12. Insurance of Employee Rights in Bankruptcy and Corporate Liquidation

a. General

The Employee Rights in Bankruptcy Division was established in 1975 against the backdrop of harm caused to many employees by business bankruptcy and liquidation. These workers not only lost their jobs and the wages still owed them, but also the severance pay mandated by work agreements, as well as social benefits to which they were entitled. This occurred because in most cases employers no longer had the financial resources or assets to finance the debt owed their workers and provident funds (see definitions below).

The mission of the Division for Employee Rights in Bankruptcy and corporate liquidation is to provide benefits that pay workers what their bankrupt employers owe them for wages and severance pay, as well as to maintain continuity of rights to social benefits in provident funds.

Benefits paid to workers and provident funds by the Division are financed through insurance fees paid by the employers (in 2014, at a rate of 0.01% of the employee's monthly salary up to the income ceiling obligated in insurance fees, and 0.05% above this ceiling up to the maximum basis of collection), as well as through government participation at a rate of 0.02% within the framework of Finance Ministry indemnification.

The Division's activities enable a complete separation between the execution of payments to workers and provident funds, and selling off employer assets in bankruptcy and liquidation. Furthermore, the benefit amounts have been linked to changes in the basic amount as defined in the National Insurance Law.

Despite significant progress achieved in the area of workers' wages and rights protection, several problems still remain:

- The law requires the issuance of a liquidation/bankruptcy order. This is generally a drawn-out process that often delays payment of the balance of debt to the employee.
- The legal expenses involved with employer liquidation proceedings can be higher than the amount the employer owes the worker, and thus the worker has no reason to initiate such proceedings, and cannot exercise his/her rights in this Division. Over the last year, in the wake of a reduction in the cost of notes of liquidation, there was a greater number of applications for lower amounts of wage and severance in liquidation.

Following are some of the law's definitions:

- **Employer in bankruptcy or liquidation**: Any type of corporation against whom a bankruptcy or liquidation order has been issued, and whose workers or provident funds have not received what they were owed: self-employed workers, limited companies, partnerships, co-operative associations, and NGOs.

- **Employee**: Anyone who worked for an employer at the time that the bankruptcy or liquidation order was issued, who has yet to receive the balance of wages and severance pay owed him/her. Included in this definition are employees who are residents of Israel, foreign residents, and residents of the territories who are employed with a valid employment contract.
- **Provident fund**: Any institution which, according to a collective bargaining agreement, employment contract, or other agreement between employee and employer, is obligated to transfer sums from its monies or from employee wages, for the accrual or assurance of employee rights in connection with his/her employment, termination of employment, retirement from employment, or social insurance.

b. The Benefits Paid and Payment Amounts

- **Benefits to Employee**
  - **Wages:** Sums yet to be paid to the employee as compensation for work – wages, overtime, vacation allowance, vacation day redemption, payment for holidays and apparel – including any sum deducted from employee wages not by law and that has yet to be transferred to his/her account. If the wages are not higher than minimum wage, the employee is entitled to receive the minimum wage mandated by law (in 2014: NIS 4,300 per month).
  - **Severance pay:** Severance to which the employee is entitled up to the date of termination of employment, for seniority accrued during years of work for the employer. The maximum benefit paid to an employee (for wages and severance pay) has been set at 13 times the basic amount (NIS 112,424 in 2014).
- **Benefits to Provident Funds**

  Intended to ensure the continuity of employee rights. The benefits are limited to a maximum sum of twice the basic amount (NIS 17,296 in 2014).

  In 2014, NIS 329.2 million were paid to employees and provident funds (Table 1), 80.3% of this sum was paid to employees. The rate of only wages – 16.5%, and only severance pay – 3.2%.

Table 1
Payments to Employees and Provident Funds and Payment by Type of Benefit as a Percentage of all Payments, 2010-2014

	Total payments (millions of NIS)			Payment by type of benefit to employee as % of total			
Year	Total	To employees	To provident funds	Total	Wages and severance pay	Only wages	Only severance pay
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
2014	329.2	321.1	8.1	100.0	80.3	16.5	3.2

C. Data Regarding Employers and Employees

The period of time from termination of employer-employee relations until payment of the benefit frequently lasts several years. The economic crisis in 2008 and the subsequence economic slowdown affected the scope of the Division's activities in the years 2010-2014, and this is expected to continue in the coming years (Table 2). Lower sums for notes of liquidation have enabled an increase in the number of claims for benefits in this Division.

In 2014, there were 630 new employers in bankruptcy and liquidation whose liquidators submitted claims on behalf of employees and provident funds to the Division – a rise of 10.5% versus 2013. 11,500 new claims were received for handling – a rise of 15% versus 2013, and 10,300 employee claims were approved. The number of employees on behalf of whom provident fund claims were approved in 2014 was 2,370 – a drop of 35% versus 2013.

Table 2
New Employers in the Division, Employee Claims Received and Approved, and Provident Fund Claims Approved, 2010-2014

Year	New employers received	New employee claims		New provident fund claims		Employees for whom payment was made to provident funds	Insurees for whom payment was made to provident funds**
		Received	Approved*	Accepted	Approved		
2010	560	9,100	8,400	320	300	3,900	4,330
2011	510	7,200	7,000	310	290	4,100	4,260
2012	490	10,100	8,800	280	235	1,510	1,570
2013	570	10,000	8,100	330	330	2,520	3,430
2014	630	11,500	10,300	300	190	2,180	2,370

* Including approvals of claims received in previous years.
** Insured in several provident funds.

More than half of the employer cases received by the Division in 2010-2014 had 1-5 claims per case (Table 3). However, additional future claims in cases that will be received in the next few years should also to be taken into account, which may change the distribution of employers by number of employee claims in their cases.

Table 3
New Employers in the Division by Number of Claims (Not Including Provident Fund Claims), 2010-2014

Date of receipt of the case	Total employers (absolute numbers)	Number of claims per employer as % of total of all employers			
		Total	5-1	25-6	26 or more
2010	550	100.0	55.2	30.9	13.9
2011	480	100.0	57.5	31.6	10.9
2012	520	100.0	55.7	30.5	13.8
2013	560	100.0	52.4	35.5	12.1
2014	630	100.0	63.2	27.7	9.1

Table 4
New Employers in Bankruptcy Division by Branch of the Economy(Percentages), 2010-2014*

Year	Total (absolute numbers)	Agriculture	Industry	Construction	Trade	Transport	Services**
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
2014	630	1.6	12.6	11.0	38.6	3.6	32.6

* New series based on economic branch classification – 2011.
** Including commercial, financial, public, and personal services.

Table 5
Employee Claims Approved As Percentage of Total, by Branch of the Economy*, 2010-2014

Year	Total (absolute numbers)	Agriculture	Industry	Construction	Trade	Transport	Services**
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
2014	10,300	0.4	8.7	5.4	32.3	0.9	52.3

* New series based on economic branch classification – 2011.
** Including commercial, financial, public, and personal services.

In 2014, these employers were concentrated in the following economic branches: trade (38.6%), services (32.5%), and construction (11.0%) (Table 4). In that year, service workers represented 52.3% of all new employees whose claims were approved (Table 5).

Table 6
Employees and Provident Funds Who Received Maximum Benefit, as a Percentage of All Claims Approved, 2010-2014

	Employees who received maximum benefit		Employees for whom maximum benefit was paid to provident funds*	
Year	Total	As % of total claims approved	Total	As % of total claims approved
2010	170	2.0	290	7.4
2011	240	3.4	220	5.6
2012	45	0.5	200	13.3
2013	380	4.7	470	18.5
2014	380	3.7	220	10.0

* Reclassified.

In 2014 like the previous year, 380 employees - approximately 3.7% of all new employees whose claims were approved - received the maximum award. 10% of employees in whose name claims had been submitted to provident funds, were awarded the maximum. It should be noted that this number may rise as a result of differences in payments in the coming years (Table 6).

D. Collection of Employers' Debts

By law, the Division is authorized to seek benefit amounts paid to each employee as a priority debt[1] from the employers' liquidators, for an amount that does not exceed the sum determined in accordance with the Companies Ordinance, Bankruptcy Ordinance, Cooperative Associations Regulations, etc. The amount of priority debt per employee was 24,080 for wages only, and 36,120 for wages and severance pay in 2014. There were no amounts collected as priority debt for benefits paid to provident funds. Regarding the balance of the debt, the Division is considered a regular creditor. It should be noted that if the maximum amount (NIS 112,424 in 2014) is paid to the employee, the amount paid by the liquidators to the Division as priority debt will be transferred to the employee to cover part of what the liquidators owe the employee. In this case, the Division becomes a regular creditor from the first shekel.

According to the same law, the Division will not be entitled to collect from the liquidator the linkage differentials it paid to an entitled party for the period following the issuance of the receivership or liquidation order, unless the liquidator decided to pay interest, linkage differentials, or both together for the that period to the other creditors also. For example, if an employee was paid wages and severance totaling NIS 35 thousand, with NIS 2,000 of this amount being a linkage differential for the period following the receivership or liquidation order, the remaining sum – NIS 33,000 – would be divided into NIS 13,500 of priority debt, and the balance – NIS 19,500 – would be regular debt.

From the above, it emerges that the law limits the Division's ability to collect (if possible) partial sums from the liquidators at the expense of benefits paid to employees and provident funds that were eroded over time. Table 7 presents the priority debt totals and their percentages within the benefit totals paid in 2010-2014, and the totals collected from liquidators and their percentage of the total priority debt in those years. It can be learned from this table that the Bankruptcy and Liquidation Division was entitled to receive as priority debt in 2014, 63.9% of the total benefits paid to employees and provident funds that year .

In 2014, the NII succeeded in collecting NIS 31 million for benefit payments made in the past, representing approximately 14.7% of the priority debt in that year.

1 Priority debts are given precedence over other debts, where this priority goes to regular creditors and not to insured creditors who are entitled to all their money in a bankruptcy/liquidation process. According to the relevant laws , some types of debts have priority, and they are ranked by

Table 7
Priority Debt as a Percentage of Total Benefits Paid to Employees and Provident Funds, and Collection from Liquidators as a Percentage of Total Priority Debt, 2010-2014

Year	Current priority debt		Collection from liquidators for past debt	
	Total (millions of NIS)	As % of total benefits	Total (millions of NIS)	As % of priority debt
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	176.2	59.6	15.3	11.8
2014	210.4	63.9	31.0	14.7