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Public-private partnerships: an effective model for project financing

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For many years, project finance has been, and remains, the preferred form of financing for large-scale industrial and infrastructure projects worldwide. The availability of infrastructure facilities is imperative for the overall development and economic growth of any country, especially of emerging economies. Therefore, the long-term need for infrastructure financing in both developing and industrialised countries is very high and of pivotal importance. However, almost every country faces the problem that its actual infrastructure requirements are far in excess of the funding allocated for this purpose. The recognition of this financial deficit has led to a nearly universal acknowledgment that the private sector should play a greater role in the financing of infrastructure in partnership with the public sector.

PPP in Israel

Public-private partnership (PPP) represents a successful policy option available to a government for the provision of basic services (for instance, health, transportation, energy, water desalination, education facilities), which seeks to involve the private sector. As such, PPP is an alternative to traditional full public provision of such services, particularly where the services are private in nature and the government's resources are limited. Thus, for the public sector, PPP provides a level of certainty for schedule and cost. For the private sector it offers a unique business opportunity, allowing private companies to deliver a wide range of services over a long contract period (usually 20 to 30 years).

In recent years, there have been a number of very large projects in Israel in which the

private sector has been substantially involved in the construction and funding of public infrastructure. These are long-term and large-scale contractual partnerships between public and private-sector agencies, targeted towards financing, designing, implementing and operating infrastructure facilities services.

The surge of such project finance transactions in Israel, based on PPP models, coincides with the creation of extensive and long-term government programmes focused on fostering the development of infrastructure in the country. The involvement of private-equity funds in projects such as the construction of toll roads, desalination facilities and other infrastructure facilities is evidence of the maturing PPP market in Israel.

Moreover, witnessing the success of the strategy, the Israeli PPP market is expanding the scope of projects to areas that were previously considered unsuitable. Whereas the traditional perception has been that PPP is suitable mainly for large infrastructure projects initiated by governments, today's perception is that PPP is also appropriate for mid-sized projects (not necessarily in the field of infrastructure and/or initiated by government) such as municipal and non-profit organisations' (NPO) projects. In fact, an NPO that holds real estate is most suitable for entry into PPP projects as it, among other things, possesses suitable land, faces less red tape and regulatory obstacles, and enables leverage of real-estate assets in order to enhance and develop projects.

Regarding the municipal sector, there are a few large Israeli PPP projects that are now at different stages: tenders for sewage-treatment facilities (Jerusalem, Akko and Hadera), Nation Square Complex in Jerusalem (a parking and commercial project), the Municipality Building in Jerusalem and various office complexes, among others. The light rail train projects in Tel Aviv and Jerusalem (which are joint ventures with the government) have many municipal aspects.

In effect, the involvement of the private sector in the development of infrastructure in Israel in the framework of PPP projects appears to be a challenging exercise for a few reasons. First, PPP projects require the establishment of a solid financial and legal basis. Second, the large number of parties involved in the PPP projects, together with the diversity of interrelated contracts, also constitutes an essential complication. Third, their development and embedded negotiations are extremely time-consuming.

In addition, PPP projects are generally structured on a project basis requiring all parties to share the risks of the project. These risks are spread between the various parties; each risk is usually assumed by the party that can most efficiently control or handle it. Project risk-sharing is necessary since the sponsor, a joint venture of one sort or another, will possess a limited worth substantially less than the aggregate net worth of the equity parties.

Finally, PPPs span a range of models which progressively engage the expertise or capital of the private sector. There is no one single PPP model that is suitable for all PPP projects. For this reason, a significant amount of effort and resources must be invested by both public and private sectors in structuring a successful PPP deal.

Innovative financing combinations

Banks and institutional investors are the essential participants of almost all PPP projects. Traditionally, the perception has been that banks negotiated the financing and served as lead arrangers, whereas institutional investors acted as co-investors. However, in recent years a new perception has been developed, according to which both of these actors join together in the financing (including the process of negotiations). In such cases, banks negotiate and finance the short-term construction facilities while the institutional investors participate in the long-term credit facilities.

An explicit example of this innovative financing is that of Highway 431, a PFI contract for the construction and maintenance of a 22km, three-lane suburban highway designed for the purpose of reducing the traffic from the main entry routes to Tel Aviv. In this project, banks financed the short-term construction loans and the institutional lenders committed to finance the long-term loans. Highway 431 was awarded the project finance deal of the year for 2006 by *Project Finance* magazine.

Capital markets

Recommended firms

Tier 1

Goldfarb Levy Eran Meiri & Co
Gross Kleinhendler Hodak Halevy
Greenberg & Co
Herzog Fox & Neeman
Meitar Liquornik Geva & Leshem Brandwein
Naschitz Brandes & Co

Tier 2

Gornitzky & Co
Yigal Arnon & Co
Zellermayer Pelossof & Co

Tier 3

Caspi & Co
Efrati Galili & Co
Fischer Behar Chen Well Orion & Co
Shibolet & Co
S Horowitz & Co
Weksler Bregman & Co
Yaacov Salomon Lipschutz & Co
Yehuda Raveh & Co

Banking

Recommended firms

Tier 1

Herzog Fox & Neeman
Kantor Elhanani Tal & Co
S Horowitz & Co

Tier 2

Gornitzky & Co
Gross Kleinhendler Hodak Halevy
Greenberg & Co
Yigal Arnon & Co

Tier 3

Caspi & Co
Goldfarb Levy Eran Meiri & Co
Naschitz Brandes & Co
Shibolet & Co
Weksler Bregman & Co
Yaacov Salomon Lipschutz & Co
Yehuda Raveh & Co
Zellermayer Pelossof & Co

Mergers and acquisitions

Recommended firms

Tier 1

Goldfarb Levy Eran Meiri & Co
Gross Kleinhendler Hodak Halevy
Greenberg & Co
Herzog Fox & Neeman
Meitar Liquornik Geva & Leshem Brandwein
Yigal Arnon & Co

Tier 2

Caspi & Co
Fischer Behar Chen Well Orion & Co
Gornitzky & Co
Naschitz Brandes & Co
S Horowitz & Co
Zellermayer Pelossof & Co

Tier 3

Amit Pollak Matalon & Co
Erdinast Ben Nathan & Co
Ori Rosen & Co
Sharir Shiv Kadouch & Co
Shibolet & Co
Weksler Bregman & Co
Yaacov Salomon Lipschutz & Co

Project finance

Recommended firms

Tier 1

Gornitzky & Co
Herzog Fox & Neeman
S Horowitz & Co
Yehuda Raveh & Co
Yigal Arnon & Co

Tier 2

Caspi & Co
Goldfarb Levy Eran Meiri & Co
Gross Kleinhendler Hodak Halevy
Greenberg & Co
M Firon & Co
Yaacov Salomon Lipschutz & Co
Zellermayer Pelossof & Co

Tier 3

Shibolet & Co
Tadmor & Co
Weksler Bregman & Co

Israel has experienced less turmoil than western countries affected by the global credit crunch. Credit problems do exist - jumbo deals and IPOs such as that of shipping group Zim have been put on hold - but the country's thriving mid-market and a well-managed economy led Standard & Poor's to upgrade its credit rating in November 2007; a very telling gesture given the state of global finances.

In fact, some Israelis are concerned that this runaway success could even damage parts of the country's economy: the ever-rising shekel has forced some key sectors, including high-tech, to revise their strategies to avoid punishingly high costs.

Meanwhile banks are becoming more sophisticated in raising capital, and the jurisdiction has seen a steady increase in structured debt and derivative products. Last year also saw a development in the Israel's banking reform programme, which reduces customer fees and aims to foster competition in the sector.

A staple for Israel's corporate finance lawyers is the energy industry, both in the traditional oil-and-gas sector and the booming alternative-energy sector. Israel is well suited to solar-power generation, and the increasing price of fossil fuels makes these investments more and more economical.

Fischer Behar Chen Well Orion & Co

Fischer Behar Chen Well Orion & Co had a prosperous year representing some of the biggest corporations across the entire spectrum of the market.

A big-ticket deal for the firm was its representation of a group of investors in their bid to acquire a controlling \$850 million stake in dairy product manufacturer Tnuva. In another noteworthy transaction, the firm represented Nasdaq-listed company Vvyo in a \$100 million private investment in public equity (Pipe) transaction by Goldman Sachs.

One the project financing side, the firm represented Danya Cebus in relation to a number of projects, including Israel's €1.4 billion Red Line railway project, the largest build-operate-transfer project in Israel. Fischer Behar also represented Danya Cebus in its tender offer to construct a tunnel for the Israeli Railway, a project valued at NIS1.5 billion (\$435 million).

Exemplary of the firm's capital markets work was Ron Leham's representation of Goldman Sachs as undewriter of Israel Electric Corporation's (IEC) debt issuance on the Singapore Stock Exchange, raising \$250 million.

Locally the firm represented Leumi Credit Risk Products, a subsidiary of Bank Leumi, in commercial-paper issuances of Africa Israel, Bank Leumi, Dexia Israel, Israel Chemicals and others. The innovative transaction resulted in the issuance of NIS1 billion commercial paper to market money funds for the first time in Israel.

Finally, Fischer Behar advised Springs of Eden in relation to a €61 million capital-raising project in conjunction with a company owned by funds group Och-Ziff, followed by a further €185 million financing provided to Eden Danona by RBS.

Leading lawyers

Avraham Well

Goldfarb Levy Eran Meiri & Co

Goldfarb Levy Eran Meiri & Co has particular renown in the Israeli market for its work in corporate law.

In M&A the firm represented ECI Telecom in its \$1.2 billion sale to a consortium of private investors. Other notable deals include advising on the sale of the Gilat satellite group to private-equity investors for \$462 million; acting for NICE Systems on its \$282 million acquisition of Actimize, a financial data company; and advising Azorim on both the NIS800 million sale of the Kiryat Ono mall and the acquisition of Tel Aviv's Elite real-estate compound for NIS300 million.

Goldfarb Levy's strength in corporate law also frequently leads to roles advising companies in their financing arrangements. For example, the firm recently acted for Koor Industries, an Israeli investment group, in securing a \$1.5 billion credit facility from

Goldman Sachs. The firm also advised Koor in the purchase of a \$15 million interest in the company which controls El Al Israel Airlines.

A representative deal of the firm's capital markets practice was its role acting for Israel Aerospace Industries in its public offering of \$250 million bonds in June 2007.

Leading lawyers

Ashok Chandrasekhar
Oded Eran

Gornitzky & Co

Gornitzky & Co's reputation in project finance is evident in its involvement in Israel's highest-profile energy and infrastructure developments. For example, it has been representing VID, a consortium of developers, in its successful bid to construct and operate the Ashkelon desalination plant. The firm has also been mandated by a group of Israeli investors in relation to the construction and operation of the Hadera desalination plant. The financing contract, which was finally signed in May 2008, reached NIS1.5 billion and was provided - unusually for Israel - entirely by a consortium of foreign banks (Calyon, European Investment Bank and Banco Espirito Santo).

Another significant projects saw the firm advise a group of investors in a bid to set up and operate Israel's first private prison near the city of Bear-Sheva using a PFI-based financing method.

Aside from project finance, the firm is strong across all other areas of financial and corporate counsel. Managing partner Moriel Matalon is a director of Bank Hapoalim Switzerland and Zvi Ephrat is on the board of Bank Mizrahi-Tefahot. The firm's strong connections with Israeli banks make it a solid contender in the banking area. In 2007 the firm acted for Bank Hapoalim in its sale of its 51% stake in Bank Masad to FIBI for NIS236 million. Gornitzky & Co more recently advised the same client in its sale of 50% of Yahav Bank (worth NIS419 million) to Mizrahi-Tefahot. In addition, the firm represented the Israel Corporation on the \$850 million financing of its purchase of Bazan, an oil refineries group.

Leading lawyers

Pinhas Rubin

Gross Kleinhendler Hodak Halevy Greenberg & Co

July 2007 saw the merger of Gross Kleinhendler Hodak Halevy Greenberg & Co and Berkman Wechsler Bloom & Co to become Gross Kleinhendler Hodak Berkman & Co. But less than a year later, in April 2008

the firm announced its demerger: the two original firms have now reverted to their pre-merger state but have also signalled their intention to cooperate with each other on particular matters.

Gross Kleinhendler is still one of the legal heavyweights of the Israeli capital markets. In May 2007 the firm acted on the IPO of AFI Development on the London Stock Exchange, raising \$1.4 billion. In the same month, the firm acted for Clal Biotechnology Industries and Investments in relation to its \$215 million IPO and listing on the Tel Aviv Stock Exchange.

The firm is not only a strong player on the equity side; it is also well-versed in the debt capital markets. This year's highlights include acting for Elbit Imaging and Plaza Centers in relation to their separate debt offerings on the Tel Aviv Stock Exchange, the former company's issuance valued at NIS1 billion.

The firm still graces the tier one space in the M&A rankings doing high-profile deals such as acting for Israel's ratings agency, Maalot, in its acquisition by Standard & Poor's for an undisclosed sum. Other significant transactions include representing Psagot Investment House in its NIS630 million acquisition of Gadish Provident Funds, owned by Bank Hapoalim.

More recently, Gross Kleinhendler has provided counsel to private-equity investor Texas Pacific Group in relation to its \$1 billion acquisition of a 25% stake in the Strauss coffee company. Another key M&A mandate came in June 2008 when Scaillex Corporation instructed the firm in connection with the disposal of its subsidiary Petroleum Capital Holdings to Suny Electronics, Scaillex's parent company, for NIS1.41 billion.

One rival comments on his experience with the firm: "I was impressed with their work and they are all pretty well known in their field."

Leading lawyers

David Hodak

Herzog Fox & Neeman

Herzog Fox & Neeman enjoyed another strong year and has ascended back into the first tier for capital markets work following positive feedback from clients and competitors. In a highlight deal the firm acted for Israel Electric Corporation in the setup of a \$2 billion global MTN programme and the issuance of \$1 billion notes on the Singapore Stock Exchange. In addition, the firm acted as counsel for Bank Hapoalim (Switzerland) in connection with its \$2.5 billion global MTN programme.

Underwriters regularly consult the firm in relation to IPOs, such as the \$78 million Nasdaq flotation of Allot Communications (underwritten by Lehman Brothers) and the \$124 million Shopping.com IPO (underwritten by Goldman Sachs).

The firm featured in many build-operate-transfer and PFI transactions around the country. For example Herzog Fox & Neeman represented a consortium in its \$100 million bid for the Fast Lane toll project and another in its bid for the Road 531 PFI project.

Meanwhile a steady influx of key M&A deals has guaranteed the firm's place in the first tier for another year. In one highlight deal it acted for VeriFone Holdings in its \$793 million acquisition of Lipman Electronics Engineering.

The firm prides itself in having a unique environmental law and climate change practice, which advises on numerous environment-related matters including regulatory compliance, licensing and liability risks.

Leading lawyers

Mark Phillips
Alan Sacks
Ehud Sol

Kantor Elhanani Tal & Co

Dalia Tal of Kantor Elhanani Tal & Co commands respect from her competitors in banking law. One competitor says: "She knows the work, and is very experienced. She's the leading lawyer in Israel for banking." Tal heads the firm's banking, finance and capital markets practice.

Bank Hapoalim and Bank Leumi are regular clients of the firm. Example transactions include acting for Bank Leumi and Bank Hapoalim in relation to financing the purchase of the controlling stake of Bezeq, Israel's national telecoms company, by the Apax-Saban-Arkin group. In addition the firm acted for Bank Leumi le-Israel and Israel Discount Bank in financing the purchase of Pekan and Lahak mutual funds by Prisma Mutual Fund for NIS490 million. The firm's practice attracts a great deal of fund formation and hedge fund-related work, in which it has represented prominent domestic clients like Bank Leumi. In one notable deal it advised the bank on its formation of a \$100 million distressed CDO fund.

The firm's insolvency and restructuring practice was busy this year. The Jerusalem District Court appointed bankruptcy specialist Pinni Yaniv as receiver in relation to four of Hefziba Building Group's distressed construction projects, which had a total indebtedness of NIS280 million. Yaniv also performed receivership duties for the shares held by an Israeli company in an American houseware

and plastics company. Aided by associate Yankie Pfeffer, Yaniv also advised on the sale of the shares to a US corporation.

Leading lawyers

Dalia Tal

Meitar Liquornik Geva & Leshem Brandwein

Cliff Felig at Meitar Liquornik Geva & Leshem Brandwein is consistently singled out as one of the leading capital markets lawyers in Israel. The firm again sits comfortably in the top tier for M&A and capital markets, a testament to its strong corporate practice group.

Prominent international banks and financial institutions represented by the firm include Lehman Brothers and Citigroup. Meitar Liquornik advised both institutions as joint bookrunners in the Israel Electric Company's issuance of \$1 billion debt. Similarly, Deutsche Bank and Morgan Stanley consulted the firm in relation to Israel's \$1 billion offering sovereign bonds.

On the equity side, the firm advised Banc of America Securities in its capacity as underwriter of two follow-on share offerings, one worth \$190 million by NICE Systems followed with another by Cergon Networks which amounted to \$102 million.

A highlight M&A deal for the firm was serving as counsel to DHL in its acquisition of freight-forwarding company Flying Cargo for an undisclosed amount. Partner Dan Geva acted for Actimize in its \$280 million merger with NICE Systems and then advised Ashmore on its \$1.3 billion merger with ECI Telecom.

Since many of the lawyers of the firm's bank lending team have practised in New York, Meitar Liquornik is able to provide expertise on US and Israeli law. For example, the firm recently acted for a consortium of international financial institutions led by Bear Stearns on its \$2 billion financing to acquire the Israeli section of the Hilton hotel chain.

Leading lawyers

Cliff Felig

Zellermayer Pelosof & Co

Zellermayer Pelosof & Co maintains a solid position this year in every practice area, having handled four transactions valued at more than half a billion dollars. The firm has a particular focus on M&A, acquisition finance, IPOs, project finance and telecoms. Besides banks and corporates, the firm's client list includes private-equity firms such as Saban Capital Group, which has sought the firm's advice regarding a number of Israeli transactions.

Gores Capital also engaged the firm to advise on its purchase, with other private investors, of Gilat, an Israeli satellite company. The \$475 million transaction was announced in March 2008. Other significant deals include advising Shamrock on its \$55 million acquisition of Dimar, a manufacturer of carbide woodworking tools.

The firm's restructuring and insolvency practice has been steadily building up a reputation in the market. Head of department Ofer Shapira, for example, represented the trustees of Clubmarket in relation to the restructuring of debt amounting to NIS1.2 billion.

Leading lawyers

Avraham Ortal

Other notable firms

The derivatives practice at Caspi & Co receives praise from clients and competitors. Says one peer: "They are clearly very strong," while another adds that Ram Caspi is "a leading character" whose strength is his combination of banking and legal experience.

Naschitz Brandes & Co's strong corporate practice presses on in the market and maintains its position in the rankings although competitors have started to note a dip in the firm's market visibility. Partner Aaron Lampert is described as a "solid lawyer and pleasant to work with".

S Horowitz & Co is one of the country's largest firms and has particular strength in banking and project finance. In one €400 million deal, the firm represented the lenders comprising a consortium of banks led by Bank Hapoalim on the extension of credit to Gazit-Globe, a property investment company. Partner Ruth Oren is described by a rival as "the queen lady of M&A".

Yigal Arnon & Co remains rooted in tier one for M&A and project finance this year, and is ranked highly in the other categories of financial law. The firm counts a number of Fortune 500 companies as clients.

Sharir Shiv Kadouch & Co is active in M&A, and recent work has included acting for the controlling shareholder of Peregrine Venture in relation to the \$50 million merger of two Israeli private companies with publicly-traded Canadian company Medical Ventures.

Shmuel Hamou joined Shibolet & Co as a partner this year and the firm enjoys a commendable position in the market with more than half of its clients being foreign companies and individuals. For example, the firm represented a prominent European client on various deals including a \$50 million secured loan to one of Israel's largest groups of privately-held companies.