

Barak Orbach

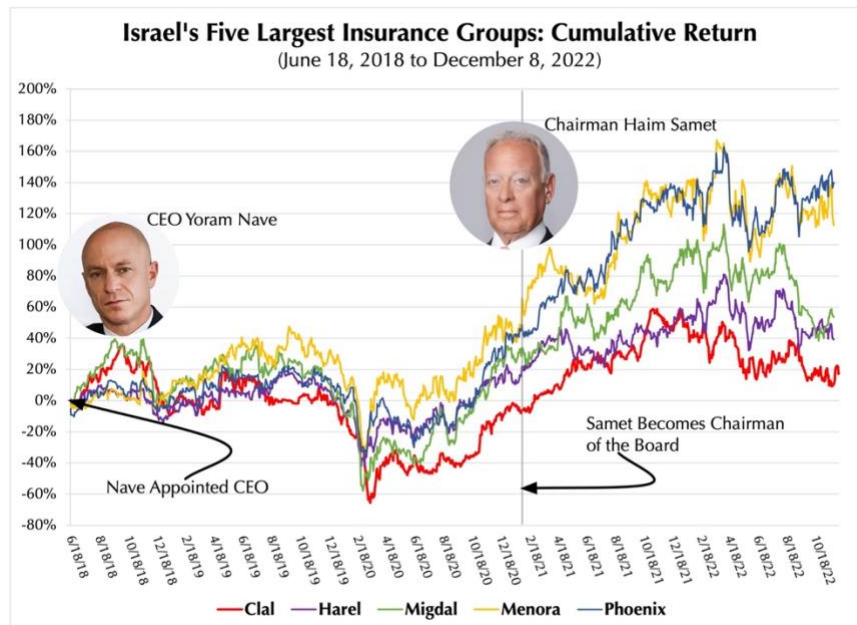
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CLAL'S CORROSIVE CORPORATE GOVERNANCE CULTURE

The world's leading proxy advisors, *International Shareholder Services* ("ISS") and *Glass Lewis*, publish annual proxy voting guidelines for Israeli companies outlining the principles that guide their voting recommendations.¹ These principles emphasize that, in Israeli companies, "external directors" are the guarantors of the interests of all shareholders.² The principles of both proxy advisors recommend voting against the reelection of directors when a company's performance is considerably lower than its peers and the board fails to take reasonable steps to address the poor performance. The principles list additional reasons to vote against the reelection of directors, such as failures to meet minimum corporate governance standards, egregious actions of board members that invoke shareholder distrust related to poor supervision, and entrenchment.

The performance of *Clal Insurance Enterprises Holdings Ltd.* ("Clal") has been considerably lower than its peers in recent years. The current CEO was appointed in June 2018. Under his leadership, Clal became a chronic underperformer. The current Chairman of the Board, Haim Samet, was appointed in February 2021. As explained below, instead of leading Board oversight, Samet has aggressively protected the CEO from oversight and scrutiny. As further explained, each of the foregoing voting considerations indicates that Clal shareholders should vote against the reelection of Mr. Samet.



¹ International Shareholder Services, *Israel: Proxy Voting Guidelines; Benchmark Policy Recommendations* (Dec. 13, 2021); Glass Lewis, *Israel: 2022 Policy Guidelines* (2022).

² The legal standards that govern "external directors" in Israeli companies are comparable to the standards that govern "independent directors" in US companies.

Alrov Properties & Lodgings Ltd. (“Alrov”) examined Clal’s chronic underperformance and identified four key factors: (1) poor management, (2) poor corporate governance, (3) shortfall in relevant expertise on the Board, and (4) ownership structure.³ Alrov, therefore, acquired 15% of Clal’s stocks and became the company’s largest shareholder seeking to promote healthy corporate governance to improve the company’s performance and enhance shareholder gains.

Facing criticism from the company’s largest shareholder, Clal’s Board and management took aggressive steps to entrench themselves by launching a blitz public offering and acquiring a credit card company (MAX). These actions and others lack rational explanations other than desperate entrenchment efforts. Indeed, recently, it became clear that the CEO (Nave) and the Chairman (Samet) have been acting to perpetuate themselves in office at the expense of the company and its shareholders.

In October 2022, external director Sami Mualem resigned from the Board stating that Samet crippled the Board to suppress oversight and healthy governance. Instead of acting to address the company’s chronic underperformance, relying on a secretive forum of directors, an “inner circle” (“מטבחון”), Samet established a corrosive corporate governance culture that penalizes directors who demand that the Board perform its oversight duties.

Clal’s decision to acquire MAX illustrates Samet’s corporate governance philosophy. Clal’s CEO negotiated the deal without the Board’s knowledge, let alone approval. When the deal was brought to the Board, the directors learned that the negotiated acquisition price vastly exceeded the value of MAX. Nonetheless, Samet and his inner circle refused to examine whether the acquisition would serve the company’s best interest and enhance shareholder gains.

Scathing public criticism from independent directors requires public companies to address the criticism in a credible fashion. Clal’s Board, however, chose to ignore the alarm. Instead of addressing the governance failures that Mualem exposed, the company manufactured a few statements to threaten and disparage Mualem.

Clal’s chronic underperformance warrants the dismissal of Chairman Samet. Evidence of bad faith and conscious breaches of directorial fiduciary duties reinforces the conclusion that Samet should not be reelected to the Board. A sworn statement of a resigning external director chronicling Samet’s actions to corrupt the company’s corporate governance certainly requires shareholders to vote against the reelection of Mr. Samet.

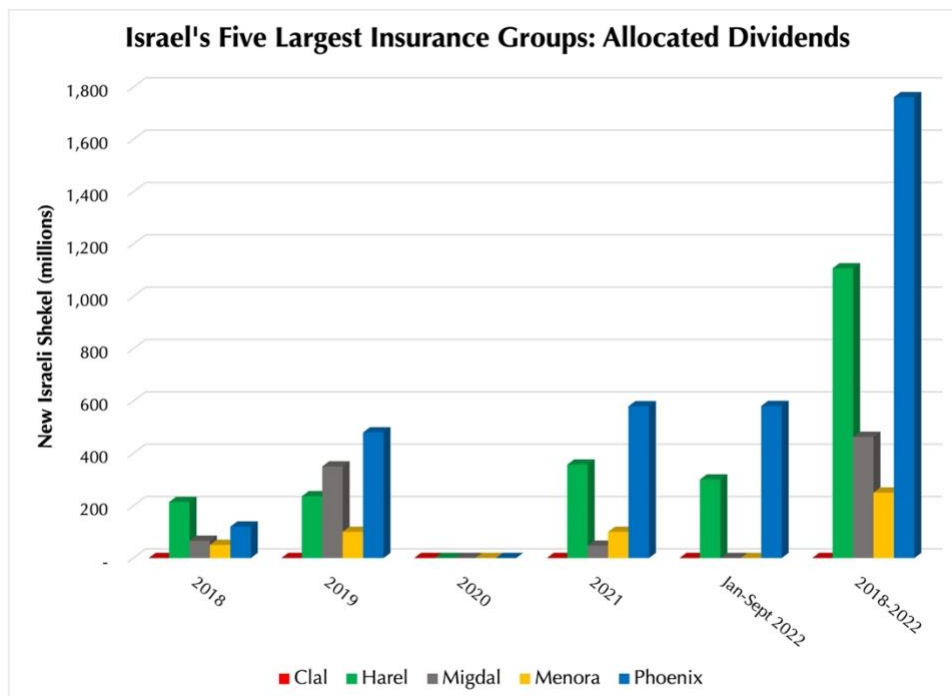
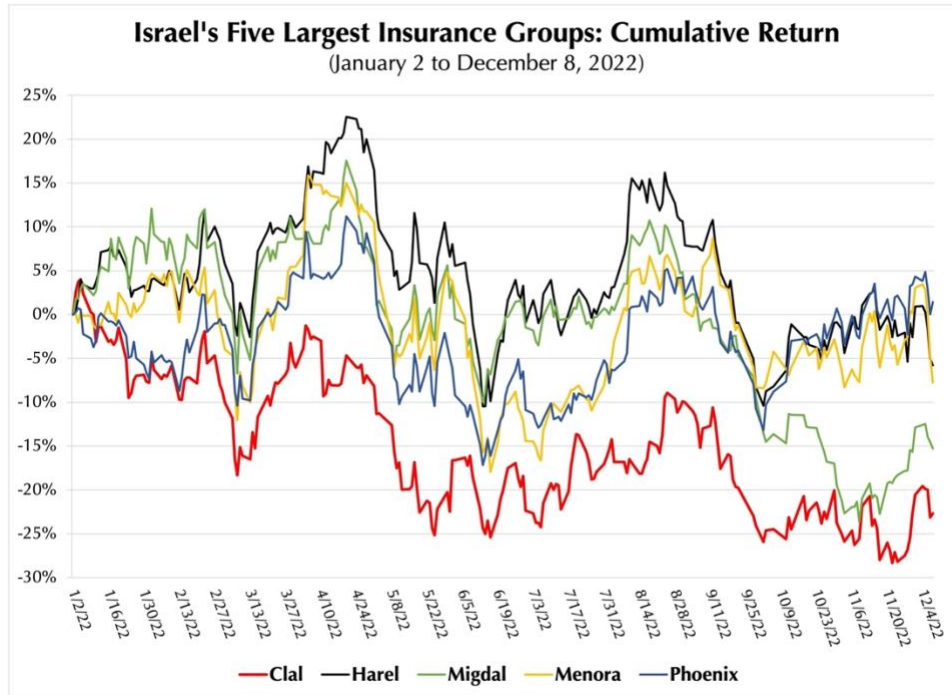


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³ Clal does not have a controlling shareholder, and, as such, suffers from significant vulnerabilities. First, the Israeli legal system focuses on governance problems that could arise in companies with controlling shareholders and does not address problems that are common in companies that do not have a controlling shareholder. Second, in heavily regulated industries in Israel, companies without a controlling shareholder struggle to secure shareholder support needed to address frequent regulatory reforms.

APPENDIX





Barak Orbach

Barak Orbach is the Robert H. Mundheim Professor of Law & Business at the University of Arizona James E. Rogers College of Law, serving as the founding director of the Business Law Program. Professor Orbach's primary areas of expertise are antitrust, corporate governance, regulation, and the digital economy. In addition to teaching and writing, his work includes consulting and serving as an expert witness for government agencies, companies, trade associations, and shareholders. Professor Orbach is recognized internationally for his work in his areas of expertise.

Professor Orbach is a fellow of the American College of Governance Counsel, Thurman Arnold Project at Yale, Salzburg Global Seminar, and American Bar Foundation. He is also a member of the American Law Institute, and a member of the advisory board of the American Antitrust Institute. In 2023, Professor Orbach will serve as Derek Brewer Visiting Fellow at the University of Cambridge's Emmanuel College.

Professor Orbach holds undergraduate degrees in law and economics from Tel Aviv University and master's and doctorate degrees in law (LLM and SJD) from Harvard Law School. Before joining academia, Professor Orbach served as an Advisor for Law and Economics to Israel Competition Authority and worked as an associate with Cleary, Gottlieb, Steen & Hamilton, New York.

Professor Orbach has been quoted and his research has been featured in numerous media outlets, including *The Atlantic*, *Bloomberg*, *Businessweek*, *CNBC*, *Forbes*, *Fortune*, *Los Angeles Times*, *Mother Jones*, *NPR*, *The New York Times*, *Slate*, *PBS*, *Sports Illustrated*, *Time*, *The Wall Street Journal*, and *The Washington Post*.