

District Court: A Public Company Can Go Private By Way of a Creditors' Arrangement As Well

It was ruled that while the alternative methods - a full purchase offer or a merger - include clear statutory mechanisms to protect the minority shareholders, a creditors' arrangement may also give them adequate protection since it is executed under the court's supervision.

The Tel-Aviv-Yaffo District Court (Economics Department) recently rendered a key decision adjudicated by Judge Ruth Ronnen, according to which a public company can go private by way of a creditors' arrangement pursuant to section 350 of the **Companies Law**, instead of by way of a full purchase offer or merger. The decision did however state that the other two methods include several protections for minority shareholders that are not included in a creditors arrangement proceeding, but the fact that it is carried out under the Court's supervision and is subject to its approval is enough to grant the shareholders adequate protection.

The decision was rendered following a request filed by "Tamada" to convene a creditors and shareholders meeting to approve a creditors' arrangement pursuant to section 350 of the Companies Law. According to the company's offered arrangement, its controlling shareholder, "Apex Issuances", will purchase all shares now held by the public at a ILS 0.05 price per share, consequently transforming the public company into a private one.

The company claimed that this arrangement is beneficial both for the company and the minority shareholders as it will allow the company to save on expenses resulting from its status as a public company, and will allow the shareholders to receive consideration for their shares, consideration they will not receive if the company is liquidated due to its financial difficulties.

Judge Ruth Ronnen was in fact required to decide whether the creditors' arrangement set forth in section 350 of the Companies Law may be used to transform a public company into a private one, as an alternative to the other statutory mechanisms, such as a full purchase offer or a merger.

The Judge stated that in this context, that while the other mechanisms include several provisions designed to protect the rights of minority shareholders and ensure that the purchase does not prejudice or discriminate against them, she deemed a creditors' arrangement, carried out under the Court's supervision and approval, an adequate substitute for these necessary protections.

In other words, the Judge ruled that the Court's involvement in fact balances out the absence of the explicit protections included in the other mechanisms.

Strict Standard

However, the Judge emphasized that the Court must ensure that it is indeed protecting the shareholders. To do so, it must demand the receipt of all relevant information that will enable it to examine whether the offered arrangement is fair to them. It was also

ruled that a heavy burden of proof must be imposed on a company requesting the purchase of shares, demonstrating that the arrangement has merit, and that a strict standard of review must be followed to guarantee complete fairness.

In short, the Judge adjudicated that the creditors' arrangement should not be ruled out as an option for a company to go from public to private, in light of the protection mechanisms inherent to the Court's involvement. However, the Court must demand full and detailed data regarding the arrangement and the consideration offered to the minority shareholders for it to ensure that the arrangement is indeed fair to them.

As to this specific case, the Judge ruled that the Court was not given the full information as required above. The company did not submit the Board's resolution regarding the arrangement, nor did it appropriately exhibit how the price per share was determined or what the company's financial position was.

Therefore it was decided that at this point, and as long as the relevant information is not yet submitted, the company's request to convene a shareholders meeting to discuss the arrangement cannot be approved. The Judge asked the company to inform the Court how it wishes to proceed within 30 days.

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**The author did not represent any of the parties.