

11. Workers' Rights 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 2011 – 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 separation 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 changes in the basic amount, as defined in the National Insurance Law.

B. Some 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 the balance of his 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 to which, pursuant to the provisions of a collective agreement, employment contract or other agreement between the employee and the em-

ployer, and with the consent of that entity, the employer must transfer contributions from the employer's means or from the employee's wages in order to accumulate or secure the employee's rights pertaining to his job, termination of employment, 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 any 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 2011 – NIS 4,100 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 employment by that employer.

In 2011, the maximum benefit to an employee (for wages and severance pay) was set at 13 times the basic amount (NIS 106,054).

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 2011 – NIS 16,316).

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 be greater than the amount of the employer's debt to the employee; consequently, the employee has no reason to institute such proceedings and he is unable to exercise his 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 to what their employers owe them.

E. Employers under bankruptcy or liquidation proceedings

Frequently, there is a time lapse of several years between the termination of employer-employee relations and the receipt of the benefit. The figures given in Table 1 indicate that

Table 1
Number of New Employers in Bankruptcy and Liquidation Being Handled, Number of Employee Claims Received and Approved, and Number of Provident Fund Claims Approved, 2007-2011

Year	New employers handled by the branch	New employee claims		New provident fund claims		
		Received	Approved*	Received	Approved*	Employees for whom benefits were paid to provident funds
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
2011	480	7,200	7,000	310	290	4,200

* Including approvals of claims received in previous years.

Table 2
New Employers, by Number of Claims Handled in Each File (not including Provident Fund Claims), 2007-2011

Year case received	Total employers (absolute numbers)	Number of claims per employer, as a percentage of all employers			
		Percentages	1-5	6-25	26+
2007	440	100.0	58.8	32.5	8.7
2008	400	100.0	57.1	31.8	11.0
2009	450	100.0	47.0	38.7	14.3
2010	540	100.0	56.9	29.9	13.4
2011	450	100.0	64.6	28.2	7.2

Table 3
New Employers Handled by the Workers' Rights under Employer Bankruptcy Branch, by Economic Sector (percentages), 2007-2011

Year	Total (absolute numbers)	Textile	Metal and electricity	Various industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2011	480	2.7	6.0	11.6	12.6	33.6	4.1	29.4

* Including business, public and personal services.

economic recessions of 2005 and 2008 impacted the volume of activity of this insurance branch in the years 2007-2011, and this is expected to continue in the coming years.

In 2011, there were 480 new employers under bankruptcy and liquidation, in which liquidators submitted claims to the insurance branch on behalf of employees and

Table 4
Approved Employee Claims, as a Percentage of the Total,
by Economic Sector, 2007-2011

Year	Total (absolute numbers)	Textile	Metal and electricity	Other industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2011	7,000	5.5	10.6	7.9	14.1	16.9	2.5	42.5

* Including business, public and personal services.

In 2011, there were 480 new employers, in which liquidators submitted claims on behalf of employees and provident funds – a drop of 14.3%

The number of employees on whose behalf provident fund claims were approved in 2011 was 4,200 – an increase of 6.7%

In 2011, these employers were concentrated in: commerce (33.6%), services (29.4%) and construction and infrastructure (12.6%)

In 2011, 240 employees, or 3.4% of all new employees with approved claims, received the maximum benefit due to them

provident funds – a drop of 14.3% compared with 2010. 7,200 new claims were received for handling – a decrease of 21% compared with 2010, and 8,400 employee claims were approved.

The number of employees on whose behalf provident fund claims were approved in 2011 was 4,200 – an increase of 6.7% compared with 2010.

Table 2 shows that, in more than half of the employer files received for handling by the insurance branch between 2006 and 2010, 1-5 claims were approved per file. However, one must take into account additional claims in the same employer files in the coming years, which are likely to change the distribution of employers by number of employee claims in their files.

Table 4 shows that in 2011, these employers were concentrated in the following economic sectors: commerce (33.6%), services (29.4%) and construction and infrastructure (12.6%) (Table 3). In that year, employees in the services sector constituted 42.5% of all new employees whose claims were approved, while employees in the commerce sector constituted 16.9% – almost half the 2010 rate in this branch.

F. Volume of payments

In 2011, NIS 258.4 million were paid to employees and provident funds – a decrease of 11%, compared with 2010. 81.8% of the payments were paid in respect of wages and severance pay, 15.8% in respect of wages only, and 2.4% in respect of severance pay only (Table 5).

In 2011, 240 employees, constituting approximately 3.4% 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. 6.4% of the employees on whose behalf claims were submitted to provident funds received the maximum benefit. It should be noted that these numbers are 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, 2007-2011

Year	Total payments (NIS million)			Payment by category of employee benefit, as a percentage of the total		
	Total	To employees	To provident funds	Wages and severance pay	Wages	Severance pay
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
2011	258.4	248.2	10.2	81.8	15.8	2.4

Table 6
Employees and Provident Funds that Received Maximum Benefits, as a Percentage of the Total Employee and Provident Fund Claims, 2007-2011

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
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
2011	240	3.4	270	6.4

Under the law, the insurance branch may demand from the employers' liquidators 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 2011, 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 noted that if the maximum amount was paid to an employee (in 2011, NIS 106,054), the amount to be paid by the liquidator to the insurance branch under preferential rights

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 their money 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 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.

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 from the liquidator the linkage differentials 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 in the amount 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 the foregoing 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 2007 – 2011, 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 2011, the Worker's Rights under Employer Bankruptcy and Corporate Liquidation insurance branch was entitled to receive, under preferential rights, 52.6% of the benefits paid to employees and provident funds during that year.

In 2011, the NII succeeded in collecting NIS 13.0 million on account of benefit payments paid in the past, and this constitutes 9.6% of the debt under preferential rights during that year

In 2011, the NII succeeded in collecting NIS 13.0 million on account of benefit payments paid in the past, and this constitutes 9.6% of the debt under preferential rights during that year.

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 Total Debt Under Preferential Rights, 2007-2011

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
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
2011	135.9	52.6	13.0	9.6