

PRECEDENT-SETTING RULING:

THE BOUNDARIES OF POWER OF A FOREIGN TRUSTEE APPOINTED IN INTERNATIONAL INSOLVENCY PROCEEDINGS

Client Update – March 2024

Dear Clients,

Our firm is pleased to inform you of an important decision recently handed down regarding international insolvency and economic rehabilitation proceedings and lawsuits against officers as part of such proceedings.

The District Court in Tel Aviv-Yafo (honorable Vice President Judge Hagai Brenner) handed down the decision on 19 February 2024, in Insolvency Case 36313-08-23 *Vesttoo Ltd. v. The Commissioner of Insolvency – Tel Aviv District et al.*. This decision essentially mandates that, unlike U.S law, where lawmakers recognize the independence of the company and its executives in conducting insolvency proceedings on its matter (as debtor in possession), Israeli law does not refer to a company serving as a foreign functionary as a “trustee,” concerning initiating legal proceedings against the company’s officers for causes under Israel’s Insolvency Law.

The company under discussion is Vesttoo Ltd., which is part of a group of multinational companies whose main business activity is in the field of Insurtech. The company developed a technology that enables quick and objective pricing of the risks inherent in insurance portfolios. Simultaneously, it established a platform through which capital market investors could serve as reinsurers of insurance companies.

In August 2023, international insolvency proceedings were initiated against the company in the U.S and Bermuda, with alleged debts of over ILS 2.5 billion. These proceedings are backdropped by allegations of fraud, forgery and embezzlement attributed to the company officers and employees. At the same time as the US insolvency proceedings, the company filed a motion to recognize the US insolvency proceedings as a secondary foreign proceeding under the provisions of Israel’s Insolvency and Economic Rehabilitation Law.

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About a month later, the company filed a motion to compel some of its officers to pay some ILS 770 million, alleging falsification of documents, impersonation, and fraudulent management of the company, with causes under the Insolvency and Economic Rehabilitation Law.

Attorneys Dr. Itay Hass and Guy Azulay from the firm's insolvency practice, together with attorneys Hilla Peleg, Sapir Gabay and Nati Haim from the litigation department, represented Mr. Alon Lifshitz, one of the company's founders, who served as a director in it, and against whom the motion for instructions was filed.

On 19 February 2024, the District Court in Tel Aviv granted Alon's motion and summarily dismissed the motion the company had filed against him and the company's former executives, even before Alon was required to submit his response on the merits of the motion. In its groundbreaking and precedent-setting decision, the court accepted our arguments that a distinction should be made between recognizing the foreign proceeding and the company's status as a debtor in possession, and affording "trustee" powers to the company — powers afforded only to an external and neutral functionary appointed for the company. In other words, unlike U.S law, under Israeli statutory law, the authority to initiate proceedings against officers for causes under the Insolvency Law is afforded to the Commissioner of Insolvency Proceedings, and to **an impartial external trustee only, and not to the company.**

One of the reasons for this conclusion was that recognizing a secondary foreign proceeding is technical by nature and cannot remedy the inherent conflict of interest whereby the company and its management will be entrusted with the process of investigating the circumstances resulting in the company's collapse, and will both sue on behalf of the company and its creditors, and issue the judgment themselves. Under Israeli statutory law, once an order is issued to initiate proceedings for a company, an external and impartial officer is appointed for it, who is given all powers to manage the company and its assets, including rights to file lawsuits, if any, against its officers and third parties.

By virtue of such an independent role, the functionary serves as an officer of the court, and thus the law affords the functionary an extensive set of tools and many presumptions designed to assist them in performing such role. These include the possibility to file a motion to issue instructions, litigation of which is quick, efficient and exempt from fees; a legal presumption that they are informationally disadvantaged and hence have broad investigative powers against third parties; and more.

In this context, the court ruled that the company cannot enjoy such neutral status, and that therefore it cannot initiate proceedings against third parties. As a result, the court summarily dismissed the motion for instructions.

Our firm's insolvency practice possesses unique experience and specialization in international insolvency proceedings, and provides legal services in this area to officers, companies involved in insolvency proceedings, and their creditors.

Our firm's litigation department has expertise and extensive experience in handling lawsuits against company officers and executives in Israel and abroad, including derivative actions, class actions, and suits concerning the liability imposed on company officers. The department is also uniquely specialized in providing legal representation in complex judicial proceedings with international aspects.

We would be pleased to be at your service at any time.

The above is provided for general information only and is not intended to constitute legal advice or serve as a substitute for legal advice.



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