

11. Workers' Rights Insurance under Employer Bankruptcy and Corporate Liquidation

A. General

The Workers' Rights under Employer Bankruptcy insurance branch was established in 1975 against the backdrop of the rights of many employees being adversely affected as a result of businesses collapsing and entering bankruptcy and liquidation proceedings. These employees lost not only their jobs and the wages owed to them, but also their obligatory severance pay prescribed in the employment agreements, and their social benefits. This occurred because, in most cases, employers were left without the financial resources or realizable assets necessary to fund the balance of the debt owed to employees and the provident funds (see definition below).

The purpose of the Workers' Rights under Employer Bankruptcy and Corporate Liquidation insurance branch is to pay insurance benefits to employees to cover the debts owed by bankrupt employers in respect of wages and severance pay, and to safeguard the continuity of the social rights in the provident funds.

The benefits paid by this insurance branch to employees and to provident funds are funded by employers' national insurance contributions (in 2010, the rate was 0.02% of the employee's monthly wage, up to the maximum income liable for insurance contributions), and by government participation at a similar rate (in 2010 – 0.02%) within the framework of Ministry of Finance indemnification.

The activities of the Workers' Rights under Employer Bankruptcy and Corporate Liquidation insurance branch enable complete severance between the rendering of payments to employees and provident funds and the realizing of assets of employers under bankruptcy and liquidation. In addition, the benefits to employees and provident funds were linked to the amendments to the basic amount, as defined in the National Insurance Law.

B. Relevant Statutory Definitions

- Employer under bankruptcy or liquidation: all types of corporations against which a bankruptcy or liquidation order has been issued, when the employees or provident funds did not receive the monies due to them: the self-employed, limited companies, partnerships, cooperative societies and nonprofit organizations.
- Employee: anyone who worked for an employer at the time the bankruptcy or liquidation order was issued, and who has not yet received owed wages and severance pay. This definition encompasses workers who are residents of Israel, foreign residents and residents of the territories who are working by virtue of a valid employment agreement.
- Provident funds: any entity whereby, pursuant to the provisions of a collective agreement, employment contract or other agreement between the employee and

the employer, and with the consent of that entity, the employer must transfer contributions to that entity from the employer's sources or from the employee's wages in order to accumulate or secure the employee's rights pertaining to his job, termination of employ, retirement from that job or his social security.

C. Benefits Paid Under the Law

Benefits to employees

Wages: sums not yet paid to an employee in respect of his work – wages, overtime pay, convalescence pay, redemption of vacation days, payment for holidays and clothing – including an amount deducted from an employee's wage other than by law that has not yet been transferred to its intended destination. If the wage does not exceed the minimum wage (in 2010 – NIS 3,850 per month), the employee is entitled to receive the minimum wage prescribed by law.

Severance pay: compensation to which an employee is entitled up to the employment termination date in respect of the seniority he accumulated during the years of his employ by that employer.

In 2010, the maximum benefit to an employee (for wages and severance pay) was affixed at 13 times the basic amount (NIS 103,675).

Benefits to provident funds

The purpose of these benefits is to guarantee the continuity of employees' rights. The benefits are limited to a maximum sum of twice the basic amount (in 2010 – NIS 15,950).

D. Difficulties Applying the Law

Despite the significant progress achieved in the realm of protecting workers' wages and rights, some problems have yet to be resolved:

- The law requires the issuance of a liquidation/bankruptcy order. This is usually a protracted process, which often delays the payment of debts to employees.
- The considerable litigation expenses involved in employers' liquidation proceedings could increase the amount of the employer's debt to the employee; consequently, the employee has no reason to institute such proceedings and would lose his eligibility for rights under this insurance branch.
- Employees who have accumulated long periods of seniority receive, in most cases, the maximum benefit, which is only a small sum compared with the debt that their employers owe to them.

E. Employers Under Bankruptcy or Liquidation Proceedings

Frequently, there is a time elapse of several years between the termination of employer-employee relations and the receipt of the benefit. The data presented in Table 1 present the impact of the economic recession that plagued the country in 2005 and the impact of the

upswing in economic activity in 2006 on the volume of activity of this insurance branch. The recession in the Israeli economy during the second half of 2008 began to impact the activities of the Workers' Rights under Employer Bankruptcy insurance branch during 2009 and 2010 and its effects are expected to continue in the coming years.

In 2010, there were 560 new employers under bankruptcy and liquidation, in which liquidators submitted claims to the insurance branch on behalf of employees and provident funds – an increase of 24.4% compared with 2009. In 2010, 9,100 new claims were received for handling – an increase of 24.7% compared with 2009, and 8,400 employee claims were approved.

The number of employees on whose behalf provident fund claims were approved in 2010 reached 4,500 employees – an increase of 71.1% compared with 2009.

Table 2 shows that, in more than half of the employer cases received for handling by the insurance branch between 2006 and 2010, between one and five claims were approved per case. However, one must take into account additional claims in the same employer cases in the coming years, which are likely to change the distribution of employers by number of employee claims in their cases.

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Table 1
Number of New Employers under Bankruptcy and Liquidation Received for Handling, Number of Employee Claims Received and Approved, and Number of Provident Fund Claims Approved, 2006–2010

Year	New employers received by the insurance branch	New employee claims		New provident fund claims		
		Received	Approved*	Received	Approved*	Employees for whom benefits were paid to provident funds
2006	440	7,500	6,400	330	290	3,470
2007	450	7,000	8,400	180	190	1,060
2008	405	6,000	6,800	155	205	1,610
2009	450	7,300	6,800	215	210	2,630
2010	560	9,100	8,400	320	300	4,500

* Including approved claims received in previous years.

Table 2
New Employers, by Number of Claims Handled in Each Case (Not Including Provident Fund Claims), 2006–2010

Year case received	Total employers (absolute numbers)	Number of claims per employer, as a percentage of all employers			
		Percentages	1-5	6-25	26+
2006	430	100.0	51.9	35.6	12.5
2007	440	100.0	59.6	32.2	8.2
2008	400	100.0	57.0	31.9	10.1
2009	440	100.0	48.5	37.6	14.9
2010	470	100.0	61.2	27.3	11.5

Table 3
**New Employers Handled by the Workers' Rights under Employer
 Bankruptcy Insurance Branch, by Economic Sector (percentages),
 2006–2010**

Year	Total (absolute numbers)	Textile	Metal and electricity	Various industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2008	405	2.5	6.1	10.3	15.7	32.7	3.9	28.8
2009	450	2.6	7.1	13.3	14.9	30.7	4.2	27.2
2010	560	3.6	5.4	9.7	15.9	33.2	3.4	28.8

* Including business, public and personal services.

Table 4
**Approved Employee Claims, as a Percentage of the Total,
 by Economic Sector, 2006–2010**

Year	Total (absolute numbers)	Textile	Metal and electricity	Other industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2008	6,800	9.2	5.1	11.9	12.2	18.6	1.2	41.8
2009	6,800	5.0	10.5	13.5	11.0	22.3	1.2	36.5
2010	8,400	6.4	4.4	7.9	10.2	28.8	4.6	37.7

* Including business, public and personal services.

In 2010, these employers were concentrated in the following economic sectors: commerce (33.2%), services (28.8%) and construction and infrastructure (15.9%) (Table 3). In 2010, employees in the services sector constituted 37.7% of all new employees whose claims were approved, while employees in the commerce sector constituted 28.8% thereof (Table 4).

F. Volume of Payments

In 2010, NIS 290.2 million were paid to employees and provident funds – an increase of 29%, compared with 2009

In 2010, NIS 290.2 million were paid to employees and provident funds – an increase of 29%, compared with 2009. 81.2% of the payments were paid in respect of wages and severance pay, 16% in respect of wages only and 2.8% in respect of severance pay only (Table 5).

In 2010, 170 employees, constituting approximately 2% of all new employees with approved claims, received the maximum benefit due to them. This low percentage apparently reflects the low wages of those employees who filed claims for a bankruptcy benefit and the short duration of their employ. 8.2% of the employees on whose behalf claims were submitted to provident funds received the maximum benefit. It should be noted that the number of employees is likely to rise, due to payments of benefit differentials in the coming years (Table 6).

Table 5
Payments to Employees and Provident Funds, Payments by Benefit Category, and as a Percentage of Total Payments, 2006–2010

Year	Total payments (NIS million)			Payment by category of employee benefit, as a percentage of the total		
	Total	To employee	To provident funds	Wages and severance pay	Wages	Severance pay
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
2008	197.2	189.0	8.2	79.2	16.8	4.0
2009	224.9	216.2	8.7	78.6	16.7	4.7
2010	290.2	278.5	11.7	81.2	16.0	2.8

Table 6
Employees and Provident Funds that Received Maximum Benefits, as a Percentage of the Total Employee and Provident Fund Claims, 2006–2010

Year	Employees who received the maximum benefit		Employees for whom the maximum benefit was paid to provident funds	
	Total	As a percentage of total approved claims	Total	As a percentage of the total
2006	140	2.1	1,170	33.8
2007	105	1.2	290	27.2
2008	170	2.5	250	15.5
2009	215	3.2	230	8.7
2010	170	2.0	370	8.2

G. Collection of Employers' Debts for the Workers' Rights under Employer Bankruptcy Insurance Branch

Under the law, the insurance branch may demand from the liquidators of employers the amounts of benefits that had been paid in respect of every employee by virtue of preferential rights¹ at an amount not exceeding the amount prescribed in the Companies' Ordinance, the Bankruptcy Ordinance, the Cooperative Societies Regulations and more. In 2010, the amount under preferential rights per employee for wages only was NIS 21,995 for wages and NIS 32,993 for wages and severance pay. In relation to benefits paid to provident funds, there are no amounts with preferential rights. With regard to the balance of the debt, the insurance branch is deemed a regular creditor. It should be

1 Debts to which preferential rights are attached are debts that are given priority over other debts, when such priority is given to regular creditors and not to secured creditors who are entitled to all money due to them in the bankruptcy/liquidation process. The relevant laws define the types of debts that are awarded preferential rights, ranked in the following order of precedence: (1) wages; (2) debts in respect of income tax deduction at source; (3) other debts, such as maintenance payments and rent; (4) municipal taxes.

noted that if the maximum amount was paid to an employee (in 2010, NIS 103,675), the amount to be paid by the liquidator to the insurance branch under preferential rights will be transferred to the employee to cover a portion of the debt owed by the liquidator to the employee. In this instance, the insurance branch becomes a regular creditor from the first shekel.

Under the same law, the insurance branch will not be entitled to collect the linkage differentials from the liquidator that the insurance branch paid to the entitled employee in respect of the period subsequent to the issue date of the receivership order or liquidation order, unless the liquidator decides to pay interest, linkage differentials or both in respect of the aforesaid period also to all other creditors during the bankruptcy or liquidation proceedings. For example, if an employee was paid wages and severance pay at the sum of NIS 35,000, of which NIS 2,000 constituted the linkage differential in respect of the period subsequent to the issue of the receivership or liquidation order, the remaining amount – NIS 33,000 – is divided into NIS 13,500 under preferential rights, while the balance – NIS 19,500 – is deemed a regular debt.

The significance of that stated above is that the law limits the insurance branch's ability to collect (if possible) partial amounts from liquidators on account of the benefits paid to employees and provident funds, which have eroded over time. Table 7 presents the amounts of debt under preferential rights and the percentage of those debts out of the total benefits paid in 2006 – 2010, as well as the amounts collected from the liquidators and the percentage of the collection out of the total debt under preferential rights during those years. This table shows that, in 2010, the Worker's Rights under Employer Bankruptcy and Corporate Liquidation insurance branch had been entitled to receive, under preferential rights, 43.5% of the benefits paid to employees and provident funds during that year.

In 2010, the NII succeeded in collecting NIS 32.1 million on account of benefit payments paid in the past, and this constitutes 25.5% of the debt under preferential rights during 2010.

Table 7
Debts under Preferential Rights, as a Percentage of Total Benefits Paid to Employees and Provident Funds, and Collection from Liquidators, as a Percentage of the Total Debt under Preferential Rights, 2006–2010

Year	Current debt under preferential rights		Collection from liquidators on account of past debts	
	Amount (NIS million)	As a percentage of total benefits	Amount (NIS million)	As a percentage of total debt under preferential rights
2006	56.3	37.0	5.9	10.5
2007	83.0	38.0	6.1	7.4
2008	69.0	35.0	10.0	14.5
2009	74.2	33.0	11.1	15.0
2010	126.0	43.5	32.1	25.5