

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

### A. General

The Workers' Rights under Employer Bankruptcy 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 were also affected. 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 branch is to pay 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 branch to employees and to provident funds are funded by employers' national insurance contributions (in 2012, the rate was 0.01% of the employee's monthly wage, up to the maximum income liable for insurance contributions, 0.03% above this income ceiling or up to the maximum of the basis for collection), and by government participation at a similar rate of 0.02%) within the framework of Ministry of Finance indemnification.

The activities of the Workers' Rights under Employer Bankruptcy and Corporate Liquidation branch allow complete separation between the rendering of payments to employees and provident funds and the realization 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 Statutory Definitions

Employer under bankruptcy or liquidation: all types of corporations against which a bankruptcy or liquidation order has been issued, and whose employees or their provident funds have not received 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 employer, 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 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 festivals 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 2012 January-September – NIS 4,100 per month; October-December NIS 4,300 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 2012, the maximum benefit to an employee (for wages and severance pay) was set at 13 times the basic amount (NIS 108,810).

#### 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 2012 – NIS 16,740).

### 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 high litigation costs 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 the economic recessions of 2008 impacted the volume of activity of this insurance branch in the years 2009–2012, and this is expected to continue in the coming years.

In 2012, there were 470 new employers under bankruptcy and liquidation, in which liquidators submitted claims to the branch on behalf of employees and provident funds – a drop of 2.1% compared with 2011. 10,100 new claims were received for handling – an increase of 40.3% compared with 2011, and 8,800 employee claims were approved.

The number of employees on whose behalf provident fund claims were approved in 2012 was 1,550 – a decrease of 63% compared with 2011.

Table 2 shows that, in more than half of the employer files received for handling by the branch between 2008 and 2012, 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.

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**Table 1**  
**New Employers in Bankruptcy and Liquidation Being Handled, Number of Employee Claims Received and Approved, and Number of Provident Fund Claims Approved, 2008-2012**

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
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
2012	470	10,100	8,800	280	235	1,550

\* 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), 2008-2012**

Year case received	Total employers (absolute numbers)	Number of claims per employer, as a percentage of all employers			
		Total	1-5	6-25	26+
2008	400	100.0	56.2	32.8	11.0
2009	450	100.0	46.5	38.9	14.6
2010	540	100.0	55.8	30.5	13.7
2011	470	100.0	59.4	30.4	10.2
2012	440	100.0	62.2	27.5	10.3

**Table 3**  
**New Employers in the Workers' Rights under Employer Bankruptcy Branch,  
 by Economic Sector (percentages), 2008-2012**

Year	Total (absolute numbers)	Textiles	Metal and electricity	Various industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2012	270	1.5	6.0	11.2	12.9	32.8	6.4	29.2

\* Including business, public and personal services.

**Table 4**  
**Approved Employee Claims as a Percentage of the Total, by Economic Sector, 2008-2012**

Year	Total (absolute numbers)	Textiles	Metal and electricity	Various industries	Construction and infrastructure	Commerce	Transportation	Services*
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
2012	8,800	4.5	6.5	8.1	6.2	16.6	4.9	53.2

\* Including business, public and personal services.

In 2012 the employers in bankruptcy cases were concentrated in the following economic sectors: commerce (32.8%), services (29.2%) and construction and infrastructure (12.9%)

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In 2012 these employers were concentrated in the following economic sectors: commerce (32.8%), services (29.2%) and construction and infrastructure (12.9%) (Table 3). In that year, employees in the services sector constituted 53.2% of all new employees whose claims were approved (Table 4).

## F. Volume of Payments

In 2012, NIS 296 million were paid to employees and provident funds – an increase of 14.6%, compared with 2011. The rate of payments in respect of wages and severance pay decreased from 81.8% in 2011 to 80.5% in 2012, while the rate of payments in respect of wages only rose from 15.8% in 2011 to 17.0% in 2012 (Table 5).

In 2012, 15 employees, constituting approximately 0.2% 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. 12.9% 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, 2008-2012**

Year	Total payments (NIS million)			Payment by category of employee benefit, as a percentage of the total			
	Total	To employees	To provident funds	Total	Wages and severance pay	Wages only	Severance pay only
2008	197.2	189.0	8.2	100.0	79.2	16.8	4.0
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

**Table 6**  
**Employees and Provident Funds that Received Maximum Benefits, as a Percentage of the Total Employee and Provident Fund Claims, 2008-2012**

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
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
2012	15	0.2	200	12.9

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

Under the law, the branch may demand from the employers' liquidators the amounts of benefits that had been paid in respect of every employee by virtue of preferential rights<sup>1</sup> in an amount not exceeding that prescribed in the Companies' Ordinance, the Bankruptcy Ordinance, the Cooperative Societies Regulations and others. In 2012, the amount under preferential rights per employee for wages only was NIS 22,831 for wages and NIS 34,427 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 branch is deemed a regular creditor. It should be noted that if the maximum

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: (a) wages; (b) debts in respect of income tax deduction at source; (c) other debts, such as maintenance payments and rent; (d) municipal taxes.

amount was paid to an employee (in 2012, NIS 108,810), the amount to be paid by the liquidator to the insurance branch under preferential rights is transferred to the employee to cover a portion of the debt owed by the liquidator to the employee. In this instance, the branch becomes a regular creditor from the first shekel.

Under the same law, the branch will not be entitled to collect from the liquidator the linkage differentials that it 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 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 2008 – 2012, 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 2012, the Worker's Rights under Employer Bankruptcy and Corporate Liquidation branch was entitled to receive, under preferential rights, 61% of the benefits paid to employees and provident funds during that year.

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**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, 2008–2012**

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
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	140.3	54.3	13.0	9.3
2012	180.6	61.0	31.7	17.6