



Office of the State Comptroller
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National-Strategic Areas of Activity

Foreign Companies' Involvement in the Construction and Operation of Vital National Infrastructure Ventures

Abstract

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Background

Foreign entities invest in the Israeli economy in various fields. Alongside their economic advantages and their contribution to the development of the Israeli economy, foreign companies' investments and involvement in the Israeli economy are also liable to have negative implications. These implications could be expressed particularly in companies whose controlling shareholders' interests are not aligned with Israeli interests, and when the foreign investments are made in assets and projects of national importance. Consequently, various arrangements were made in several areas to enable State authorities to protect vital interests in appropriate situations.

Key figures


USD 129 billion

Estimate of the cumulative balance of foreign investments in Israel, as of 31.12.17





USD 18 billion

The annual foreign investments in Israel in 2017

Audit actions

 From December 2018 to June 2019, the Office of the State Comptroller examined actions of various entities relating to engagements with parties planning to operate vital national infrastructure. The audit was conducted in the Prime Minister's Office – in the National Security Council and in the National Economic Council; in the Ministry of Defense; in the Ministry of Finance; in the Ministry of Economy and Industry; and in the Ministry of Transportation.

Key findings






-  **The Ministry of Defense was not involved in the staff work during 2013 and 2014 regarding the implications on national security of the identity of the party operating a vital national infrastructure:** the National Security Council did not include representatives of the Ministry of Defense in the preparation work that the Council coordinated in 2013 – 2014, which examined the security directives in preparation for the international tender for an operator of a vital national infrastructure, which addressed, inter alia, the implications of the identity of the operator of the vital national infrastructure on national security.
-  **There is no obligation to consult with the advisory committee:** the mechanism for screening foreign investments does not obligate the regulators to consult with the advisory committee, and consulting is basically left to the regulator's discretion.
-  **There is a concern that the timing of the consultation might be at advanced stages of the engagement process:** referring to the advisory committee at late stages could cause irreversible damage.
-  **Transferring the operation of vital national infrastructure to a company that is not a private company as is required:** participation in a tender by parties under foreign government ownership has not been restricted.



Promoting the setting of a mechanism to screen foreign investments, and a State Security Cabinet decision regarding examinations of the national security aspects of engagements: the National Security Council, in collaboration with the Prime Minister's Office, the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Justice, the Israeli Security Agency, the Mossad, the National Economic Council, the Ministry of Economy and the National Cyber Directorate took action to advance an agreed mechanism in this regard and, in October 2019, a Cabinet resolution was passed that is designed to regulate this matter.



Key recommendations

-  **The advisory committee for examining the national security aspects should examine the resolution implementation methodology, pursuant to article 5 of the Cabinet resolution**, particularly the aspect of the defined consultation format, and should report this matter to the Cabinet in order to prevent material risks to national security that are liable to derive from an engagement entered into without consulting with the advisory committee.
-  **The advisory committee should examine how to distribute to all regulators the relevant information** about consultations held with it as a result of any regulator's inquiry. The Committee should inform all regulators specified in the resolution that, prior to approving a foreign investment for which there is a concern that it might adversely affect national security aspects of Israel's interests, as these aspects are defined in the resolution, they should examine whether it is necessary to apply to the advisory committee and receive a reasoned decision in this regard.
-  **The advisory council should examine the report forwarding timeframe** and incorporate changes in its manual of procedures. This will prevent executing the engagement process including the tender proceeding, at significant cost to the applicant, before all pertinent aspects of the engagement have been examined.
-  **The regulators should present the foreign investment to the advisory committee in a timely manner** in order to avoid a situation whereby the foreign entity's investments will be lost, and its losses might be imposed on the government entity that engaged with it and might adversely affect foreign relations. Examination of the investment in a timely manner will also prevent any compromising of national security that is liable to be caused if the engaging party prefers to refrain from cancelling the engagement that should be cancelled for reasons of national security, due to a concern that it might have to compensate the foreign entity, or due to a concern about harming foreign relations.
-  **Government entities engaging in engagements with foreign companies** – such as the Ministry of Defense, the Ministry of Finance, the Ministry of Transportation and government companies – should ensure that, during future infrastructure projects, the risks in handing over the project to a foreign company – whether privately owned or government owned – should be meticulously examined, including an examination of their ownership structure (the pyramid of holdings) and national security aspects, and the conditions of the early screening for these proceedings should be formulated accordingly.



Summary

Foreign entities' control over strategic assets could adversely impact a wide variety of national interests, including: national security, strategic assets and the competitive capacity in the international arena. Foreign economic involvement in national infrastructure projects and in fields having a broad economic or national impact should be examined in the future according to national security and business considerations. The Israeli government must handle this issue through the National Security Council or through some other entity to be determined.