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## Case Study – The IDB Debt Restructuring

"We never discussed the possibility of debt restructuring, a haircut or any other kind of cut. We have in our accounts adequate liquid funds to serve our present bond needs for at least a year and a half or two years. The market is undervaluing us. We are much stronger than our current image. I do not want to give investors any recommendations, but I myself buy IDB Holding shares."

Nochi Dankner, controlling shareholder in IDB, in an interview to Channel 2, May 19<sup>th</sup>, 2012

As of December 14, 2013, Mr. Nochi Dankner (hereinafter: "**Mr. Dankner**") was no longer at the headquarters of IDB Holding Ltd. (hereinafter: "**IDB**" or the "**Company**"), located on the 44<sup>th</sup> floor of the Azrieli Center Triangular Tower. He had just concluded some last meetings at his house in Herzliya Pituach, and tried to predict tomorrow's ruling by Judge Eitan Orenstein of the District Court of Tel Aviv. Will he be given another opportunity to recover his life's work, in which he invested most of his energies (and part of his fortune) over the last decade, or will the court rule that the IDB Group be transferred to the hands of Eduardo Elsztain and Moti Ben-Moshe?

Dankner went over the chain of events. He tried to understand how he lost the bondholders' trust and how someone who had started out as his partner to the recovery plan, Mr. Elsztain, could become his bitter enemy and finally win the bondholders' support. He knew that although almost everything has already been said in the statements filed with the court, and in those released to the media, the court would still request to hear again the positions of the Official Receiver of Israel and the Securities Authority. After all, this was the biggest debt restructuring ever, in terms of both its size and effect on the Israeli market. He tried to forecast the arguments to be presented by the representatives of the Official Receiver and the Securities Authority, and bitterly imagined the claims to be made by Mr. Eyal Gabbai and Adv. Haggai Ulman, the court-appointed expert and observer appointed for the Company. The bondholders' position he knew full well. To his regret, he could not picture any optimistic scenario for the next day, as he knew how limited the court's power is to intervene against the will of a bankrupt corporation's creditors. All of this was in stark contrast to just a few years earlier, when Mr. Dankner was seen as a brilliant financier, a wunderkind of the Israeli capital market, and succeeded in gaining control of IDB.

## A. About IDB<sup>1</sup>

Mr. Dankner bought control of IDB in May 2003, holding the Company both directly (7.7%) and indirectly through Ganden Holdings Ltd. (47.2%) – a private company controlled by Mr. Dankner and his sister, Ms. Shelly Bergman. Mr. Dankner bought control in IDB together with the Manor and Livnat families that held, through Avraham Livnat Ltd. and Avraham Livnat Investments (2002) Ltd. and through Manor Holdings B.A. Ltd., approximately 11.79% and 9.94%, respectively. Mr. Dankner holds IDB through a complex holding structure, via subsidiaries Ganden and Tomahawk.

IDB was and still is one of Israel's largest holding companies, investing, both by itself and through held companies, in corporations operating in different and diverse industries in the Israeli market and abroad. The Company was incorporated in Israel in 1969, and held its initial public offering that year.

IDB's main direct holding is IDB Development Corporation Ltd. (hereinafter: "Development Corporation"), through which IDB invests in companies in the field of insurance and financial services, industry, commerce and services, communications and more. The operations of these companies, together with IDB itself and Development Corporation, termed the "IDB Group", will be described in brief below.<sup>2</sup> Appendix A details the Company's structure and holdings.

### **Discount Investment Corporation Ltd. (hereinafter: "DIC")**

**DIC is a public company incorporated in Israel, with shares and bonds listed for trade on the Tel Aviv Stock Exchange Ltd. (hereinafter: the "Stock Exchange").** DIC itself is one of Israel's largest holding companies, and invests both by itself and through its held companies, in corporations that operate mainly in the fields of communication, real estate, technology, commerce and services, financial services and agrochemicals.

Thus, for example, DIC holds approximately 43.6% of the shares of Cellcom Israel Ltd. (hereinafter: "Cellcom"). Cellcom is a communications service provider, which offers its customers mainly cellular communications services in Israel, landline telephony services, international telephony services, internet access services and accessory services. Cellcom is a public company incorporated in Israel with shares listed for trade on the Stock Exchange and the New York Stock Exchange and bonds listed for trade on the Stock Exchange. In addition, Cellcom itself holds the full share capital of 013 Netvision Ltd., which provides its customers with communications and internet services.

In addition, DIC holds approximately 79.2% of the shares of Property & Building Corp. Ltd. (hereinafter: "Property & Building"), which is a public company dealing mainly in the field of income-producing properties in Israel and the US and in the field of residential construction in Israel. In addition, Property & Building holds, together with Development Corporation, IDB Group USA Investments Inc. (hereinafter: "IDGB"), which engages through real estate corporations in the construction of an offices and commerce project and marketing of a residential project in Las Vegas (hereinafter: "Plaza Project").

DIC also holds shares of Shufersal Ltd. (hereinafter: "**Shufersal**"), the main operation of which is the ownership and management of one of Israel's largest retail chains. Shufersal also

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<sup>1</sup> A description of the business and holdings of IDB as of the date of the Company's 2012 Financial Statements.

<sup>2</sup> The IDB Holding chart is attached as Appendix A.

operates in the field of income-producing real estate, by leasing different income-generating real estate properties for office and commercial uses. Shufersal is also a public company, with shares and bonds listed for trade on the Stock Exchange.

It should be noted that until December 2013, DIC held, both directly and indirectly, the shares of Given Imaging Ltd. (hereinafter: "**Given Imaging**"), a company traded *inter alia* on the Nasdaq Stock Market, which develops, manufactures and markets tools for the visual examination of the human digestive system. The company's products are based on miniature cameras inside capsules that can be swallowed. In December 2013, Given Imaging and Covidien Plc. announced that they have signed a binding agreement under which Covidien would purchase the full share capital of Given Imaging, and on February 27, 2014, Covidien announced that it had completed the transaction.

### **Koor Industries Ltd.** (hereinafter: "**Koor**")

Koor is a public holding company whose shares and bonds are listed for trade on the stock exchange, and through which IDB holds, *inter alia*, shares of Makhteshim Agan Industries Ltd. (hereinafter: "**Makhteshim Agan**") and shares of Credit Suisse Group AG (hereinafter: "**Credit Suisse**"). Makhteshim Agan is a private company incorporated in Israel, whose bonds are listed for trade on the stock exchange. Its main operation is in the field of agricultural protection products (agrochemicals), including the development, manufacturing and marketing of mainly generic agricultural protection products.

Credit Suisse is a provider of financial services that offers its customers financial services through its private banking and wealth management division and investment banking division. It is a Swiss public company whose shares are listed for trade on the Swiss stock exchange, and whose American depository shares are listed for trade on the New York Stock Exchange.

### **Clal Insurance Enterprises Holdings** (hereinafter: "**Clal Insurance**")

Clal insurance is a holding company mainly operating in the fields of insurance, pension and provident funds, financial services and the holding of properties and real and other businesses (such as holding insurance agencies), and is one of Israel's largest insurance groups. Clal Insurance has four fields of operation: long-term savings, general insurance, health insurance and financial services. Clal Insurance is a public company whose shares are listed for trade on the Stock Exchange.

### **Modiin Energy Limited Partnership** (hereinafter: "**Modiin**")

Modiin is a limited partnership dealing with oil and gas exploration in territories under concession. IDB is one of the controlling shareholders (indirectly) in the general partner in Modiin, and indirectly holds participation units in the rights of the limited partner in the company.

## B. The Debt Structure of IDB and Development Corporation

IDB presents a complex debt structure. The Company's debt is mostly to banks, which are not secured creditors, which precede in order of creditors the Company's other creditors. On the other hand, the banks have a right of offset against cash balances in the bank and NIS 150 million in secured debt in Development Corporation. In addition, the Company had liabilities to its bondholders. It should be noted in particular that both IDB and Development Corporation have debts to banks and debts to the bondholders as detailed below.

As of December 31, 2012, IDB had five bond series in circulation, the primary terms of which were as follows (amounts denominated in NIS millions):

Series	Book value of the bond balance as of December 31, 2012	Stock exchange value	Interest rate (fixed)	Principal payment start date	Principal payment end date	Interest payment date	Linkage terms
A	15.6	Nonnegotiable	6.55%	Aug 24, 2005	Aug 24, 2013	Aug 24	Consumer price index
B	32.2	Nonnegotiable	5.7%	Sept 6, 2008	Sept 6, 2013	Sept 6	Consumer price index
C	292	57.4	4.4%	June 10, 2013	June 10, 2014	June 10	Consumer price index
D	1,292.7	212.4	5.1%	Dec 20, 2015	Dec 20, 2020	Dec 20	Consumer price index
E	119.3	24.8	5.2%	June 10, 2013	June 10, 2014	June 10	Unlinked

A summary of bond terms as included in IDB's 2012 Financial Statements is attached as **Appendix B**.

In addition, as of December 26, 2012, IDB owed an amount of approximately NIS 120 million to Bank Leumi LeIsrael Ltd. (hereinafter: "**Bank Leumi**"), and an additional amount of approximately NIS 155 million to Credit Suisse Bank. A detailed description of IDB's loans as included in the Company's 2012 Financial Statements is attached as **Appendix C**.

### Development Corporation

As of December 31, 2012, Development Corporation had five bonds series in circulation, the primary terms of which were as follows (amounts denominated in NIS millions):

Series	Book value of the bond balance as of December 31, 2012	Stock exchange value	Interest rate (fixed)	Principal payment start date	Principal payment end date	Interest payment date	Linkage terms
C	20.2	Nonnegotiable	5.9%	June 30, 2013	June 30, 2013	June 30	Index
G	1,978.8	1,094.5	4.5%	June 10, 2013	June 10, 2018	June 10	Index
H	48.9	38.9	4.1%	June 10, 2013	June 10, 2013	June 10	Index
I	1,051.8	479.9	4.95%	Dec 18, 2020	Dec 18, 2025	June 18, Dec 18	Index
J	614.7	317.3	6.6%	Dec 10, 2012	Dec 10, 2014	June 10	Unlinked

A summary of bond terms as appears in IDB Development's 2012 Financial Statements is attached as **Appendix D**.

In addition, as of December 31, 2012, and March 31, 2013, Development Corporation had debts to numerous banking corporations and financial institutions, as detailed in **Appendix E**.

### **Private debts up the pyramid**

According to publications to the general public, the Group's balance of indebtedness to banks is estimated at approx. NIS 500 million from Gaden to Bank Leumi and approx. NIS 80 million more to Bank Mizrahi Tefahot, and approximately NIS 100 million from Tomahawk to Bank Discount. The Group's balance of indebtedness appears in **Appendix F**.

## **C. Chain of Events Leading to the Debt Restructuring**

### **Beginning of the snowball**

In September and November 2012, meetings of IDB bondholders were held, convened by the trustees for the bondholders. In these meetings, among other things, a joint representation for bondholders of the Company's Series A, C, D and E bonds was appointed. Usually, the appointment of such a representation points to the bondholders' estimate that the issuing company is in financial difficulties; in IDB's case, this was not at all a surprise.

Many of Nochi Dankner's business moves in recent years raised some eyebrows in the Israeli capital market. One of these moves was investing in shares of Swiss bank Credit Suisse - and the connection of this investment to IDB's other holdings and business was confusing, to begin with. This move seemed more like a speculative bet on the capital market, only in this case the bet was made with bondholders' money and ended with an estimated loss of approximately NIS 1 billion. The investment in the Maariv newspaper (through DIC) was also widely bewildering with respect to its underlying business rationale, and this investment, too, turned out to be a failure. It seems that the most ambitious investment – the Plaza Project in Las Vegas – a joint venture by the IDB Group (through Development Corporation and Property & Building) and Yitzhak Tshuva (through Elad Group<sup>3</sup>), is a typical example of the symptom that led to the wave of debt restructuring in recent years in Israel.

On the one hand, easy to raise money was available to key entrepreneurs in the Israeli market (lately nicknamed "tycoons"), while on the other hand control mechanisms over the use of the raised money were inadequate, especially those mechanisms that would connect the risk attached to the issued bonds with the appropriate collateral. According to different estimates, the IDB and Delek groups wrote off approximately NIS 2.4 billion for the failed Plaza Project, at the end of which the lenders acted to foreclose the land. Thus, due to hasty and failed investments, which were sometimes devoid of any business justification, together with an aggressive dividend distribution policy in IDB Group companies, the group companies lost since 2007 approximately NIS 33 billion in value. These processes ended in IDB's serious cash flow difficulties – difficulties that bondholders started to also feel. As a result, it was decided to appoint a representation as foregoing.

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<sup>3</sup> Both parties were supposed to build, on the land that they bought in 2007 in consideration for USD 1.24 billion, a giant (and megalomaniac, according to some) hotel, casino and residential project, in an additional investment of billions of dollars.

To represent the bondholders, the following bodies were selected: Harel Pia Mutual Funds Ltd. (which later resigned from the representation), Gilad Pensions for Religious Workers Ltd. and Psagot Investment House Ltd. (which also later resigned from the representation). In addition, Excellence Investments Ltd. was appointed as another company in the representation. In addition to the appointment of the representation in the foregoing meetings, the Series C, D and E bondholders resolved to order the trustees to take any legal action required, *inter alia*, to prevent the payment at the amount of NIS 35 million which was to be transferred on September 6, 2012 to the Company's Series B bondholders.

And indeed, in September 2012, the trustees for the Series C, D and E bondholders commenced a legal proceeding in connection with the making of the aforementioned payment at the amount of approximately NIS 35 million to the Series B bondholders. As part of the foregoing legal proceeding, the court was requested to issue an injunction to prevent IDB from making payments to its bondholders and other financial creditors on the same creditor level, or an injunction ordering that instead of making such payments, the Company would deposit the amounts due to such creditors in the court's account or in a trust account. According to a procedural understanding the parties reached after the completions of the Company's rights issue, in which it raised an amount greater than the amount that was to be transferred to Series B bondholders, the full payment was transferred to Series B bondholders, and accordingly the foregoing legal proceeding was erased without a costs order.

At the same time as the attempts to stop payment to the bondholders (Series B), IDB's financial statements demonstrate that in the months of September to December 2012, several letters were sent to the Company and/or its officeholders by the IDB trustees and representation, in which the trustees and representations made, *inter alia*, demands to receive information, claims regarding the Company's conduct and a demand to start negotiations on debt restructuring.

Accordingly, on December 12, 2012, a memorandum of understandings was signed between IDB and the trustees for the bondholders (hereinafter: **the "Memorandum of Understandings"**), in which, *inter alia*, the following provisions were agreed: (1) the payment of interest at the amount of approximately NIS 65 million to the Company's Series D bondholders, set to December 20, 2012, would be postponed to March 31, 2013; (2) the Ganden group undertook that if and insofar as the option given to the corporation controlled by Mr. Eduardo Elsztain by virtue of the agreement between him and Ganden Holdings Ltd. (hereinafter: **the "Elsztain Option"**) is exercised, it will cause the injection to the Company (at its discretion – as share capital or as a capital note or as a loan, which would be inferior in status to the Company's bond series), of an amount of no less than NIS 120 million (hereinafter: **the "Controlling Shareholders' Injection"**). In this context, it was agreed that the Controlling Shareholders' Injection would be made from the resources of the Ganden Group or Mr. Elsztain or any other external source, and insofar as it is not performed dully and fully, that the bondholders would be allowed to take legal action; (3) if the Controlling Shareholders' Injection is performed, payment to the Series D bonds will be made no later than April 3, 2013; (4) If the Elsztain Option is not exercised, and insofar as the Ganden Group does not give its written commitment to perform the Controlling Shareholders' Injection from any other external source by March 31, 2013, then the bondholders would be allowed to take legal action; (5) The Parties will continue to negotiate to formulate an agreed plan for reinforcing the Company's financial basis, under which the Company and the Ganden Group will commit to the investment of an additional amount of NIS 60 million in the Company, from any external source, no later than 30 days after the date of signing the agreed plan. In addition, as part of the agreed plan, the parties will discuss deferring the due date of the Company's obligations to its creditors, and it was agreed that if an agreed plan is not formulated by the end of April 2013, either party will be allowed to take legal action, while reserving its rights and claims; (6) The bondholders agreed not to take any legal action against

the Company, its shareholders, officeholders in their name or on their behalf, unless the Company violates the provisions of the Memorandum of Understanding, or until the end of March 2013; (7) The Company and the trustees undertook to sign a standstill letter, in which IDB undertook, *inter alia*, to make the execution of different actions subject to the approval in advance of the trustees for the bondholders, including any action that is not part of the ordinary course of business. The standstill letter was signed by the parties in December 2012.

In January 2013, the District Court in Tel Aviv Jaffa appointed Mr. Eyal Gabbai as a court-appointed expert witness pursuant to the provisions of Section 350 R of the Companies Law, according to an application filed by the trustees for the bondholders, in light of the commencement of negotiations between the representation and the trustees and the Company for the purpose of debt restructuring. Section 350 of the Companies Law appears in **Appendix G**.

On March 12, 2013, IDB announced that following negotiations it held with the representation and the trustees for the bondholders, business principles were settled for an agreed plan for the reinforcement of the Company's capital structure (hereinafter: **the "Arrangement Plan"**). The Arrangement Plan referred to all bondholders and banking institutions that are the Company's creditors, to whom the scope of the Company's total debt was as of that date **approximately NIS 2.06 billion**. The main principles of the plan were as follows:

1. The shareholders would inject to IDB cash at a total amount of NIS 500 million, so that NIS 275 million will be injected to the Company upon the coming into effect of the arrangement, and the remainder would be injected to the Company in five equal annual payments of NIS 45 million each;
2. The consideration to be given to the Company's creditors on the effective date will include the following components:
  - a) Payment in cash at the amount of NIS 405 million;
  - b) Placement of Company shares constituting 15% of its issued share capital post-placement;
  - c) Issue of three new bond series with the following terms:
    - i. **Series A** at a total scope of NIS 1,100 million, to be split into two separate series:
      - **Series A1** – in the scope of NIS 775 million, will be due for payment in eight equal annual payments to be paid starting from the end of the fifth year and until the end of the twelfth year, counting starting from the effective date. The aforementioned series will be linked to the index and bear annual interest at a rate of 2% in the first year and second year (starting from the effective date), 3% in the third year and fourth year (starting from the effective date) and 5% in the remaining years. Subject to agreed economic conditions, reflecting the Company's solvency, the Company shall pay starting from the fifth year from the effective date an additional annual interest, so that the total effective interest rate on the said series from the effective date will be 6.3%. The Series A1 bonds will be guaranteed with a negative pledge on the shares of Development Corporation, which will be released as the scope of the debt decreases.

- **Series A2** – in the scope of NIS 325 million, will be due for payment in one payment thirteen years after the effective date. The series will be linked to the index and bear annual interest at the rate of 2% in the first year and second year (starting from the effective date), 3% in the third year and fourth year (starting from the effective date) and 5% in the remaining years. Subject to agreed economic conditions, reflecting the Company's solvency, the Company will pay starting from the fifth year from the effective date an additional annual interest, so that the total effective interest rate on the said series from the effective date will be 6.3%. The Series A2 bonds will also be guaranteed with a negative pledge on the shares of Development Corporation, which will be released as the scope of the debt decreases.
- ii) **Series B**, at a scope of NIS 300 million, will be due for repayment in one payment fourteen years after the effective date. The said series will not be linked to the index, and will bear 4% PIK annual interest to be paid on the due date as foregoing.
- iii) **Series C**, at a scope of NIS 165 million, will be due for repayment in five equal annual payments starting from the end of the second year until the end of the sixth year from the effective date. This series will be linked to the index and will not bear interest. In addition, the series will be guaranteed with a negative pledge on the shares of Development Corporation, to be released as the scope of the debt decreases.

In addition to the foregoing, the plan determined a mechanism for the issue of additional IDB shares in case IDB does not perform any of the future injections mentioned in Section 1, as well as terms regarding the distribution of dividends, restrictions on transactions with controlling shareholders, reduction of general and administrative expenses in the IDB Group and an exemption from claims to the shareholders of the control group who participate in the injection of funds.

### **Development Corporation joins the proceeding**

On April 21, 2013, the trustees for the bondholders of Series G, I and J of Development Corporation filed an "Application for Recovery of IDB Development Corporation Ltd." pursuant to Section 350 of the Companies Law (hereinafter: **the "Application for Forced Arrangement"**). The trustees based their conclusions, regarding IDB's Development Corporation financial position and it being insolvent, on the expert opinion of TASC Consulting Group. A copy of the expert opinion is attached as **Appendix H**.

The trustees claimed in their application that Development Corporation is insolvent and has no practical option of raising capital, and is unable to fully meet its future obligations. Therefore, the court was requested to order the convening of meetings for the purpose of approving a composition of creditors, in which Development Corporation's debt to its financial creditors will be decreased from an amount of approximately NIS 6 billion to an amount of approximately NIS 2.6 billion only (i.e. a 55% reduction). The financial debt to be erased will be converted into the full share capital of Development Corporation, and against the remaining debt, the creditors will be assigned one new bond series, bearing 7% annual interest, to be paid in 2019 – 2020 in biannual payments.

In addition to the stay application, the trustees filed an urgent application for temporary relief, in which the honorable court was requested to appoint an officer authorized to



supervise the actions of Development Corporation's management. IDB responded to the foregoing applications and in its response rejected the trustees' claims and claimed that Development Corporation is not insolvent. In addition, IDB argued that in this case, it is impossible to apply Section 350 of the Companies Law, since this section requires the Company's agreement, whereas the trustees are requesting to impose an arrangement on the companies. Corporation Development also responded to the Application for Forced Arrangement, and in its response claimed that it is solvent, according to both the cash flow test and the balance sheet test. Development Corporation supported its claims with the opinion of Fahn Kanne & Co. Grant Thornton Israel Financial Consultants Ltd. A copy of the expert opinion is attached herewith as **Appendix I**.

In a discussion held on April 30, 2013, at the District Court in Tel Aviv, the court appointed Haggai Ulman as an officer with supervisory powers and Mr. Eyal Gabbai as an economic expert. The appointment of the economic expert was performed, *inter alia*, in order to help the court decide on the parties' dispute on the question of IDB Development Corporation's solvency. On June 4, 2013, the court-appointed expert filed his opinion. A copy of the expert opinion is attached as **Appendix J**.

### **Further proceedings toward the debt restructuring**

On May 24, 2013, a memorandum of understandings was signed between the joint representation of IDB and the joint representation of the bondholders of Series G, I and J of Development Corporation, under which the representations agreed to cooperate to formulate and execute an arrangement between IDB, Development Corporation and all of their financial creditors (hereinafter: **the "Representations' Arrangement"**). The principles of the Arrangement Plan were based on the consolidation of IDB and Development Corporation into one company, as follows:

1. An amount of NIS 1,750 million of the debts of Development Corporation will be converted into Development Corporation shares, so that upon the completion of the proposed arrangement, the creditors of Development Corporation will hold 90% of the share capital of Development Corporation, and the creditors of IDB will hold 10% of the share capital of Development Corporation;
2. Upon the completion of the proposed arrangement, NIS 600 million will be repaid to Development Corporation's creditors, out of the cash in Development Corporation's accounts;
3. For the remainder of Development Corporation's unsecured financial debt, following the foregoing conversion and prepayment, amounting to a total of NIS 3,450 million, a new bond series (Series 1) will be issued to Development Corporation's creditors, bearing 6% annual interest to be paid once every six months. The principal will not be linked to the index and will be repaid in four biannual payments between 2018-2019, and in addition the right for the full or partial prepayment of the foregoing series will be granted, at the discretion of the board of directors of IDB Development Corporation;
4. Development Corporation will issue two additional bond series to the company's creditors:
  - a) A bond series (Series 2) at the total nominal value of NIS 150 million, under the following terms: 6% annual interest to be paid once every six months, the principal will not be linked to the index and will be repaid in four biannual payments between 2019 and 2020;

- b) A bond series (Series 3) at the total nominal value of NIS 250 million, under the following terms: 5.25% annual interest, the principal will not be linked and the principal and interest will be repaid in two biannual payments in 2050 or on an earlier date in case a certain financial covenant is met;
5. IDB's creditors will be issued options exercisable into shares of Development Corporation, which will constitute after their issue 15.62% of Development Corporation's issued share capital, at a graduated exercise price that will reflect an overall exercise consideration to the company at the amount of NIS 277.5 million, plus 6% annual interest accumulated on the exercise price from the allocation date, once a quarter. The options' exercise period will be 12 years from their date of allocation.

It should be noted that even before the Representations' Arrangement, the trustees for IDB's bondholders proposed an offer nicknamed the "distribution in kind" offer. Under this offer, a cash amount of approximately NIS 150 million, which was available in IDB's accounts, was supposed to be distributed among its creditors, and the remaining debt was to be converted into the company's share capital, *pro rata*. This offer was split into two plan: one plan in which the control block would remain in trust, and after its sale the consideration would be distributed among the creditors, and a second plan that did not include the preservation and sale of the control block.

On June 5, 2013, the trustees for the IDB bondholders filed an application with the District Court in Tel Aviv under Section 350 of the Companies Law, in which they requested the court to order the convening of meetings of the company's creditors, for the purpose of approving the "Representations' Arrangement." In its ruling dated June 9, 2013, the court set dates for the convening of preliminary meetings, creditor meetings and company shareholder meetings. In addition, in its foregoing ruling, the court gave Development Corporation time to sell shares it holds in Clal Insurance. On August 21, 2013, Development Corporation announced that the previous day it had signed an agreement with a Hong Kong-based corporation named JT Capital Management, and that under the foregoing agreement it had sold JT Capital 32% of the Clal Insurance shares, according to a company value of NIS 4.6 billion. Following the process of selling the Clal Insurance shares, among other things, Development Corporation's financial position improved, and as a result the composition of creditors in this company was suspended. From this stage on, therefore, the composition of creditors proceedings continued in connection with IDB only.

The creditor meetings were held on August 18, 2013, and the "distribution in kind" offer, without preservation of the control block, won by a 92.93% majority. This majority was in accordance with Section 350(I) of the Companies Law, and therefore this arrangement should have been approved by the court and implemented; however, this was not the last development in the IDB affair.

### **Additional applications filed**

On August 19, 2013, Mr. Eduardo Elsztain's proposal to engage the trustees for IDB bondholders in a debt restructuring arrangement (hereinafter: **the "Elsztain Proposal"**) was accepted. According to the Elsztain Proposal, Elsztain was to inject a total of NIS 700 million as an investment in Development Corporation, and in addition pay the creditors of Development Corporation a total of NIS 70 million, and in consideration receive 50.5% of the shares of Development Corporation. The court was informed that Elsztain had already deposited USD 75 million (approximately NIS 265 million) in a bank account in Israel, and even gave an irrevocable order to transfer this amount as well as an additional amount of USD 25 million (approximately NIS 90 million). On their part, the trustees committed not to accept

any other offer, unless it includes terms that are at least 8% better than the Elsztain Proposal, and only if a deposit of USD 100 million in trust is made, as in the Elsztain Proposal. The parties agreed that the Elsztain Proposal will become a binding agreement upon its approval by the bondholder meetings.

It should be noted that earlier, on August 14, 2013, the company filed another plan in principal that was based on bringing in two additional investors: Emblaze Ltd. and Netz Ltd. According to this plan, the investors would inject an amount of NIS 826 million to IDB against the allocation of 80% of its shares, with the main part of this amount invested in Development Corporation (hereinafter: **the "Emblaze Proposal"**).

In light of the foregoing developments, IDB filed an application to extend the deadline for filing debt restructuring proposals for the company, in order to give it more time to file an orderly proposal on its behalf. The court granted the company's application, and ordered the deadline for submitting debt restructuring proposals for IDB to be set to October 20, 2013, 12:00 noon. At the request of the court-appointed expert and supervisor, the foregoing date was extended one more time to November 3, 2013.

Following the deadlines' extension, three proposals were filed with the court: one by the company, the second by the Elsztain Group, and the third by a group called Extra Israel owned by Mr. Mordechai Ben-Moshe (hereinafter: **the "Extra Group"**). Mr. Ben-Moshe's proposal drew considerable interest in the capital market, mainly because at that time he was an obscure factor in the Israeli market, and almost nothing was known about his businesses<sup>4</sup>. This led to perplexity regarding his economic strength and ability to follow up on his proposal, and also with regard to the possibility that he represents other investors who for different reasons want to keep their identity a secret. The company later exploited these weaknesses regarding Mr. Ben-Moshe's identity to attack his proposal. In any case, the proposals filed with the court, including the Extra Group proposal, were examined by the court-appointed expert, who on November 13, 2013 filed an expert opinion analyzing and comparing the different proposals.<sup>5</sup>

On October 18, 2013, just before the date set for the preliminary bondholders' meetings for the purpose of discussing and voting on the different arrangement proposals, a joint announcement on behalf of the Elsztain Group and the Extra Group was filed, with the agreement of the trustees for the bondholders, to which a joint and improved arrangement proposal was attached on their behalf. The announcement claimed that the joint proposal integrates the advantages of each of the original proposals. In addition, on October 20, 2013, the trustees filed an urgent application with the court, with the agreement of the court-appointed expert and supervisor, and with the support of Bank Leumi, requesting permission to file improved proposals. Although IDB objected to this application, the court granted the trustees' application, and allowed improved proposals to be filed by any of the present offerors, until November 25, 2013. Shortly after this decision, IDB requested that the deadline for filing the improved proposals be postponed by 48 hours, and the court granted its application.

Pursuant to the foregoing developments, two improved proposals were filed with the court: one on behalf of the company, and the other on behalf of the Elsztain-Extra Group. The Company's proposal included the following components:

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<sup>4</sup> See the TheMarker article dated December 13, 2013: *From Beer Sheva to Germany and Back – Moti Ben-Moshe Road to Riches*" (Appendix K).

<sup>5</sup> Link to the expert's report dated November 13, 2013:  
[http://maya.tase.co.il/bursa/report.asp?report\\_cd=855715-00&CompCd=736&Type=Pdf](http://maya.tase.co.il/bursa/report.asp?report_cd=855715-00&CompCd=736&Type=Pdf).

1. Injection of a cash amount of NIS 700 million to Development Corporation;
2. Allocation of 49.5% of Development Corporation shares to the company's creditors;
3. Payment in cash to the company's creditors at the amount of NIS 318 million;
4. Purchase offer for Development Corporation shares at the scope of NIS 540 million in four pulses;
5. A bridging loan to Development Corporation of up to NIS 500 million.

The company's alternative arrangement plan, instead of allocating Development Corporation shares to IDB's creditors, was a bond issue at the amount of NIS 668 million with unlinked interest at an annual rate of 7% for 4 years, and setting the payment in cash to NIS 450 million instead of NIS 318 million.

The Elsztain-Extra Group's proposal included the following components:

1. Injection of an amount of NIS 650 million to Development Corporation;
2. Allocation of 46.7% of Development Corporation's shares to the company's creditors;
3. Payment in cash to the Company's creditors at the amount of NIS 300 million.
4. Purchase offer for the shares of Development Corporation at the scope of NIS 512 million in two pulses, one of up to NIS 250 million by December 31, 2015 and the second of up to NIS 262 million by December 31, 2016;
5. Future injection of funds to Development Corporation in accordance with the estimated need of an amount of approximately NIS 300 million in 2014, and a total of approximately NIS 500 million in 2015;
6. A bridging loan at the amount of no less than NIS 100 million by March 15, 2014, until the earliest of the end of a 6-month period or the implementation of the arrangement.

On November 29, 2013, the court-appointed expert filed an updated expert opinion with regard to the improved proposals<sup>6</sup>. In his opinion, the expert pointed out that the value of the arrangements increased significantly since the composition of creditors started, since at this stage the creditors reach, supposedly, a financial return of approximately 70% of their debt. The expert's conclusion was that the two proposals are equal in value in case Clal Insurance is not sold, and that in case that it is sold, there is a certain advantage to the company's proposal in comparison with the Elsztain-Extra proposal.

### **The votes and their results**

On December 3, 2013, IDB bondholder meetings were held for the purpose of discussing and voting on the proposals. Approximately 35% of creditors voted for the company's proposal, while approximately 65% voted against it. Approximately 71% of creditors voted

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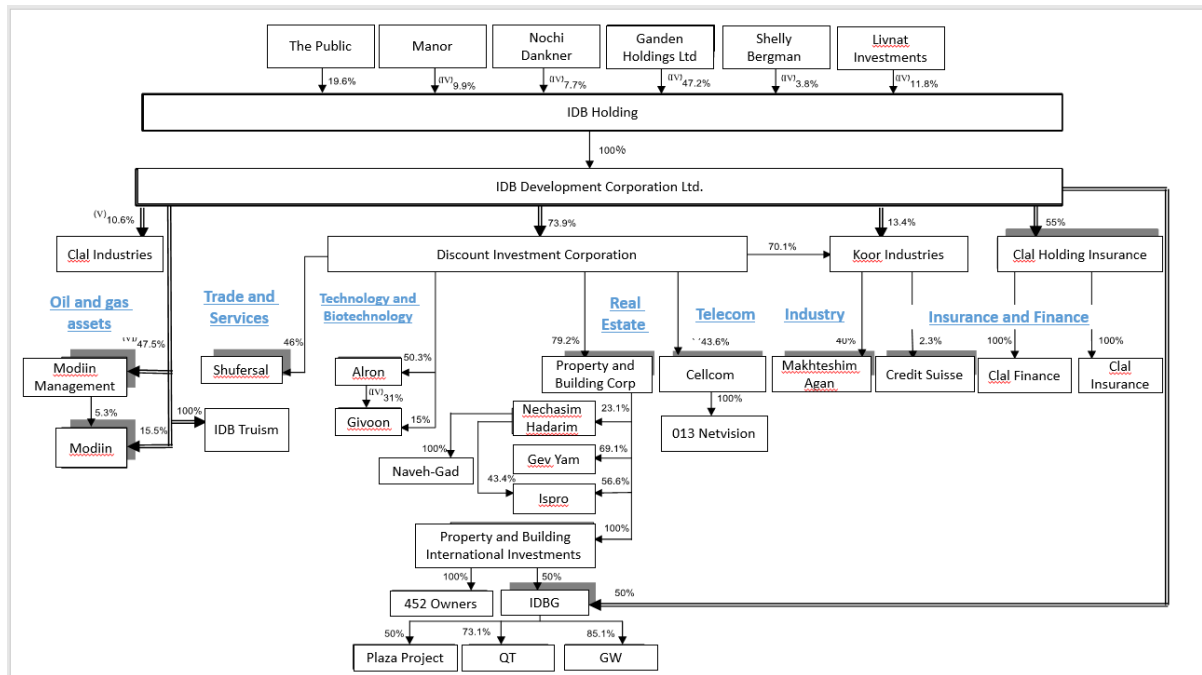
<sup>6</sup> Link to the expert's report dated November 29, 2013:  
[http://maya.tase.co.il/bursa/report.asp?report\\_cd=860527-00&CompCd=736&Type=Pdf](http://maya.tase.co.il/bursa/report.asp?report_cd=860527-00&CompCd=736&Type=Pdf).

for the Elsztain-Extra proposal, while approximately 29% voted against it. This meant that neither proposal won a majority of 75% - the majority required for the purpose of the arrangement's approval, as prescribed in Section 350 of the Companies Law. Therefore, another vote was held, only with respect to the Elsztain-Extra proposal. In this vote, 75.21% voted for the Elsztain-Extra proposal, while 24.79% voted against it. This vote, therefore, **was won with the majority required pursuant to Section 350 of the Companies Law**, and therefore this proposal could be brought for the court's approval.

Nochi again considered the discussion awaiting him in court tomorrow. Will the court accept his argument that it is impossible to force on a company an arrangement it objects to? Will the court agree to intervene in the wishes of the bondholders? Will his arguments be accepted with regard to the disclosure of further information on the Extra Group and Ben-Moshe who heads it?

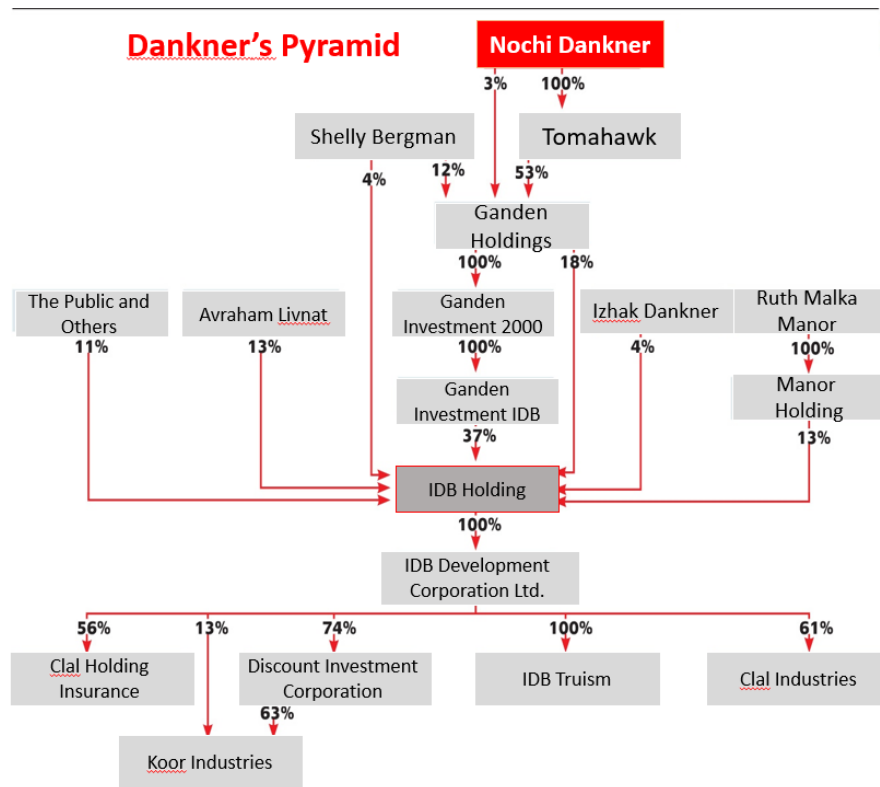
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Appendix A – Structure of the Company's Holdings



**Appendix A2 (Continued) – Structure of IDB Holding's Holdings**

Source: TheMarker, 2011



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### Appendix B – Summary of the Terms of IDB's Bonds for the 2012 Financial Year

Source: The Company's 2012 Financial Statements. Data presented in NIS millions.

Series	Original Issue Date	Face Value on Date of Issuance	Total Face Value Balance	Total Face Value Balance Including Indexation	Book Value of Accrued Interest	Total Book Value Balance on 31/12/2012	Substantial Amount?	Market Value	Interest Rate	Principal Payment date		Interest payment date	Indexation
										From	Until		
A	24/08/2003	200	12.5	15.3	4	15.6	No	Not negotiable	0.0655	41510	41510	24/08	CPI
	*18/09/2003	145.5											
	*08/10/2003	71											
	Total	416.5											
B	02/09/2004		26	13.6	0.6	32.2	No	Not negotiable	5.70%	06/09/2012	06/09/2012	6/09	CPI
		540								06/09/2013	06/09/2013		
C	07/06/2005	150	267.7	324.6	8	331	Yes	65.1	4.40%	10/06/2013	10/06/2014	10/06	CPI
	*11/10/2007	385.4											
	Total	535.4											
Total buyback of series C		-45	-31.6	-38.3	-1	-39	Yes	-7.7	4.40%	10/06/2013	10/06/2014	10/06	CPI
Total series C without buyback		0	236.1	286.3	7	292	Yes	57.4	4.40%	10/06/2013	10/06/2014	10/06	CPI
D	21/12/2006	1074.5	1074.5	1275.1	65	65	Yes	217	5.10%	20/12/2015	20/12/2020	20/12	CPI
					2	1259							
					67	1324							
Total buyback of series D		-25.4	-25.4	-30.1	-1.5	-1.5	Yes	-5.2	5.10%	20/12/2015	20/12/2020	20/12	CPI
			0	-29.8									
			-1.5	-31.3									
Total series D without buyback		0	1049.1	1245	63.5	63.5	Yes	212.4	5.10%	20/12/2015	20/12/2020	20/12	CPI
					2	1229.2							
					65.5	1292.7							



Series	Original Issue Date	Face Value on Date of Issuance	Total Face Value Balance	Total Face Value Balance Including Indexation	Book Value of Accrued Interest	Total Book Value Balance on 31/12/2012	Substantial Amount?	Market Value	Interest Rate	Principal Payment date		Interest payment date	Indexation
										From	Until		
E	13/12/2009	250	125	125	3.6	128.3	Yes	26.7	5.20%	10/06/2013	10/06/2014	10/06	None
Total buyback of series E		-11.8	-8.8	-8.8	-0.2	-9	Yes	-1.9	5.20%	10/06/2013	10/06/2014	10/06	None
Total series E without buyback		0	116.2	116.2	3.4	119.3	Yes	24.8	5.20%	10/06/2013	10/06/2014	10/06	None

### Appendix C – Details of IDB's Loans for the 2012 Financial Year

Source: The Company's 2012 Financial Statements.

Currency	Loan's Balance in the Balance Sheet (31/12/2012)	Interest Rate	Principal Payment Date	Interest Payment Date	Loan's Final Repayment Date	Indexation	Company's Early Repayment Right	Cross Default
INS	124	5.55%	Annually, Every May starting in 2011	Annually, Every May starting in 2011	5/2016	No	Yes, with extra fee	Yes*
USD	148	L+6.5% **	Semiannual, Every May November starting in 2013	February, May, August and November Starting 2012	11/2015	Libor	Yes, with a 5-day notice	Yes***

### Appendix D – Summary of the Terms of IDB Development Corporation's Bonds for the 2012 Financial Year

Source: the Company's 2012 Financial Statements. Data presented in NIS millions.

Series	Original Issue Date	Face Value on Date of Issuance	Total Face Value Balance	Total Face Value Balance Including Indexation	Book Value of Accrued Interest	Total Book Value Balance on 31/12/2012	Substantial Amount?	Market Value	Interest Rate	Principal Payment date		Indexation	
										From	Until		payment
C	02/05/2001	180.0	15.0	19.6	0.6	20.2	No	Not negotiable	5.90%	30/06/2013	30/06/2013	30/06	CPI
G	08/06/2005	100.0											
	*14/06/2006	1,083.2											
	*19/12/2006	174.1											
	*24/06/2007	789.9											
Total series G		2,147.2	1,620.3	1,964.8	49.4	1,998.2	Yes	1,105.2	4.50%	10/06/2013	10/06/2018	10/06	CPI
Total buyback of series G		17.6	15.7	-19.0	-0.5	-19.4	Yes	-10.7	4.50%	10/06/2013	10/06/2018	10/06	CPI
Total series G without buyback			1,604.6	1,945.8	48.9	1,978.8	Yes	1,094.5	4.50%	10/06/2013	10/06/2018	10/06	CPI
H	08/06/2005	200.0	40.0	48.5	1.1	49.5	No	39.4	4.10%	10/06/2013	10/06/2013	10/06	CPI
Total buyback of series H		-1.0	-0.5	-0.6	-	-0.6	No	-0.5	4.10%	10/06/2013	10/06/2013	10/06	CPI
Total series H without buyback		-	39.5	47.9	1.1	48.9	No	38.9	4.10%	10/06/2013	10/06/2013	10/06	CPI

**Appendix D (Cont.)**

Series	Original Issue Date	Face Value on Date of Issuance	Total Face Value Balance	Total Face Value Balance Including Indexation	Book Value of Accrued Interest	Total Book Value Balance on 31/12/2012	Substantial Amount?	Market Value	Interest Rate	Principal Payment date	Interest payment date	Indexation	
										From	Until		
I	19/12/2006 *24/06/2007	547.5 440.2											
Total series I		987.7	981.2	1,164.5	2.1	1,180.3	Yes	538.6	4.95%	18/12/2010	18/12/2015	18/06 18/12	CPI
Total buyback of series I		- 106.9	- 106.9	-126.9	-0.3	- 128.5	Yes	- 58.7	4.95%	18/12/2010	18/12/2015	18/06 18/12	CPI
Total series I without buyback			874.3	1,037.6	1.8	1,051.8	Yes	479.9	4.95%	18/12/2010	18/12/2015	18/06 18/12	CPI
J	24/06/2007 *04/08/2009	461.3 274.1											
Total series J		735.4	630.3	630.3	2.4	627.0	Yes	323.6	6.60%	10/12/2013	10/12/2018	10/12	CPI
Total buyback of series J		- 14.4	- -12.3	-12.3	-0.1	-12.3	No	- 6.3	6.60%	10/12/2013	10/12/2018	10/12	CPI
Total series J without buyback			618.0	618.0	2.3	614.7	No	317.3	6.60%	10/12/2013	10/12/2018	10/12	CPI
<b>Total</b>			<b>3,151.4</b>	<b>3,668.9</b>	<b>54.7</b>	<b>3,714.4</b>							

**Appendix E – Details of Development Corporation's Loans for the 2012 Financial Year**

Source: The Company's 2012 Financial Statements

**Details on Loans from Banking Corporations and Financial Institutions**

- (1) The Company's agreements with its lenders and certain bonds issued by the Company include customary provisions regarding the right to call for immediate payment, including, *inter alia*, under the following circumstances (in whole or part, as relevant): making a liquidation resolution or filing a liquidation application or application for appointment of a temporary liquidator, filing an application for suspension of proceedings, compromise with/composition of creditors or convening or holding creditor meetings in connection to an arrangement/inability to repay debts or negotiations in order to formulate an arrangement, appointment of a liquidator or receiver, exercise of charges or imposition of foreclosures, structural change (such as merger), change of control, ceasing payment of debts, a material concern of ceasing payments, a situation in which a company ceases or it is reasonable to expect that it will cease managing its business, an event constituting material damage or which could cause material damage to the rights of bondholders, material deterioration of business position, calling and/or cause for calling for immediate payment any other debt of the Company (with respect to certain bonds, calling for immediate payment of another series of bonds of the Company); all – under certain circumstances prescribed in agreements or in bonds, as relevant. It should be noted that Banking Corporation A (Row A in the table) approached the Company on November 29, 2012, with a request for information in connection with the processes of investigation held against the Chairman of the Company's Board of Directors (see Section 4.4 of Part A of the report), and taking into consideration their effect on the Company's ability to fulfill its obligations. The Company responded that the foregoing does not undermine its foregoing ability.
- (2) The lender may call the loan for immediate payment in certain cases where the Company fails to pay other debts it has and/or in cases where the Company is required by any of its other creditors to repay the Company's debts to such creditor before their due date.
- (3) The Company engaged another banking corporation in a swap transaction due to which, economically, the Company's liability became by virtue of the new credit an unlinked NIS liability bearing fixed interest at an annual rate of 5.01%.
- (4) See Section 1.8.4.3 of the Board of Directors' Report and Note 21.H.1 of the Financial Statements for a description of restrictions, the financial covenants and the results of their calculation.
- (5) The loans at the amount of NIS 83 million are part of the postponement of principal payments by three years of the loan at the amount of NIS 750 million (in this appendix – **the "original loan"** mentioned in Row (b) of the table), this pursuant to an agreement the Company entered with Banking Corporation B in December 2010, pursuant to which each of the nine principal payments of the original loan will be postponed by three years, so that instead of the payments being repaid on a biannual basis from March 2011 to March 2015, they will be repaid on a biannual basis from March 2014 to March 2018. Each of the principal payments shall bear, from its original due date to its updated due date (i.e. for a 3-year period) interest on a prime interest rate basis plus a margin as detailed in the above table, instead of the fixed interest paid up to its original due date. Another recycling was performed on March 18, 2013.
- (6) The interest rate is starting from September 14, 2011, and was increased from an annual rate of 7.05% in parallel to a change made in the financial covenants on that date.
- (7) The interest rate is starting from September 14, 2011, and was increased from an annual rate of P+0.8% in parallel to a change made in the financial covenants on that date.

- (8) The interest rate was raised to 6.89% annually starting from September 26, 2011 until June 30, 2012, in parallel to a change made in the financial covenants on that date.
- (9) The interest rate was raised to 7.05% annually starting from September 26, 2011 until June 30, 2012, in parallel to a change made in the financial covenants on that date.
- (10) The interest rate was increased from 6.6% to 7% starting from September 26, 2011 until September 23, 2011, in parallel to a change made in the financial covenants on that date.
- (11) The interest rate was increased from P+1.55% to P+1.95% starting from September 26, 2011 until September 23, 2011, in parallel to a change made in the financial covenants on that date.
- (12) The interest rate was increased from an annual rate of prime + a 1% margin starting from September 22, 2011 until September 30, 2012, in parallel to a change made in the financial covenants on that date.
- (13) This loan is secured with a pledge to the benefit of the lender. For further details see Section 1.8.4.3 of the Board of Directors Report and Note 21.c.(1) of the Financial Statements.
- (14) The interest rate was increased to 5.90% annually starting from September 25, 2011 until June 30, 2012, in parallel to a change made in the financial covenants on that date.
- (15) The interest rate was increased to a rate of P+1.15% annually starting from September 25, 2011 until June 30, 2012, in parallel to a change made in the financial covenants on that date.

Companies in the IDB Tourism Group have loans at the total amount of approximately NIS 0.5 billion. These loans bear interest in the range of 2.3% to 6.75%, and are to be repaid between 2013 and 2014. For details on guarantees provided by the Company for the purpose of financing these companies, see Note 29.C-F of the Financial Statements. For details on pledges on the properties of IDB Tourism Group companies, see Note 30.B.(14) of the Financial Statements.

**Appendix F – The Group's Debts to Banks**

	<b>Amount of debt, NIS in millions</b>	<b>Bank</b>	<b>Debt status</b>
<b>Tomahawk</b>	Approx. 100	Discount	Classified as impaired. Most of the debt was allocated to credit loss.
<b>Tomahawk</b>	Unknown	Credit Suisse	Unknown.
<b>Ganden</b>	500	Leumi	Classified as impaired; almost the full debt amount was allocated to credit losses.
<b>Ganden</b>	80	Mizrabi Tefahot	Classified as impaired; half of the debt was allocated to credit loss.
<b>IDB Holding</b>	158	An unknown Israeli bank	Classified as impaired.
<b>IDB Holding</b>	147	A foreign bank.	Unknown.
<b>IDB Development</b>	773	Bank Hapoalim	Classified as impaired; most of the debt was allocated to credit losses.
<b>IDB Development</b>	494	A foreign bank.	Unknown.

**Appendix G – Provisions of Section 350 of the Companies Law  
Companies Law, 5759 – 1999 (Sections 350-351 of the Law, updated as of March 1,  
2011)**

**Chapter 3: Compromise or Arrangement**

**Authority for compromise or arrangement**

350. (a) Where a compromise or arrangement are proposed between a company and its creditors or shareholders, or between a company and any particular class of creditors or shareholders, the court may, on the application of the company, of a creditor or of a shareholder, or of a liquidator if the company is in liquidation, order the convening of a meeting of such creditors or shareholders, as the case may be, in such manner as the court shall order.
- (b) The court to which the application for a compromise or arrangement is submitted as referred to in subsection (a) (in this Chapter: **the "plan"**) may, if it is convinced that this would assist in drawing up or approving a plan aimed at reviving the company, grant an order stating that for a period that shall not exceed nine months, it shall not be possible to continue with or commence any proceedings against the company, other than with the permission of the court, and on conditions that it may determine (in this Chapter: **a "stay of proceedings order"**).
- (c) A stay of proceedings order may be granted in the presence of the applicant alone, if the court is convinced that the circumstances of the case so require, provided that notice of issue of the stay of proceedings order be published and be delivered to whomever might be prejudiced thereby, as the court may order.
- (d) A person prejudiced by a stay of proceedings order granted in the presence of the applicant alone may apply to the court that gave the order to revoke it; the court shall deal with any such application for revocation submitted on the same date to be fixed for that purpose, provided that the hearing take place within thirty days of the date of grant of the order as aforesaid.
- (e) The court may, for special reasons that it shall specify in writing, deal with an application by a creditor to revoke a stay of proceedings order even if the date laid down in subsection (d) has passed, if it is of the opinion that a significant change has taken place in the circumstances which may substantially prejudice the rights of the creditor.
- (f) Where a stay of proceedings order is granted, the court shall permit:
- (1) On the application of a secured creditor – the realization of assets mortgaged to him;
  - (2) On the application of a creditor who is the holder of a floating charge – the crystallization thereof;
  - (3) On the application of a creditor who is the holder of a floating charge that has crystallized – the disposal of one or more such assets; provided the court is of the opinion that no proper protection of the rights of the creditor in the asset has been secured or that the disposal of the mortgage or the crystallization of the floating charge will not prejudice consolidation and approval of the plan.
- (g) The period in which proceedings are stayed under this section shall not be included in counting the periods prescribed under the Companies Ordinance to the extent that the staying of proceedings affects such periods, nor in reckoning the periods prescribed under the Prescription Law, 5718-1958, unless the court orders otherwise.
- (h) In subsections (b) to (g), "proceedings" – shall include a proceeding under the Execution Law 5727-1967, but shall not include proceedings completed immediately prior to the grant of the order even if the money received in respect of such proceeding has not yet been transferred.



- (i) If, in a meeting referred to in subsection (a), the majority in number of the persons present and voting together holding three quarters of the value represented at the vote agree to the compromise or arrangement, and the court approves the compromise or arrangement, they shall bind the company and all the creditors or shareholders, or any class of them, as the case may be, and if the company is in liquidation, the liquidator and any contributory.
- (j) An order granted under subsection (b) shall not be valid until a certified copy thereof is submitted to the Registrar of Companies; a copy of the order shall be attached to all copies of the articles of association of the company issued after the granting of the order, and if the company does not have articles of association, to every copy of the document under which the company is incorporated and pursuant to which it acts, issued as aforesaid.
- (k) For the purposes of this section:  
**"Company"** – any company that may be subject to winding up under the Companies Ordinance;  
**"Settlement"** – including reorganization of the share capital by amalgamation of shares of different classes or by division of shares into various classes, or by both such ways.
- (l) The Minister may make provisions regarding the implementation of this section, including provisions regarding claims for debt and convening of meetings, as well as on the matter of procedure, appointment of an officeholder, provisions regarding indemnity and insurance to an officeholder and determining his powers by court.

### Change of structure and merger

351. (a) Where an application is submitted to the court for the approval of a compromise or arrangement as referred to in section 350, and it is proved to the court that the compromise or arrangement have been proposed in respect of a plan for the alteration of the structure of a company or for the merger of companies, and that, under the plan, a building or assets of one of the companies (in this Chapter: the "**transferor company**") are to be transferred to another company (in this Chapter: the "**transferee company**"), the court may, in an order approving the application or in an order granted thereafter, make provision for –
- (1) Transfer of the concern, the assets or the liabilities, of the transferor company, in whole or in part, to the transferee company;
  - (2) Allotment of shares, debentures, policies or other similar benefits in the transferee company which it is required to allot to a person under the compromise or arrangement;
  - (3) Continuation on behalf of the transferee company of a pending proceeding by or against the transferor company;
  - (4) Dissolution of the transferor company without winding up;
  - (5) Relief for persons objecting to the compromise or arrangement within the time and in the manner ruled upon by the court;
  - (6) Any routine matter required in order to ensure that the change in structure or the merger be effected completely and effectively.
- (b) Where an order is granted as aforesaid for the transfer of assets or liabilities, the assets shall be transferred by virtue of the order and shall be vested in the transferee company, and shall be freed, if so prescribed in the order, from all charges that have ceased to be valid by virtue of the compromise or arrangement, and the liabilities shall be transferred to the transferee company and shall become its liabilities.
- (c) Where an order is granted under this section, every company to which the order applies shall transfer a certified copy of the order to the Registrar within seven days of the date on which it is granted; a company in breach of this provision, as well as any office holder of such company who approved or permitted such breach, shall be

liable to a fine as prescribed in section 61(c) of the Penal Law, 5737- 1977, for every day on which the breach continues.

## **Appendix H – Summary of the Expert Opinion of TASC**

*Source: TASC Expert Opinion*

4.2.1 The Company is a holding company – according to the generally accepted definition, a holding company is a company to which the following characteristics apply<sup>1</sup>:

- The Company's assets are usually the share capital or other securities of held companies.
- The Company holds a diversified asset portfolio through minority holdings at a high rate or a limited business portfolio through majorities or even full ownership of the share capital.
- Usually, the Company has significant influence over the management of held companies.
- Usually, a large part of the assets may be purchased or sold on short notice.

4.2.2 The Company has a high level of leverage – the Company's leverage level is 136%, which is a leverage level that is significantly higher (see Footnote 1 at the bottom of this page) than the customary (a leverage level higher than 60% is considered a very high leverage level, leading to a speculative credit rating).

4.2.3 The amount of the Company's liabilities significantly exceeds its list of assets:

- There is a significant difference between the present market value of the Company's assets on the capital market<sup>2</sup> and the Company's liability balance, i.e. – the Company's net asset value (NAV) is **significantly negative**. The NAV calculation should take into account the market value rather than book value, since it tests the Company's ability to meet its liabilities in the present time period (on a given date or over the last six months), and the market value expresses fair value in case the Company desires to dispose of its assets.
- As arises from our analysis, the Company's net asset value (NAV) (on the basis of a market value and an assessment we made for nonnegotiable assets) **is negative and is approximately NIS (-)1.55 billion**.

4.2.4 Material volume of debt payments in the near future:

- The Company has material debt payments coming in the near future, with the volume of debt payments due from the Company in the next 24, 18 and 12 months amounting to approximately NIS 2.5, 2.1 and 1.4 billion, constituting approx. 58%, 49% and 33%, respectively, of the value of the Company's assets according to their present market value. As the Company itself states in its most recent financial statements, it is unable to acquire new credit or recycle existing debts.

### **The conclusion arising from the Company's unique characteristics**

**Taking into consideration the unique characteristics of IDBD, in reality its assets are used as collateral for the repayment of its future liabilities. As foregoing, the Company has a very high leverage level, a material negative NAV and a large amount of debt payments expected in the near term.**

As will be described below in this opinion, due to the significant volume of debt payments expected in the upcoming period, the Company will be required to dispose of a very significant part of its assets within a short period of time. Under these circumstances, the Company's chance of enjoying a potential upside in the Company's assets is only limited.

**On the basis of our analysis, we believe that there is no reasonable scenario in which the Company succeeds in repaying all of its liabilities and as part of this paying all future debt service payments duly.**

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4.3 The values according to which the balance-sheet and cash flow analyses were performed.

- 4.3.1 Market value – we used the market value of the companies held by the Company. The market value that was used was the average of (1) the market value on April 3, 2013, shortly before this opinion's submission date; and (2) the average market value in the six last months, i.e. between October 4, 2012 and April 3, 2013. For companies that are not listed for trade<sup>3</sup> (only approximately 14% of all of the Company's assets), we used a valuation we prepared, with the value of traded holdings calculated on a market value basis, while the value of the Company's nonnegotiable assets was calculated on the basis of the highest reasonable assessment ("optimistic valuation").
- 4.3.2 The valuation we conducted (hereinafter: **"Optimistic Valuation"**) – in order to validate and establish the market-value-based analysis, we conducted independent valuations (which are not necessarily based on market values) for the Company's material holdings, using different valuation methods that were appropriate under the circumstances. According to the Optimistic Valuation, the Company's holdings are assessed at the highest reasonable value which would be expectedly received as the result of their sale by the Company:
- On the basis of the fact that, due to the Company's cash flow problem, the Company will have to dispose of certain assets in the immediate to short term<sup>4</sup>, without any real chance of any significant change in their value – we attributed to such assets the market value (experience teaches us, as in the case of the sale of Clal Industries Ltd., that in reality the sale of these assets may also occur at below-market prices).
  - As for assets which the Company is required to dispose of in the near or intermediate term – this assessment took into account the possibility of a change which will reflect a premium exceeding the market price.
  - In the optimistic scenario, none of the Company's assets was assessed at less than market price, although there is definitely a very real possibility that the value of these assets, or at least part of them, will decrease.
- 4.3.3 Extreme value scenarios (hereinafter: **"Extreme Value Scenarios"**) – in addition to the two above analyses, we conducted another analysis based on Extreme Value Scenarios (high or low) which are expected to be realized on a very low level of probability. The Extreme Value Scenarios for each of the holdings were produced on the basis of the methodology used for performing the Optimistic Valuation, while using extreme values for the parameters fed into the valuation. As foregoing, these values are expected to be received on a very low level of probability:
- An extremely high value scenario (hereinafter: **"Extremely High Value Scenario"**) – in this scenario we used the highest values expected to be received for the Company's different holdings upon their sale. We estimate that the chance of this scenario being realized is at very low probability.
  - An extremely low value scenario (hereinafter: **"Extremely Low Value Scenario"**) – in this scenario we used the lowest values expected to be received for the Company's different holdings upon their sale. We estimate that the chance of this scenario being realized is at very low probability.

All analyses we prepared, in which we estimated the value of holdings expected to be received by the Company upon their disposal under several scenarios, we did not take into account transaction costs which the Company shall incur as the result of conducting the asset sale transactions – such as costs of brokerage, professional consultants valuations and more. Taking such costs in consideration would result in a lower valuation and perhaps even significantly lower one for the Company.

In addition, we did not include any tax costs which may apply in cases where the Company is

required to pay these following the generation of any profit deriving from the sale of assets.

**Appendix I – Summary of the Expert Opinion of Fahn Kanne & Co. Grant Thornton Israel Financial Consultants Ltd.**

<http://mayafiles.tase.co.il/RPdf/815001-816000/P815081-00.pdf>

Work Summary IDB Development Corporation Ltd.

**Summary of the Assessment of IDB Development's Intrinsic Economic Value**

- Our examination focused as foregoing on the Company's 7 main portfolio assets. We did not conduct a full comprehensive assessment and/or review of all of the holdings of IDB Development Corporation' and its subsidiaries and held companies (the asset balance was estimated by their accounting balance-sheet value, which is an approximation of fair value).
- **This valuation attempts to determine the "real" economic value (i.e. the intrinsic value) of the shares of IDB Development Corporation on the basis of long-term considerations. For the purpose of this work we assumed that the values assessed in this work are values assuming disposal of the portfolio assets in the ordinary course of business of a holding company, rather than under pressure.**
- Pursuant to the valuations and assessments as detailed above and below in this work, the assessment of the intrinsic economic value of the Company is estimated as of September 30, 2012 at the range between approx. NIS 1.9 and 3.3 billion, in comparison with an accounting balance of equity in IDB Development Corporation's books as of September 30, 2012, amounting to NIS (0.039) billion.

<b>Equity balance in IDB Development Corporation's books as of September 30, 2012</b>	<b>Estimated economic value of IDB Development Corporation as of September 30, 2012</b>
<b>NIS (0.039) billion</b>	<b>NIS 1.9 – 3.3 billion</b>

**Summary of the Assessment of IDB Development's Intrinsic Economic Value (Cont.)**

## **Appendix J – Summary of the Court-Appointed Expert's Opinion**

For the full report: <http://mayafiles.tase.co.il/RPdf/832001-833000/P832758-00.pdf>

### **Summary and Conclusions**

Introduction > Executive Summary > Examination of NAV > Examination of Cash Flow

#### **The Company has a clear positive NAV**

- After studying the expert opinions filed with the court, we conducted a detailed valuation of IDB Development Corporation and the subsidiaries pursuant to the methodology determined by Prof. Barnea.
- We found that the Company has a clear positive NAV of between NIS 700 million and NIS 944 million. These values reflect a NAV to net debt ratio of 15% and 21%, respectively.
- When we examined the Company's value under the central disposal scenario too, NAV was NIS 550 million reflecting a NAV to net debt ratio of 12%.

#### **Short-term solvency depends on the disposal of Clal Insurance shares**

- The Company has at present cash adequate on a high level of certainty for all cash needs in 2013.
- Under reasonable disposal scenarios, the Company has a very high level of certainty for debt service until June 2014.
- In order to continue serving the debt for the period until March 2015 (repayments in the scope of approximately NIS 1 billion), the Company must act to dispose of approximately half of its holdings in Clal.

#### **NAV must be monitored over time**

- As long as the disposal prices of assets are in the ranges appearing in this estimate, even in the beginning of Q2 2015, the Company will have positive NAV.
- This is a clear indication of the ability to repay distant debt on a reasonable level of probability.

## Appendix K – TheMarker Article: *Moti Ben-Moshe's Road to Riches*

### **From Beer Sheva to Germany and Back – Moti Ben-Moshe's Road to Riches**

*He was born in Beer Sheva as Mordechai (Maurice) Moshiashvili, grew up in Lod, was educated at a Yeshiva and made his money far away from Israel and from the Israeli press ▪ This is probably why Moti Ben-Moshe stirs up such curiosity*

By: **Haggai Amit**, December 13, 2013

It's noontime on Hashezif Street in the Young Lod neighborhood. The door of the Moshiashvili family home is closed. The woman at the entrance, who appears to be the mother, stands suspiciously behind the glass. When she hears that we are with the press, she makes it clear that she does not want to talk.

We turn to the nearby commercial center. Nobody knows the Moshiashvilis here. Not at the hair salon, not at the supermarket, not even at the nearby lottery booth. Nobody knows that Mordechai (Maurice) Moshiashvili, who lived here as a young man before changing his surname to Ben-Moshe, is the man who might replace businessman Nochi Dankner and become the new boss of the **IDB** Group. The neighborhood's residents standing outside the the local pizzeria are more concerned about downwards fates than upwards ones. "He's from Lod? What would he want in Lod?" one asks.

**He does not live here now, but he grew up in Lod and his family lives here in this neighborhood.**

"No, we never heard of him. But say, what's going to happen to Nochi Dankner?"

**He won't be left with much money, but he won't starve either.**

"No, I know, he'll have food and he'll have a place to live. But compared to where he was – this is a serious fall. The problem here is more the psychological damage. Still, this person employed tens of thousands of people."

At least with regard to his background, businessman Moti Ben-Moshe is probably as different a person from Dankner as you could imagine. His parents, Yaacov and Atari Moshiashvili, belong to dozens of Georgian families who populate the private houses in the neighborhood's Build Your House project. They immigrated to Israel in the seventies and upon arrival were sent to Beer Sheva.

When their son Moti was still a baby (Ben-Moshe has one younger sister), they moved to Lod. For most of his childhood, they resided in one of the city's housing projects, and approximately 20 years ago, when the local Build Your House neighborhood was built, they moved to a private house. At the same time, the father of the family progressed in his career at the **Mizrachi Tefahot** bank, and for many years he has been the manager of the Ramle branch, just in front of the town market. Anyone looking to come full circle in Ben-Moshe's present move will find closure in the fact that his mother was in the past a manufacturing worker in Telrad, a company owned by **Koor**, which currently belongs to the IDB Group.

Even at present, when he spends most days of the week managing in his businesses in Germany, a person familiar with the Lod Georgian community testifies that he visits his parents at least once a month, and prays at the local synagogue. A member of the local community says, "he is a discrete, conservative and very nice person."

So far Ben-Moshe successfully protected his privacy, and thus managed to remain a mystery for the local Israeli business community. "Now there is peak interest in him. Dozens of people have called me in recent months, many on behalf of the Dankner Group. Lawyers, investigation firms, all

wanted information on Ben-Moshe. As much as I tried reading up on him, I couldn't," says an Israeli businessman active in Germany. "I talked with bankers, people familiar with the field of telecom, energy. I spoke with the Head of the Israeli Desk of a German bank, who is familiar with all Israelis operating in Israel, and even he doesn't know him, he never heard anything about Ben-Moshe."

The lack of information about the man who may soon become the controlling shareholder in companies such as Clal Insurance, Cellcom and Shufersal led to a plethora of rumors about him. Claims were made that he made his fortune through dubious means, or that on the contrary, he is just a front for a business factor that wishes to remain anonymous. A business figure whose name was never previously heard in Israel appeared one morning and injected NIS 600 million in cash to buy IDB, and this seems illogical to many – especially to the people who wanted to keep their control of the company.

In recent weeks, the Dankner-Granovsky Group did its utmost so that Dankner will maintain control of the Group which in the last decade was synonymous with him. Dankner managed to recruit, with great difficulty, several investors from all around the world, who agreed to invest their money in assisting him preserve control of IDB. This required all of his persuasive ability and every shred of business relations, and he probably would have succeeded if he were not faced with an unknown businessman who will turn on 39 this April.

The many questions around Ben-Moshe's character arise from the fact that even besides his hometown, which did not produce many tycoons, his later life story is also quite different than that typical of Israeli businessmen. Ben-Moshe attended the Nahalim Yeshiva high school near Petach Tikva, and afterwards joined the military as a General Corps soldier. He moved between rear units, including the Adjutant Corps in Ramat Gan, Training Base 11 and the Tel Hashomer IT Unit. The fact that he did not join any technological elite unit such as 8200 or Mamram did not prevent Ben-Moshe from striving to become a start-up entrepreneur, and he learned programming in evening classes during his service.

When you review his story from this perspective, it is easy to understand why the Dankner Group is so eager to prove Ben-Moshe a charlatan – since his business progress from such a starting point seems to meteoric as to be bewildering. How could he, in a foreign country, without any loans, without leverage, without business partners, at a very young age and through only private companies, reach a situation where he can inject hundreds of millions of NIS to IDB?

However, since his business activity is backed with accounting reports of some of his companies and bank approvals related to his capital, it is difficult to believe that this is a sophisticated plot by a man who poses as a tycoon. It seems like the story of a young Israeli with boundless chutzpa, good analytical ability and sharp business acumen that allowed him to seize opportunities.

After completing his army service, Ben-Moshe enrolled in economics and accounting at Bar-Ilan University but quit his studies in his second year to go into business. He founded the software development company Cyber Gate, which developed billing systems and micropayment solutions; he did the programming himself. The company address is still listed as his parents' home on Hashezif Street in Lod.

Ben-Moshe worked in the Israeli market for two years before looking for opportunities abroad. He noticed a market failure in western countries at the time. In the late 1990s, the high-tech bubble brought about the rapid development of infrastructure related to global data transfer. The anticipation of global takeover by the Internet brought about the founding of switchboards, relays and a huge quantity of data transfer channels. With the bubble bursting at the beginning of the millennium, the infrastructure in which billions had been invested were left sitting idle.

Ben-Moshe moved to Germany and through a local acquaintance, an attorney, started selling his services in the country. Ben-Moshe connected the available idle communication infrastructure with



his understanding of the possibility of selling communication services in Western Europe through retail chains. Like Rami Levi in the Israeli markets at present, he turned to Germany's largest retail chains, and these proposed a collaboration with one of Europe's communication giants. He collaborated with a telecommunications network owned by the Spanish telecom multinational Telefonica, which also operates in Germany. Meanwhile, he started buying communication infrastructure at rock-bottom prices.

### **Operates in Fields Similar to IDB's**

"Did you take a cart and did not return it? This is actual theft! What will you say on judgment day?" warns the sign when exiting the Colel Store supermarket in Elad. This is a makeshift supermarket based on its promise to customers that the goods are sold at the price of the cost from suppliers. Some of products are still in the crates in which they arrived from the supplier, waiting for the consumer to take them. A trip between the aisles gives a sense of an improvised mix of products bought on the basis of their low price. Air conditioning ducts hang loose from the ceiling, snakelike, and the two checkout counters seem like they have been placed randomly before the exit, without anything to establish the queue. No checks, no payment by installments, and with a lot of brands you will never find in the major retail chains – it is hard to imagine a supermarket more different than the Shufersal retail giant.

Ben-Moshe, owner of the six-branch chain, however, is about to take control of Shufersal. The way he operates Colel Store could shed some light on his approach to business, which can be summed up in one word: discount. His logic is that in pricing things right for consumers while maintaining a good relationship with suppliers, the chain can offer customers bargains and still make a nice profit.

This approach could have a significant effect, not only for Shufersal but also for Clal Insurance, Cellcom and a long list of other companies run by IDB that could fall into Ben-Moshe's hands on Sunday. He closely examined all their operations and believes he can have a significant influence on their retail activities.

The possibilities for Ben-Moshe's takeover of IDB seem even greater after taking a look at the activities of Extra, his holding company operating in the German market. The reason Ben-Moshe isn't known to the Israeli business community in Germany is that it tends to congregate in the same industry and the same geographic region. In Germany's case, it is real estate in Berlin, a city that saw a significant real-estate boom in recent years. But Ben-Moshe is not there.

In Extra, Ben-Moshe pushes his expertise in pricing and collection capabilities to a wide range of products and services, many of which are tangential to the activities of IDB Group companies. Extra sells insurance of all types, from health insurance to assistance service insurance in case of an explosion at home, as well as Internet service, landline and cellular phone service, website design, internet marketing, network security, search engine optimization, vacation packages and low-cost flights - plus Ben-Moshe's most important field at the moment: energy. His company offers private customers a service unknown to Israelis: the option of buying energy packages based on their needs.

Insurance is the field in which Extra has experienced the fastest growth and which is expected to overtake energy in scope. In this field, it will soon expand to the UK. In addition, the group is in the process of entering the credit card market – again, in cooperation with industry giants like **MasterCard**.

Extra doesn't directly produce most of the services it offers to its customers, but its operations still require a staff of 1,700 – in support, customer service, software and sales – and the company is recruiting new employees at a brisk pace. It does not hold airlines, power plants or insurance corporations, and it was for good reason that we started describing its operation with the small Israeli

retail chain Colel Store: Ben-Moshe maximizes in all fields the model of identifying cheap suppliers and then acting as a broker between them and the end user. To put it simply, he could be called the "Rami Levy of the German market."

This model produces narrow profit margins. Make no mistake, Extra is definitely not a giant conglomerate. To illustrate its size, you could say that Extra's energy operations – the most significant part of its revenues – will finish the year with EUR 80 million in profit on EUR 1.7 billion in turnover. So while Ben-Moshe might not be putting all his money down on IDB, the NIS 600 million he deposited in Israel is certainly a very substantial investment for him.

The court's representatives, institutional investors, and IDB's private bondholders checked the documentation presented by Ben-Moshe but did not independently examine his operations. They did not send private investigators to Germany or carry out due diligence of his businesses. Ben-Moshe and Eduardo Elsztain are expected to win IDB, since their proposed arrangement would guarantee that the billions of shekels they inject to the company will enter its accounts in the first phase of the transaction. The weight of their future promises, however, is close to zero.

**"My impression is that he is committed."**

Everyone involved in the arrangement, who met with the winners, kept saying this week that they like neither of the groups competing over IDB, and that they would rather see Warren Buffet competing. Considering that this has not happened, they prefer Ben-Moshe. It was further clarified, especially by institutional bodies, that Ben-Moshe had the benefit of the fact that they assessed he would not be as anxious as the competing group to withdraw dividends as soon as possible. In addition, he had the benefit of the fresh management approach he brings to the group and the ease in which he transferred money to the trust account for the purpose of the arrangement.

It is also possible that they liked Ben-Moshe's declarations about the value he wants to bring to the Israeli citizen and the new path he wants to lead the Group companies on. As one institutional investor told us when we asked about the car Ben-Moshe came to the meeting in: "historically, I can say that we saw a lot of people who came with luxury cars and never returned the money. And vice versa. The correlation with the car's model is so weak – that I just stopped checking."

In institutional bodies that he met with, people say that Ben-Moshe impressed everyone with his knowledge of strategic details and financial data, both regarding his group in Germany and in the subsidiaries of the group he wants to buy. While his partner Elsztain – who first entered this investment through Dankner – admitting now that he did so without doing too much research, out of his full belief in Dankner's ability, Ben-Moshe trusts no-one but himself.

"He came with an organized presentation and was happy to provide detail on his activity – from the founding, through its development and how they made the money. When you discuss IDB, too, you see he is a person of great detail. He reads everything and has all the answers. My impression is that he fully understands and can mark IDB's weaknesses. My impression was that he did huge background work before going into this," said a senior officer of an institutional body.

"Meeting with him was fascinating," said Prof. Yehuda Kahane, one of the founders of the Tmurot Group, set up to represent the private bondholders of IDB Holding. "I was greatly impressed by the man, by his business abilities. He said that he is the sole owner of his group, and showed bank documents on his financial ability. He also demonstrated his involvement and knowledge regarding any detail in these businesses. This is how I understood how he made his great fortune. He struck me as a person who is proficient in his business, a realistic investor with a long-term commitment to the business's recovery, rather than a desire to sell it on. We were already burned by the old approach. Why would we try it again?"

Due to the numerous fields in which the IDB Group forms a dominant player – insurance, cellular communication, retail and real estate – the winner of control in the group can have an impact on the Israeli citizen from a number of directors. If Ben-Moshe is indeed the man he presents himself

## **IDB**

as, a retailer who bets his money on creating real economic value to the Israeli consumer, then his moves in IDB could stir up competition in many different fields. If, however, he is not who he says he is – his control of a group that is already "the biggest in the Israeli market" will not benefit us.

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