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Extensive Amendment to the Companies Regulations (Reliefs for Israeli Public Companies Listed on Stock Exchanges Outside of Israel), 5760-2000

Client Updates

Israeli companies with shares listed on non-Israeli exchanges encounter a complex legal landscape, as they are subject to the Israeli Companies Law, 5759-1999 (the "**Companies Law**") as well as the securities laws and rules of the non-Israeli stock exchange on which their shares are listed. This dual regulatory framework sometimes leads to conflicting requirements and overly cumbersome obligations, thereby placing such Israeli companies at a disadvantage compared to their non-Israeli counterparts.

In 2000, the Israeli government enacted the Companies Regulations (Reliefs for Israeli Public Companies Listed on Stock Exchanges Outside of Israel), 5760-2000 (the "**Companies Law Regulations**") which seek to alleviate challenges faced by these companies by affording them exemptions from certain provisions of the Companies Law.

A recently passed amendment (the "**Amendment**") has made significant changes to the Companies Law Regulations. Here are some of the key highlights:

1. **Exempt Companies** – Prior to the Amendment, Israeli companies whose shares were listed (i) only outside of Israel or (ii) on the Tel Aviv Stock Exchange (the "**TASE**") and on any exchange outside of Israel were generally eligible for the exemptions under the Companies Law Regulations. While maintaining the availability of the exemptions for companies whose shares are listed only outside of Israel on any exchange ("**Foreign-Listed Companies**"), the Amendment limits the availability of the exemptions for companies whose shares are traded on the TASE by providing a closed list of eligible non-Israeli exchanges ("**Dual Companies**").
2. **Buybacks** – Under the Companies Law, buybacks of shares and other equity securities are considered to be a distribution and require that the company's board of directors determine that two criteria are met: (i) the profits test, meaning that the company has sufficient retained earnings in accordance with specified rules, and (ii) the solvency test, meaning that the company will be able to meet its existing and foreseeable obligations after the buyback. If a company does not meet the profits test, it can seek court approval, which can be a timely process.
The Amendment allows Foreign-Listed Companies and Dual Companies to conduct buybacks without meeting the profits test and without resorting to a court, provided that they: (i) satisfy the solvency test, (ii) provide notice to material and secured creditors and publish the notice on the company's website, and (iii) do not receive objections from such creditors.

3. **Private Placements** – Under the Companies Law, private placements of equity securities that represent 20% or more of a company's outstanding voting rights require shareholder approval under certain circumstances. Under the Companies Law Regulations, Foreign-Listed Companies were exempt from such requirement. While the Amendment extends this exemption to Dual Companies, the availability of the exemption for both Foreign-Listed Companies and Dual Companies is now conditioned on their following non-Israeli rules regarding private placements.
4. **Notice of Personal Interest** – The Companies Law requires a disinterested shareholder vote for certain related-party transactions and other matters and further requires that shareholders declare whether or not they have a "personal interest" in the relevant transaction on the voting instrument (such as a proxy card) in order for their vote to count. For Israeli companies traded outside of Israel, this requirement presented significant challenges and even resulted in litigation. The Amendment allows shareholders of Foreign-Listed Companies and Dual Companies to declare that they do not have a personal interest simply by voting by way of the voting instrument, provided that such instrument states that their vote constitutes a declaration of the absence of their personal interest (other than a personal interest the shareholder previously notified the company about).
5. **Agenda of Shareholders Meetings (Proxy Contest)** – The Companies Law allows shareholders holding at least 1% of the voting rights of a company to request that a matter be included on the agenda of a shareholders meeting. The Amendment increases this threshold to 5% if the matter is the appointment or removal of a director of a Foreign-Listed Company or a Dual Company.
6. **Convening a Special Shareholders Meeting** – The Companies Law provides 5% shareholders of a public company with the ability to force the calling of a special shareholders meeting. The Amendment increases this threshold to 10% for Foreign-Listed Companies and Dual Companies, unless the rules of the foreign country on which the shares are traded provide for a threshold lower than 10%.
7. **Record Date for Shareholders Meetings** – The Amendment provides that the record date for shareholders meetings can be 4-60 days prior to the date of the meeting (instead of 4-21 days per the Companies Law and 4-40 days as previously provided under the Companies Law Regulations).
8. **Reporting Obligations** – The Companies Law required Foreign-Listed Companies to file reports with the Israeli Registrar of Companies as if they were an Israeli private company. The Amendment exempts Foreign-Listed Companies from most, but not all, of the filing requirements.

Should you have any questions, please do not hesitate to contact us.

This client update was prepared with the assistance of Inbar Avrahami.

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