

# Employee Rights in Bankruptcy and Corporate Liquidation

## General

The Employee Rights in Bankruptcy and Corporate Liquidation Division was established in 1975, against the backdrop of businesses collapsing and filing for bankruptcy and liquidation. Employees in these places lost not only their jobs and the balance of their wages, but also their severance pay as required by their employment agreements, as well as some of their social rights. It occurred because in most cases employers no longer had any financial resources or realizable assets to finance the debts owed to their employees and provident funds. The Division's activity allows for complete separation between the payments to employees and provident funds, and the realization of employers' assets. The amounts of benefits are linked to changes in the basic amount as defined in the National Insurance Law.

The purpose of the Division is to pay employees the remaining debt of employers for wages and severance pay and to maintain the continuity of social rights in provident funds. The benefits are financed by the payment of insurance contributions by the employers (at a reduced rate, 0.01% of the employee's monthly salary up to the liable income ceiling, and at the usual rate 0.06% above this ceiling, up to the maximum basis for collection), as well as by government's participation of 0.02% within the framework of the Treasury Indemnification.

## Problems Yet to Be Solved

Despite significant progress made in the area of employee's wages and rights protection, some problems still remain unsolved:

- The legal expenses involved in liquidation proceedings may be higher than the amount of the employer's debt to the employee, and thus the employee avoids initiating such proceedings. In 2018, as a result of the reduction in the cost of liquidation fees, the number of requests for liquidation and compensation for lower amounts increased.
- The maximum benefit paid to employees who have accumulated long periods of seniority is only a partial amount compared to the total debt owed to them by the employer.

## Legal Definitions

- **Employer in bankruptcy or liquidation:** All types of corporations against which a bankruptcy or liquidation order was issued, and whose employees or provident funds did not receive full payments: self-employed workers, companies, **partnerships**, cooperative associations and non-profit organizations.
- **Employee:** Anyone who worked for an employer at the time a bankruptcy or liquidation order was given, and has not yet received the balance of his salary and severance pay. This definition includes workers who are Israeli residents, foreign residents and residents of the Territories who work under a valid employment agreement.
- **Provident funds:** A body to which, according to a collective agreement, employment agreement or any other agreement between the employee and the employer, and with the consent of that body, the employer must transfer money sums from his own funds or from employee's wage, for the purpose of accumulating or securing the employee's rights related to his employment, termination of employment, retirement or his social security.

## Benefits and Scope of payments

### Benefits to Employee

- **Wages:** Unpaid sums to the employee for his work – including wages, overtime, convalescence pay, vacation redemption, holiday pay, holiday pay and clothing – including any amount illegally deducted from the employee's wages and not yet transferred to its destination. If the wage does not exceed the minimum wage, the employee is entitled to receive the statutory minimum wage – NIS 5,300 in 2018.
- **Severance pay:** Compensation to which the employee is entitled until the termination of his employment due to his seniority accumulated during his employment with the employer.

The maximum benefit paid to an employee (for wages and severance pay) was set at 13 times the basic amount (NIS 112,762 in 2018).

### Benefits to Provident Funds

Benefits to a provident fund are intended to ensure the continuity of workers' rights, and their maximum amount is twice the basic amount (NIS 17,348 in 2018). In 2018, NIS 273.3 million were paid to workers and provident funds, of which NIS 259 million paid to workers (slight decrease compared to 2017) and NIS 14.3 million to provident funds (increase compared to 2017). Out of the payments to workers, 85.5% were paid as wages and severance pay: only wages – 10.6%, only severance pay – 4% (Table 1). Compared to 2017, the share of payments as wages and severance pay increased (from 82.2% to 85.5%) and the share of payments for wages only decreased (from 14.6% to 10.6%).

Table 1: Payments to Employees and Provident Funds, by Benefit Type, as Percentage of Total Payments, 2014-2018

Year	Total payments (NIS million)			Payments to employees as a percentage of total			
	Total	To employees	To provident funds	Total	Salary and severance pay	Salary only	Severance pay only
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
2016	324.8	308.4	16.4	100.0	84.8	12.6	2.6
2017	272.2	260.4	11.8	100.0	82.2	14.6	3.2
2018	273.3	259.0	14.3	100.0	85.5	10.6	4.0

## Employers and Employee's Claims

The time period between termination of employee-employer relationships and the payment of the benefit lasts usually several years. The reduction in liquidation fees led to an increase in the number of claims in this Division.

In 2018, there were 1,043 new employers whose liquidators filed claims with the Division. 6,364 new claims were received – a decrease of 12.3% compared to 2017, and 6,509 employee claims were approved. The number of insured workers on whose behalf claims to provident funds were approved was 461, a slight decrease compared to 2017 (Table 2).

Table 2: New Employers in the Division and New Claims (Employees and Provident funds), 2014-2018

Year	New employers	New employee claims		New provident funds claims		Employees for whom provident funds payments were made
		Received	Approved*	Received	Approved*	
2014	630	11,500	10,300	300	300	3,020
2015	630	8,800	10,500	500	490	4,120
2016	670	7,500	9,100	440	450	4,300
2017	657	7,254	7,755	435	466	3,525
2018	1,043	6,364	6,509	435	461	3,338

\* Including approved claims received in previous years.

More than half of the employers' cases received in this Division in 2014-2018 there were 1-5 claims per case (Table 3). However, additional claims in the future should be taken into account in these cases, which may change the distribution of employers by number of employee claims in their cases.

The breakdown by industry shows that 35.8% of employers were in the commerce sector, 34.1% in services and 13.7% in construction (Table 4). The share of services claims in all approved claims decreased from 43.9% in 2017 to 38% in 2018, and of commerce related claims increased from 24.7% to 30.3% (Table 5).

Table 3: New employers in the Bankruptcy Division, by Number of Claims (Not Including Provident Funds Claims), 2014-2018

Year of file receipt	Total employers (absolute numbers)	Number of claims per employer as a percentage of all employers			
		Total	1 to 5	6 to 25	26 and more
2014	63	100.	54.	32.	12.
2015	63	100.	59.	29.	11.
2016	67	100.	69.	23.	7.
2017	65	100.	66.	26.	6.
2018	1,04	100.	71.	23.	5.

Table 4: New Employers in the Bankruptcy Division, by Industry (Percentages), 2014-2018\*

Year	Total (absolute numbers)	Percentages						
		Total	Agriculture	Industry	Construction	Commerce	Transportation	Services**
2014	630	100.0	1.6	12.4	10.9	38.8	3.6	32.6
2015	630	100.0	1.3	9.9	13.0	37.1	3.2	35.5
2016	670	100.0	1.4	12.7	14.3	35.7	3.1	32.7
2017	657	100.0	0.7	11.0	13.3	35.6	5.1	34.3
2018	1,043	100.0	1.1	11.4	13.7	35.8	3.9	34.1

\* New series based on economy branches classification, 2011.

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

Table 5: Approved Employee Claims, by Industry\* (Percentages), 2014-2018

Year	Total (absolute numbers)	Percentages						
		Total	Agriculture	Industry	Construction	Commerce	Transportation	Services**
2014	10,300	100.0	1.3	19.5	9.5	27.1	2.6	39.9
2015	10,500	100.0	0.4	8.1	5.4	32.3	0.9	52.8
2016	9,100	100.0	0.7	13.8	11.2	24.9	2.8	46.6
2017	7,940	100.0	1.0	13.4	13.4	24.7	3.6	43.9
2018	6,509	100.0	0.4	11.2	17.5	30.3	2.7	38.0

\* New series based on economy branches classification, 2011.

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

In 2018, 3.6% of all employees whose claim was approved (250 employees) received the maximum benefit they were entitled to, compared to 4.4% in 2017, and 3.9% received the maximum benefit to provident fund compared to 5.3% in 2017. Their number may increase, due to payments for benefit differentials in the later years (Table 6).

Table 6: Employees and Provident Funds Receiving Maximum Benefits, as a Percentage of All Approved Claims, 2014-2018

Year	Employees who received the maximum benefits		Employees whose provident funds received the maximum benefits*	
	Total	As a percent of all approved claims	Total	As a percentage of all approved claims
2014	380	3.7	290	9.7
2015	380	3.6	220	5.4
2016	330	3.7	310	7.3
2017	270	4.4	220	5.3
2018	250	3.6	40	3.9

\* Re-classified.

## Collection of Employers' Debts

By law, the Division may claim from employers' liquidators the amounts of benefits paid to each employee as a priority debt<sup>1</sup>, in an amount not exceeding the sum determined by the Companies Ordinance, Bankruptcy Ordinance, Cooperative Association Regulations and more. The amount of priority debt per employee for wages alone was NIS 26,246 in 2018 and NIS 39,368 for wages and severance pay. There are no priority debt amounts in benefits paid to provident funds. Regarding the balance of the debt, the Division is considered an ordinary creditor: if the employee was paid the maximum amount (NIS 112,762 in 2018), the amount to be paid by liquidators to the Divisions as priority debt will be transferred to the employee to cover part of the debt that liquidators owe to the employee. In this case, the Division becomes an ordinary creditor from the very first shekel.

The Division is not entitled to collect from the liquidator the linkage differentials paid to the entitled party for the period following the date of receivership or the liquidation order issuance, unless the liquidator decides to pay interest, linkage differentials or both for the said period to all other creditors. For example, if an employee was paid NIS 35,000 for salary and compensation, of which NIS 2,000 is a linkage differential for the period following the receivership or liquidation order issuance, the remaining amount – NIS 33,000 – is divided into NIS 13,500 of priority debt and NIS 19,500 ordinary debt.

It is clear from the above that the law restricts 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 have eroded over time. Table 7 shows the amounts of priority debt and their weight in the amount of benefits paid in 2014-2018, and the sums collected from liquidators and their proportion of the total priority debt in those years. The table shows that the Employee Rights in Bankruptcy and Liquidation Division was entitled to receive as priority debt 43.7% of the amount of benefits paid to employees and provident funds that year.

In 2018, the NII was able to collect NIS 44.5 million on account of previously paid benefit payments, which constitutes 37.3% of the priority debt in that year.

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<sup>1</sup> 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. Order of priority for debts: a) wages; b) income tax debts for deduction at source; c) other debts, such as maintenance and rent; d) municipal taxes.

Table 7: Priority Debt and Collection from Liquidators (Millions of NIS), 2014-2018

Year	Current priority debt		Collection from liquidators for the past	
	Amount (Millions of NIS)	As percentage of all benefits	Amount (Millions of NIS)	As percentage of priority debt
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
2017	168.7	64.5	37.6	22.3
2018	119.4	43.7	44.5	37.3