

## 11. Employee Rights Insurance in Case of Bankruptcy or Corporate Liquidation

### A. General

The Employee Rights in Case of Bankruptcy branch was established in 1975 against the backdrop of undue prejudice to many employees following the collapse of businesses and these businesses entering bankruptcy and liquidation proceedings. These employees lost not only their jobs and the balance of their wages, but also their obligatory severance pay under labor agreements, and their social rights were prejudiced as well – since in most cases, the employers were left without the financial resources or disposable assets necessary in order to fund the outstanding balance due to the employees and to the provident funds (see definitions below).

The purpose of the Employee Rights in case of Bankruptcy and Corporate Liquidation branch is to pay employees, via its benefits, the outstanding balance of the employers undergoing bankruptcy in respect of wages and severance pay and to maintain the continuity of social rights in the provident funds.

The branch benefits to employees and to provident funds are funded by the employers' insurance contribution payments (in 2013 at a rate of 0.01% of the monthly wage of the employee up to the income ceiling subject to insurance contributions and 0.04% above this income ceiling up to the maximum collectible base) as well as by government participation at a rate of 0.02% in the framework of the Ministry of Finance indemnification.

The activities of the branch enable complete separation between the effectuation of payments to employees and to provident funds and disposal of the employers' assets in case of bankruptcy and liquidation. Furthermore, the benefit amounts are linked to changes in the “basic amount” as defined in the National Insurance Law.

Notwithstanding the considerable progress achieved in the realm of protecting employee wages and rights, several problems remain that have yet to be resolved:

- The law requires the issuance of a liquidation / bankruptcy order. This is usually a protracted process that often delays payment of the outstanding balance to the employee.
- The high legal costs involved in the liquidation proceedings of the employer may be higher than the outstanding amount that the employer owes to the employee and therefore the employee has no reason to initiate these proceedings and he cannot exercise his rights under this branch.
- In most cases, employees who have accrued long periods of seniority receive the maximum benefit, which is only part of the debt that the employer owes them.

The following are a few of the definitions under the law:

- **Employer undergoing bankruptcy or liquidation:** all categories of corporations against which a bankruptcy or liquidation order has been issued, where the employ-

ees or provident funds have not received what is due to them: self-employed persons, limited companies, partnerships, cooperative societies and nonprofit organizations.

- **Employee:** anyone who was working for an employer when a bankruptcy or liquidation order was issued, who has yet to receive the balance of his wages and severance pay. This definition includes employees who are Israeli residents, foreign residents and residents of the territories who are working under a valid labor agreement.
- **Provident funds:** any entity to which, under the provisions of a collective agreement, labor agreement or other agreement between the employee and the employer and with the consent of said entity, the employer must remit money from the employer's own resources or from the employee's wages in order to accumulate or secure the employee's rights associated with his work, with the cessation of his work, with his retirement therefrom or with his social insurance.

## B. Benefits Paid and Volume of Payments

- **Benefits to employees**
  - **Wages:** amounts not yet paid to the employee in respect of his work – wages, overtime, convalescence pay, pay in lieu of leave days, payment for holidays and clothing – including any amount deducted from the employee's wage other than by law and that has not yet been transferred to its intended destination. If the wage does not exceed the minimum wage, the employee is entitled to receive the minimum wage prescribed by law (in 2012: January-September NIS 4,100 per month, in October-December NIS 4,300 per month).
  - **Severance pay:** compensation to which the employee is entitled up to the date of cessation of his employment in respect of the seniority accumulated during his years of work for the employer.  
The maximum benefit per employee (for wage and severance pay) was set at 13 times the "basic amount" (NIS 110,331 in 2013).

- **Benefits to provident funds**

These are intended to secure the continuity of rights of the employees. The benefits are limited to a maximum amount of twice the "basic amount" (NIS 16,974 in 2013). In 2013, a total sum of NIS 295.6 million was paid to employees and to provident funds – similar to that of the previous year (Table 1). The rate of total payments made in 2013 for both wages and severance pay together was 81.7%: 15.1% for wages only and 3.2% for severance pay only.

380 employees, constituting 4.7% of all new employees whose claim was approved, received the maximum benefit due to them in 2013; this is a high rate compared with those of recent years. 21% of the employees on whose behalf claims were filed with provident funds received the maximum benefit. It should be noted that their number may rise, due to benefit differential payments in the coming years – and this is also a much higher rate than the average in recent years (Table 2).

**Table 1**  
**Payments to Employees and to Provident Funds and Payment by Benefit Category as a Percentage of All Payments, 2009–2013**

| Year | Total payments (NIS million) |              |                    | Payment by employee benefit category as a percentage of the total |                         |           |                    |
|------|------------------------------|--------------|--------------------|---|-------------------------|-----------|--------------------|
|      | Total                        | To employees | To provident funds | Total   | Wages and severance pay | Wage only | Severance pay only |
| 2009 | 224.9                        | 216.2        | 8.7                | 100.0   | 78.6                    | 16.7      | 4.7                |
| 2010 | 290.2                        | 278.5        | 11.7               | 100.0   | 81.2                    | 16.0      | 2.8                |
| 2011 | 258.4                        | 248.2        | 10.2               | 100.0   | 81.8                    | 15.8      | 2.4                |
| 2012 | 296.0                        | 288.9        | 7.1                | 100.0   | 80.5                    | 17.0      | 2.5                |
| 2013 | 295.6                        | 281.0        | 14.6               | 100.0   | 81.7                    | 15.1      | 3.2                |

**Table 2**  
**Employees and Provident Funds who Received Maximum Benefits as a Percentage of Total Claims Approved, 2009–2013**

| Year | Employees who received the maximum benefit |  | Employees for whom a maximum benefit was paid to the provident funds |                              |
|------|--|--|--|------------------------------|
|      | Total                                      | As a percentage of total claims approved | Total  | As a percentage of the total |
| 2009 | 215  | 3.2                                      | 230  | 8.7                          |
| 2010 | 170  | 2.0                                      | 370  | 8.2                          |
| 2011 | 240  | 3.4                                      | 270  | 6.4                          |
| 2012 | 45   | 0.5                                      | 200  | 12.9                         |
| 2013 | 380  | 4.7                                      | 840  | 21.0                         |

### C. Data on Employers and on Employees

The period of time from when employer–employee relations are severed and until the benefit is paid is a long one, often extending for several years. It may be understood from the data in Table 3 that the economic crisis in 2008 impacted the volume of activity of the branch during 2009–2013 and this is expected to continue in the coming years.

In 2013, there were 570 new employers undergoing bankruptcy and liquidation whose liquidators filed claims with the branch on behalf of the employees and the provident funds – a decline of 16.3% compared to 2012. 10,000 new claims were received for processing – similar to 2011– and 8,100 employee claims were approved. The number of employees on whose behalf provident fund claims were approved in 2013 was 4,000 – a rise of 158% compared to 2012.

In more than half the employer files received for processing by the branch in 2009–2013, 1–5 claims per file were received (Table 4). However, additional future claims in the files that will be received for processing in the coming years should be taken into account, which may alter the employer distribution by number of employee claims in their files.

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Table 3

### New Employers Undergoing Bankruptcy and Corporate Liquidation Received for Processing, Number of Employee Claims Received and Approved And Number of Provident Fund Claims Approved, 2009-2013

| Year | New employers received by the branch | New employee claims |           | New provident fund claims |           | Employees for whom benefits were paid to provident funds |
|------|--------------------------------------|---------------------|-----------|---------------------------|-----------|--|
|      |                                      | Received            | Approved* | Received                  | Approved* |  |
| 2009 | 450                                  | 7,300               | 6,800     | 215                       | 210       | 2,630  |
| 2010 | 560                                  | 9,100               | 8,400     | 320                       | 300       | 4,500  |
| 2011 | 510                                  | 7,200               | 7,000     | 310                       | 290       | 4,200  |
| 2012 | 490                                  | 10,100              | 8,800     | 280                       | 235       | 1,550  |
| 2013 | 570                                  | 10,000              | 8,100     | 330                       | 330       | 4,000  |

\* Including claim approvals received in previous years.

Table 4

### New Employers by Number of Claims Received for Processing by the Branch (excluding provident fund claims), 2009-2013\*

| Year file received | Total employers (absolute numbers) | Number of claims per employer as a percentage of total employers |      |      |      |
|--------------------|------------------------------------|--|------|------|------|
|                    |                                    | Total  | 1-5  | 6-25 | 26+  |
| 2009               | 450                                | 100.0  | 46.3 | 38.3 | 15.4 |
| 2010               | 560                                | 100.0  | 55.9 | 30.8 | 13.3 |
| 2011               | 510                                | 100.0  | 58.9 | 30.1 | 11.0 |
| 2012               | 470                                | 100.0  | 56.3 | 30.4 | 13.3 |
| 2013               | 540                                | 100.0  | 59.7 | 29.8 | 10.5 |

In 2013, employers were concentrated in the following economic sectors: commerce (34%), services (33.5%) and construction (12.7%)

\* Excluding employer files in which only provident fund claims were submitted.

Table 5

### New Employers in the Employee Rights in Case of Bankruptcy Branch by Economic Sector (Percentages), 2009-2013\*

| Year | Total (absolute numbers) | Agriculture | Industry | Construction | Commerce | Transportation | Services** |
|------|--------------------------|-------------|----------|--------------|----------|----------------|------------|
| 2009 | 450                      | 0.9         | 18.6     | 15.0         | 30.3     | 2.2            | 33.0       |
| 2010 | 560                      | 1.1         | 17.3     | 14.4         | 33.5     | 2.5            | 31.2       |
| 2011 | 510                      | 1.2         | 16.7     | 12.1         | 32.7     | 3.5            | 33.8       |
| 2012 | 490                      | 1.9         | 15.9     | 12.0         | 31.6     | 4.3            | 34.3       |
| 2013 | 570                      | 0.5         | 15.3     | 12.7         | 34.0     | 4.0            | 33.5       |

\* New series based on the uniform classification of economic sectors – 2011.

\*\* Including business, financial, public and personal services.

In 2013, these employers were concentrated in the following economic sectors: commerce (34%), services (33.5%) and construction (12.7%) (Table 5). In that year, the service employees constituted 40% of total new employees whose claims were approved (Table 6).

**Table 6**  
**Approved Employee Claims as a Percentage of the Total,**  
**by Economic Sector\*, 2009-2013**

| Year | Total (absolute numbers) | Agriculture | Industry | Construction | Commerce | Transportation | Services** |
|------|--------------------------|-------------|----------|--------------|----------|----------------|------------|
| 2009 | 6,800                    | 0.7         | 19.4     | 12.1         | 26.9     | 0.8            | 40.1       |
| 2010 | 8,400                    | 1.0         | 14.3     | 8.0          | 27.6     | 3.3            | 45.8       |
| 2011 | 7,000                    | 0.8         | 15.3     | 12.3         | 17.4     | 1.1            | 53.1       |
| 2012 | 8,800                    | 0.5         | 18.1     | 4.0          | 16.0     | 2.5            | 58.9       |
| 2013 | 8,100                    | 1.3         | 19.6     | 9.4          | 27.1     | 2.6            | 40.0       |

\* New series based on the uniform classification of economic sectors – 2011.

\*\* Including business, financial, public and personal services.

#### D. Collecting Employer Debts

Under the law, the branch may demand from the employers' liquidators the benefit amounts paid to each employee under preferential rights<sup>1</sup>, in an amount not exceeding that prescribed under the Companies Ordinance, the Bankruptcy Ordinance, the Cooperative Societies Regulations, etc. In 2013, the amount under preferential rights per employee for wages only was NIS 23,379 for wages and NIS 35,068 for wages and severance pay. For benefits paid to provident funds there are no amounts with preferential rights. With regard to the outstanding balance, the branch is deemed a regular creditor. It should be noted that if the maximum amount (NIS 110,331 in 2013) was paid to the employee, the amount to be paid by the liquidators to the branch under preferential rights will be transferred to the employee to cover a portion of the debt owed by the liquidators to the employee. In this case, the branch becomes a regular creditor from the first shekel.

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

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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 secured creditors who are entitled to all their money in the bankruptcy / liquidation process. Pursuant to the relevant laws, there are categories of debts that are awarded preferential rights and they are ranked according to the following order of precedence: a) wages; b) debts in respect of deduction of income tax at source; c) other debts, such as maintenance payments and rent; d) municipal taxes.

The foregoing suggests that the law limits the branch's ability to collect (if possible) partial amounts from the liquidators on account of the benefits paid to employees and provident funds that have eroded over time. Table 7 presents the amounts of debt under preferential rights and their proportion of the benefits amounts paid in 2009 – 2013, as well as the amounts collected from the liquidators and their proportion of the total debt under preferential rights during said years. We learn from this table that in 2013, the Employee Rights in case of Bankruptcy and Liquidation branch was entitled to receive, under preferential rights, 44% of the benefit amount paid to employees and to provident funds during said year.

In 2013, the NII managed to collect NIS 15.3 million on account of benefit payments that were made in the past, constituting approximately 12% of the debt under preferential rights during that year.

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**Table 7**  
**Debt Under Preferential Rights as a Percentage of Total Benefits Paid to Employees and to Provident Funds and Collection From Liquidators as a Percentage of the Amount of Debt Under Preferential Rights, 2009-2013**

| Year | Current debt under preferential rights |                                   | Collection from liquidators on account of past payments |   |
|------|--|-----------------------------------|---|---|
|      | Amount (NIS million)                   | As a percentage of total benefits | Amount (NIS million)                                    | As a percentage of debt under preferential rights |
| 2009 | 74.2                                   | 33.0                              | 11.1  | 15.0  |
| 2010 | 126.0                                  | 43.5                              | 32.1  | 25.5  |
| 2011 | 140.3                                  | 54.3                              | 13.0  | 9.3   |
| 2012 | 180.6                                  | 61.0                              | 31.7  | 17.6  |
| 2013 | 130.0                                  | 44.0                              | 15.3  | 11.8  |