

Insurance of Employee Rights in Bankruptcy and Corporate Liquidation

General

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 their 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 realizable assets to finance the outstanding debt owed to their employees and provident funds. The Division's activities enable a complete separation between making payments to employees and provident funds, and realization of the employers' 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.

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 2016, 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.

Despite significant progress achieved in the area of employees' 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 therefore the latter has no reason

to initiate such proceedings, and cannot exercise his/her rights in this Division. In 2016, in the wake of a reduction in the cost of the 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 employees or provident funds have not received what they were owed: self-employed workers, limited companies, partnerships, cooperative associations and non-profit organizations.
- **Employee:** Anyone who worked for an employer at the time 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:** Anybody 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.

Benefits and Scope of Payments

Benefits to Employee

- **Wages:** Sums yet to be paid to the employee for his work – wages, overtime pay, convalescence pay, payment in lieu of leave, payment for religious holidays and clothing – including any sum deducted from employee wages other than by law, and not yet transferred to its destination. If wages are not higher than minimum wage, the employee is entitled to receive the minimum wage prescribed by law – NIS 4,825 in 2016.

- **Severance pay:** Severance pay to which the employee is entitled up to the date of termination of his employment, for seniority accrued during the 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 2016).

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 2016). In 2016, NIS 324.8 million were paid to employees and provident funds; 84.8% of the payments to employees were paid as wages and severance pay, wages only – 12.6%, severance pay only – 2.6% (Table 1).

Table 1

Payments to Employees and Provident Funds and Payment by Type of Benefit as a Percentage of Total Payments, 2012-2016

Year	Total payments (millions of NIS)			Payment to employee by type of benefit as percentage of total			
	Total	To employees	To provident funds	Total	Wages and severance pay	Wages only	Severance pay only
2012	296.0	288.9	7.1	100	80.5	17.0	2.5
2013	295.6	281.0	14.6	100	81.7	15.1	3.2
2014	329.2	321.1	8.1	100	80.3	16.5	3.2
2015	364.4	350.6	13.8	100	81.9	15.8	2.3
2016	324.8	308.4	16.4	100	84.8	12.6	2.6

Data Regarding Employers and employees

The period of time from termination of employer-employee relations until payment of the benefit frequently lasts several years. Reduction of liquidation fees has led to an increase in the number of claims for benefits in this Division.

In 2016, there were 670 new employers in bankruptcy and liquidation whose liquidators submitted claims to the Division. 7,500 new claims were received for processing – a decrease of 14.8% compared with 2015, and 9,100 employee claims were approved. The

number of insured employees on behalf of whom provident fund claims were approved in 2016 was 4,760 – a decrease of 13.4% compared with 2015 (Table 2).

In more than half of the employer cases received for processing by the Division in 2012-2016, 1-5 claims per case were received (Table 3). However, one must take into account additional future claims in those cases, which may change the distribution of employers by number of employee claims in their cases.

From the distribution of employers by economic sector, it appears that 35.7% belonged to the trade sector, 32.7% to services and 14.3% to construction (Table 4). Service workers represented 46.6% of all employees whose claims were approved, compared with 52.8% in 2015 (Table 5). Between 2015 and 2016, there was a decrease in the share of trade and services sectors among bankrupt employers, but an increase in the share of agriculture, industry and construction sectors.

Table 2
New Employers in the Division, New Employee Claims and New Provident Fund Claims, 2012-2016

Year	New employers	New employee claims		New provident fund claims		Employees for whom payment was made to provident funds	Insureds for whom payment was made to provident funds**
		Received	Approved*	Received	Approved*		
2012	490	10,100	8,800	280	280	2,070	2,170
2013	570	10,000	8,100	330	370	3,680	4,900
2014	630	11,500	10,300	300	300	3,020	3,290
2015	630	8,800	10,500	500	490	4,120	5,500
2016	670	7,500	9,100	440	450	4,300	4,760

* Including approval of claims received in previous years.

** Insured in several provident funds.

Table 3
New Employers in the Division, by Number of Claims (Not Including Provident Fund Claims), 2012-2016

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
2012	490	100	55.2	30.6	14.2
2013	570	100	51.5	35.7	12.8
2014	630	100	54.8	32.6	12.6
2015	630	100	59.0	29.3	11.7
2016	670	100	69.6	23.0	7.4

Table 4

New Employers in the Bankruptcy Division, by Economic Sector (Percentages), 2012-2016*

Year	Total (absolute numbers)	Percentages						
		Total	Agriculture	Industry	Construction	Trade	Transport	Services**
2012	490	100	1.8	15.5	12.3	31.7	4.3	34.4
2013	570	100	0.5	15.2	12.6	34.5	4.0	33.1
2014	630	100	1.6	12.4	10.9	38.8	3.6	32.6
2015	630	100	1.3	9.9	13.0	37.1	3.2	35.5
2016	670	100	1.5	12.7	14.3	35.7	3.1	32.7

* New series based on 2011 economic sector classification.

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

Table 5

Approved Employee Claims as a Percentage of Total, by Economic Sector,* 2012-2016

Year	Total (absolute numbers)	Total	Agriculture	Industry	Construction	Trade	Transport	Services**
2012	8,800	100	0.8	15.0	12.5	17.4	1.1	53.2
2013	8,100	100	0.5	17.8	4.5	15.9	2.5	58.8
2014	10,300	100	1.3	19.5	9.5	27.1	2.6	39.9
2015	10,500	100	0.4	8.1	5.4	32.3	0.9	52.8
2016	9,100	100	0.7	13.8	11.2	24.9	2.8	46.6

* New series based on 2011 economic sector classification.

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

Table 6

Employees and Provident Funds Receiving Maximum Benefits, as a Percentage of All Approved Claims, 2012-2016

Year	Employees who received the maximum benefit		Employees for whom maximum benefit was paid to provident funds *	
	Total	As a percentage of total approved claims	Total	As a percentage of total approved claims
2012	410	4.9	300	14.6
2013	370	4.6	650	17.7
2014	380	3.7	290	9.7
2015	380	3.6	220	5.4
2016	330	3.7	310	7.3

* Reclassified

In 2016, 330 employees – approximately 3.7% of all new employees whose claims were approved, a percentage similar to 2015 – received the maximum benefit to which they were entitled. 7.3% of employees on whose behalf claims had been submitted to provident funds received the maximum benefit, compared with a lower percentage (5.4%) in 2015. It should be noted that this number may rise as a result of payments for benefit differentials in the coming years (Table 6).

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 debt¹, 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 NIS 25,078 for wages only, and NIS 37,617 for wages and severance pay in 2016. There were no priority debt amounts in the benefits paid to provident funds. Regarding the balance of the debt, the Division is considered an ordinary creditor. If the maximum amount (NIS 112,424 in 2016) 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 an ordinary 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 ordinary 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

1 Priority debts are given priority over other debts – priority over ordinary creditors and 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.

provident funds that were eroded over time. Table 7 presents the priority debt amounts and their percentage of the benefit amounts paid in 2012-2016, 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 2016 the Employee Rights in Bankruptcy and Liquidation Division was entitled to receive as priority debt, 64.9% of total benefits paid to employees and provident funds that year.

In 2016, the NII succeeded in collecting NIS 19.3 million for benefit payments made in the past, which constitute 9.2% of the priority debt in that year.

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, 2012-2016

Year	Current priority debt		Collection from liquidators for the past	
	Total (millions of NIS)	As percentage of total benefits	Total (millions of NIS)	As percentage of priority debt
2012	181.3	61.4	31.7	17.6
2013	176.1	59.6	15.3	11.8
2014	205.1	64.0	31.0	14.7
2015	232.7	64.6	35.0	14.7
2016	210.8	64.9	19.3	9.2

