

Auditor: Agrexco misled bondholders (globes)

Barlev Investigative Auditing: The company certainly manipulated its financials, to the extent of possible criminal misconduct.

Barlev Investigative Auditing states in its report on Agrexco that it certainly misled and manipulated its official financial reports and presentations, amounting to possible criminal misconduct.

"From the day it was founded, Agrexco served as the long arm of the government to carry out a clear and declared policy of subsidizing and promoting Israel's agriculture... at the expense of the company's profitability. In retrospect, this policy also came at the expense of the company's creditors," Barlev states in the 31-page preliminary audit report on the bankrupt agricultural produce exporter. The report, commissioned by Agrexco's bondholders, was submitted to Tel Aviv District Court Judge Varda Alshech, who is handling the case.

The manipulations affected the NIS 200 million that Agrexco raised in its bond issue. Barlev says, "The financial reports that were the main tool that the bondholders used in deciding on the investment, in protecting their debts, and in rating the bond, did not properly reflect, to put it mildly, the transactions carried out and the material data of the company on the basis of accepted accounting practices."

Barlev says, "Agrexco's financial reports misstated its shareholders' equity, assets, liabilities, and operating results. These misstatements were made consistently in all the financial reports published since the bond was issued, and apparently beforehand as well."

In sharp words, Barlev writes, "There is real concern that, with regard to the bondholders, the inclusion of this misleading financial presentation was apparently intended to show that the company was able to meet its commitments, specifically its commitment to maintain a minimum shareholders' equity as part of the financial criteria for avoiding its debts being called in."

Barlev focused on the distorted relations between the government and the agricultural sector, which were concealed through Agrexco, to the point of possible criminal misconduct. "The government's policy considerations diverted the company from operating on the basis of business and commercial considerations. The transfer of money from Agrexco to the agricultural sector served the interests of the government and other shareholders and reduced the need to provide direct financing to this sector. This means that the owners may have used the company to transfer money to a third party that they wanted to support (farmers) on the basis of extraneous considerations, without using the formal procedure of distributing dividends to the shareholders themselves.

"On the basis of a legal opinion I obtained from the bondholders' legal advisor, there is concern that this was an illegal distribution of a dividend... since a dividend includes any asset given to the company's shareholders without equivalent consideration. Had the company chosen the alternative of distributing a dividend to the shareholders so that they could transfer the proceeds to sectors that they wanted to foster, such a distribution would not have met the profit test and ability to repay as stipulated in the Companies Law."

The Government Companies Authority owns 30% of Agrexco, Tnuva Food Industries Ltd. owns 11%, and the Plants Production and Marketing Board owns 57%. The Plants Production and Marketing Board is controlled by the Ministry of Finance and the Ministry of Agriculture, basically rendering it another branch of the government.

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