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Expert Opinion by Prof. Asher Blass Leads to the State of Israel Prevailing in an Arbitration Proceeding versus the Concessionaire of the Tel Aviv Light Rail

In April 2016, a settlement agreement was signed between the State of Israel and MTS, the Concessionaire of the Tel Aviv Light Rail, following an earlier arbitration award entered by the panel of arbitrators, Judge (Ret.) Judith Tsur, Judge (Ret.) Boaz Okon and Adv. Eli Zohar, in which they rejected MTS's claim against the State of Israel and accepted the State's counterclaim. **The settlement agreement provided that the State of Israel would retain the NIS 140 million performance bond appropriated from the Concessionaire after the State cancelled its contract with MTS because of MTS' non-performance, and in addition, MTS was required to pay NIS 5 million legal fees.**

According to the arbitration award, at the core of the dispute between the parties was the question as to why MTS failed to reach financial closing (i.e. to secure funding) for the light rail project.

During the arbitration proceeding, MTS claimed, based on an expert economic opinion submitted by Sir Professor Alan Budd, previously a member of the Bank of England's Monetary Policy Committee and Chairman of the Office for Budget Responsibility at HM Treasury in the UK, that the global economic crisis is what had prevented MTS from reaching financial closing. In his view, the world financial crisis commenced in 2007 and continued at least until mid-2012 and the timeframe of the crisis therefore allowed MTS to postpone financial closing beyond mid-2012. MTS also claimed that the State of Israel must return MTS's performance bond of NIS 140 million and pay NIS 1.5 billion in damages and lost profits resulting from the termination of the contract.

The State of Israel claimed, based on the economic opinion prepared by Prof. Asher Blass, CEO of **ERCG**, that many local and international economic and financial macroeconomic parameters indicated that the crisis lasted from September 2008 until June 2009 and that the concessionaire could have secured funding before or after this period. Prof. Blass's opinion also demonstrated, using two international databases, that 2008 was a record year in terms of the volume of projects overseas that had reached financial closing both in the overall infrastructure sector, and in the transport infrastructure segment, in particular. The fact that the concessionaire didn't achieve financial closing specifically in this record year indicates that the crisis was not the determining factor for MTS's failure.

Prof. Blass also wrote a supplementary expert opinion in which he examined Sir Alan's analysis and use of data. Blass identified significant flaws in Sir Alan's work following which the concessionaire requested to amend Sir Alan's expert opinion but even after the corrections, the arbitrators held that "inaccuracies and even methodological difficulties" had been found in Sir Alan's expert opinion.

In their ruling, the arbitrators noted that the concessionaire had breached the agreement and that the bond had been lawfully seized by the State of Israel. The arbitrators also held that **"of the two expert opinions, Blass's is preferable, in particular with respect to the effect of the financial crisis on similar projects around the world."**

With respect to the dispute about the duration of the financial crisis, the arbitrators ruled that **"it can be determined for the purpose of this arbitration, that the peak of the financial crisis ran from September 2008 until the end of 2009 (...), an almost identical time-frame to that asserted by Prof. Blass in the expert economic opinion on behalf of the State of Israel."**

Prof. Blass was supported by an **ERCG** team of economists including Michael Touati, Yedidya Lau and Dafna Segol. Adv. Joseph Benkel and Adv. Shiri Shapira of Raved, Megriso Benkel & Co. represented the State of Israel.

ERCG is a leading economic consulting firm in Israel founded in 2001 by Prof. Asher Blass. The firm operates in a range of economic and financial fields and provides incisive insights and analyses in legal proceedings and for regulatory, strategic decision-making and public policy purposes. **ERCG's** clients include leading law offices, government authorities and corporations.