

# 1. INSURANCE OF EMPLOYEE RIGHTS IN BANKRUPTCY

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

The purpose of the Employee Rights in Bankruptcy and Corporate Liquidation Division is, through its benefits, to pay workers what their bankrupt employers owe them for wages and severance pay, as well as to maintain continuity of social benefits in provident funds. Benefits are financed through insurance contributions paid by employers (in 2015, at a rate of 0.01% of the employee's monthly salary up to the income ceiling for which insurance contributions must be paid, and 0.05% above this ceiling up to the maximum basis for collection), as well as through government participation at a rate of 0.02% as Finance Ministry indemnification.

The Division's activities enable a complete separation between making 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 unsolved problems still remain:

- The law requires the issue of a liquidation/bankruptcy order. This is generally a drawn-out process that often delays payment of outstanding debt to employees.
- Legal expenses involved in 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 liquidation fees, there was a greater number of liquidation applications for lower amounts of wages and severance pay.

- In most cases employees who have accumulated long seniority periods receive the maximum benefit, which is only a partial amount compared with the debt owed by their employer.

### Definitions in the law

- **Employer in bankruptcy or liquidation:** Any type of corporation against which 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 non-profit organizations.
- **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 under a valid employment contract.
- **Provident funds:** A body to which, according to a collective bargaining agreement, employment contract or other agreement between employee and employer, and with the consent of that body, the employer is obligated to transfer sums from its monies or from employee wages, for the accrual or assurance of the employee's rights in connection with his/her employment, termination of employment, retirement from employment, or social insurance.

## 2. Benefits and Payment Amounts

### Benefits to Employee

- **Wages:** Sums yet to be paid to the employee for work – wages, overtime, vacation allowance, vacation day redemption, payment for holidays and apparel – including any sum deducted from employee wages other than by law and that has not yet been transferred to its destination. If wages are not higher than minimum wage, the employee is entitled to receive the minimum wage mandated by law- which was NIS 4,300 in January-March 2015 and NIS 4,650 in April-December 2015.
- **Severance pay:** Severance pay 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 2015).

### Benefits to Provident Funds

The benefits to provident funds are 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 2015). In 2015, NIS 364.4 million were paid to employees and provident funds; 81.9% of the benefits to employees were paid as wages and severance pay; wages only – 15.8%, severance pay only – 2.3% (Table 1).

Table 1

#### Payments to Employees and Provident Funds and Payment by Type of Benefit as a Percentage of all Payments, 2011-2015

| Year | Total payments (millions of NIS) |              |                    | Payment by type of benefit to employee as percentage of total |                         |            |                    |
|------|----------------------------------|--------------|--------------------|---|-------------------------|------------|--------------------|
|      | Total                            | To employees | To provident funds | Total   | Wages and severance pay | Only wages | Only severance pay |
| 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                |
| 2015 | 364.4                            | 350.6        | 13.8               | 100.0   | 81.9                    | 15.8       | 2.3                |

## 3. 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 subsequent economic slowdown placed a great burden on the Division's activities, and this is expected to continue in the coming years (Table 2). Reduction of liquidation fees has led to an increase in the number of claims for benefits in this Division.

In 2015, there were 630 new employers in bankruptcy and liquidation whose liquidators submitted claims to the Division – as in 2014. Eight thousand eight hundred new claims were received for processing – a decrease of 23.4% compared with 2014, and 10,500 employee claims were approved. The number of employees on behalf of whom provident fund claims were approved in 2015 was 2,530 – an increase of 6.8% compared with 2014.

Table 2  
**New Employers in the Division, New Employee Claims  
 and New Provident Fund Claims 2011-2015**

| Year | New employers | 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* | Received                  | Approved* |  |   |
| 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   |
| 2015 | 630           | 8,800               | 10,500    | 500                       | 210       | 2,380  | 2,530   |

\* Including approval of claims received in previous years.

\*\* Insured in several provident funds.

In more than half of the employer cases received for processing by the Division in 2011-2015, 1-5 claims per case were received (Table 3). However, one must take into account additional future claims in cases that will be received in the next few years, 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), 2011-2015**

| Year of receipt of the case | Total employers (absolute numbers) | Number of claims per employer as a percentage of total employers |      |      |            |
|-----------------------------|------------------------------------|--|------|------|------------|
|                             |                                    | Total  | 1-5  | 6-25 | 26 or more |
| 2011                        | 470                                | 100.0  | 57.0 | 31.9 | 11.1       |
| 2012                        | 520                                | 100.0  | 55.2 | 30.5 | 14.3       |
| 2013                        | 560                                | 100.0  | 51.6 | 36.1 | 12.3       |
| 2014                        | 630                                | 100.0  | 56.3 | 31.4 | 12.3       |
| 2015                        | 620                                | 100.0  | 65.7 | 26.0 | 8.3        |

In 2015, these employers were concentrated in the following economic sectors: trade (36.7%), services (36.2%), and industry (Table 4). In that year, service workers represented 53.4% of all new employees whose claims were approved, compared with 52.3% in 2014 (Table 5).

In 2015, like the previous, 415 employees - approximately 4.0% of all new employees whose claims were approved - received the maximum benefit to which they were entitled. Five point nine percent of employees in whose names claims had been submitted to

Table 4  
**New Employers in Bankruptcy Division  
 by Sector of the Economy (Percentages), 2011-2015\***

| Year | Total<br>(absolute numbers) | Agriculture | Industry | Construction | Trade | Transport | Services** |
|------|-----------------------------|-------------|----------|--------------|-------|-----------|------------|
| 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       |
| 2015 | 630                         | 1.3         | 9.7      | 12.9         | 36.7  | 3.2       | 36.2       |

\* New series based on economic sector classification – 2011.

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

Table 5  
**Approved Employee Claims as Percentage of Total,  
 by Economic Sector\*, 2011-2015**

| Year | Total<br>(absolute numbers) | Agriculture | Industry | Construction | Trade | Transport | Services** |
|------|-----------------------------|-------------|----------|--------------|-------|-----------|------------|
| 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       |
| 2015 | 10,500                      | 1.8         | 8.6      | 6.6          | 25.4  | 4.2       | 53.4       |

\* New series based on economic sector classification – 2011.

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

provident funds received the maximum benefit. It should be noted that this number may rise as a result of payments for benefit differentials in the coming years (Table 6).

Table 6  
**Employees and Provident Funds Receiving Maximum Benefits,  
 as a Percentage of All Approved Claims, 2011-2015**

| Year | Employees who received maximum benefit |                               | Employees for whom maximum benefit was paid to provident funds* |                               |
|------|--|-------------------------------|---|-------------------------------|
|      | Total                                  | As % of total approved claims | Total   | As % of total approved claims |
| 2011 | 245                                    | 3.5                           | 220   | 5.6                           |
| 2012 | 55                                     | 0.6                           | 200   | 13.3                          |
| 2013 | 390                                    | 4.8                           | 470   | 18.5                          |
| 2014 | 390                                    | 3.8                           | 220   | 10.0                          |
| 2015 | 415                                    | 4.0                           | 140   | 5.9                           |

\* Reclassified.

## 4. Collection of Employers' Debts

By law, the Division is authorized to demand benefit amounts paid to each employee from the employers' liquidators as a priority debt<sup>1</sup>, in 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 24,538 for wages only, and 36,807 for wages and severance pay in 2015. There were no priority debt amounts in the benefits paid to provident funds. Regarding the balance of the debt, the Division is considered a regular creditor. If the maximum amount (NIS 112,424 in 2015) was paid to the employee, the amount paid by liquidators to the Division as priority debt will be transferred to the employee to cover part of the liquidators' debt to him/her. 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 date of the receivership or liquidation order, unless the liquidator has decided to pay interest, linkage differentials, or both, for the aforesaid period to the other creditors as well. For example, if an employee was paid wages and severance pay 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 on account of benefits paid to employees and provident funds that were eroded over time. Table 7 presents the priority debt amounts and their percentages of the benefit amounts paid in 2011–2015, and the amounts collected from liquidators and their percentage of the total priority debt in those years. It can be learned from this table that in 2015 the Employee Rights in Bankruptcy and Liquidation Division was entitled to receive as priority debt, 64.6% of the total benefits paid to employees and provident funds that year.

In 2015, the NII succeeded in collecting NIS 35 million for benefit payments made in the past, representing 14.7% of the priority debt in that year, as in 2014.

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1 Priority debts are given priority over other debts - priority over regular creditors but not over secured creditors, who are entitled to all their money in the bankruptcy/liquidation process. According to the relevant laws, some types of debts have priority, and they are ranked by the following order of priority: a) wages; b) income tax debts for withholding tax; c) other debts such as maintenance and rent; d) municipal taxes.

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, 2011-2015**

| Year | Current priority debt   |                        | Collection from liquidators for the past |                       |
|------|-------------------------|------------------------|--|-----------------------|
|      | Total (millions of NIS) | As % of total benefits | Total (millions of NIS)                  | As % of priority debt |
| 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                  |
| 2015 | 237.7                   | 64.6                   | 35.0                                     |                       |

