5
2007	450	2.9	5.8	8.7	15.1	34.2	3.3	30.0

\* Including business, public and personal services.

Table 4  
**Workers' Claims Approved as Percentage of Total,  
 by Economic Sector, 2003-2007**

Year	Absolute numbers	Thereof: by sector, as percentage of total						
		Textiles	Metals and electricity	Other industries	Construction and infrastructure	Commerce	Transport	Services*
2003	7,100	3.3	8.8	16.8	11.1	12.2	10.0	37.8
2004	8,400	6.4	5.5	10.5	17.8	15.4	2.2	42.2
2005	7,600	4.0	8.5	13.2	13.7	24.3	2.8	33.5
2006	6,400	4.4	7.1	8.9	12.3	28.9	2.7	35.7
2007	8,400	5.1	5.0	9.9	8.2	24.4	1.7	45.7

\* Including business, public and personal services.

## F. Benefits to workers and provident funds

In 2007 a total of NIS 218.1 million was paid to workers and provident funds – a rise of 43.3% compared with 2006. Out of the amounts paid to workers in 2007, 79.7% was paid for salaries and dismissal compensation, 16.9% for salaries alone and 3.4% for compensation alone (Table 5).

Table 5  
**Payments to Workers and Provident Funds, and Payments by Type of Benefit,  
 as Percentage of Total Payments, 2003-2007**

Year	Total payments (NIS million)			Payment by benefit type for workers as percentage of total		
	Total	Workers	Provident funds	Salary and dismissal compensation	Salary	Dismissal compensation
2003	188.2	179.5	8.7	71.8	23.6	4.6
2004	199.3	192.1	7.2	75.0	19.0	6.0
2005	227.2	209.8	17.4	76.4	17.3	6.3
2006	152.2	139.6	12.6	73.0	23.7	3.3
2007	218.1	212.7	5.4	79.7	16.9	3.4

Table 6 shows figures on workers who received the maximum benefit for salary and dismissal compensation, and in the framework of provident funds, in 2003-2007.

In 2007, 80 workers, representing about 0.1% of new workers whose claims were approved, received the maximum benefit for which they were eligible. 27.2% of the workers on whose behalf provident fund claims were submitted received the maximum benefit. It should be noted that this number may rise following benefit differentials to be paid in the coming years.

Table 6  
**Workers and Provident Funds that received Maximum Benefits  
 as Percentage of all Workers' and Provident Fund Claims, 2003-2007**

Year	Workers who received maximum benefit		Workers for whom maximum provident fund benefit was paid	
	Total	As percentage of claims approved	Total	As percentage of total
2003	523	7.5	273	20.1
2004	320	3.8	210	14.6
2005	153	2.0	480	14.9
2006	129	1.9	1,174	33.8
2007	80	0.1	288	27.2

### G. Collecting employers' debts to the Workers' Rights in Bankruptcy branch

Under law, the branch may ask the employers' liquidators to pay the benefit sums that it paid to each worker by *preferential right priority*<sup>2</sup>, of an amount that does not exceed the sum set in accordance with the companies' order, bankruptcy ordinance, collective association regulations, etc. In 2007 the value of the *preferential right priority* was NIS 8,380 for salary alone, and NIS 12,570 for salary and dismissal compensation. With regard to benefits paid to a provident fund, there are no *preferential right priority* amounts. With regard to the balance of the debt, the branch is considered a regular creditor. It should be noted that, if the maximum sum (NIS 71,520 in 2007) is paid to a worker, the sum to be paid by the liquidators to the *preferential right priority* section is transferred to the worker to cover part of the debt which the liquidators owe to the worker. In this case, the branch becomes a regular creditor for the full amount.

Under the law, the branch does not have the right to collect from the liquidator the linkage differentials which it paid to the eligible party for the period following the day on which the receivership or liquidation order was issued, unless the liquidators decided to pay interest, linkage differentials or both together for the period in question to the other creditors in the bankruptcy or liquidation.

<sup>2</sup> As part of *preferential right priority*, a determination was made regarding the owners of the debt (creditors) with regard to whom the debt of the bankrupt corporation/corporation in liquidation is set at the highest level, out of the debts to the other creditors.

Table 7

**Preferential Right Priority Debt as Percentage of Total Benefits Paid to Workers and Provident Funds, and Collecting from Liquidators as Percentage of Sum of Preferential Right Priority Debt, 2003-2007**

Year	Preferential right priority debt		Collection from liquidators	
	Total (NIS million)	As percentage of total benefits	Total (NIS million)	As percentage of preferential right priority debt
2003	64.3	34.2	4.6	7.2
2004	74.3	37.3	4.4	5.9
2005	73.6	32.4	5.0	6.8
2006	56.3	37.0	5.9	10.5
2007	83.0	38.0	6.1	7.4

It is clear that the law limits the branch's ability to collect (if collection is possible) partial sums from the liquidators on account of the benefits paid to workers and provident funds that have declined over time. Table 7 shows the *preferential right priority* debt amounts and their part in the sums of benefits paid in 2003-2007, as well as the amounts collected from the liquidators and the share they represent of the total *preferential right priority* in those years. This table indicates that in 2007, the Bankruptcy branch had the right by *preferential right priority* to receive 38% of the sum of the benefits paid to workers and provident funds in that year.

In 2007 the NII managed to collect NIS 6.1 million, comprising 7.4% of *preferential right priority* debt in that year, on account of benefit amounts paid in the past.