

## The Companies Regulations (Reliefs for Companies Whose Securities are Listed on a Stock Exchange Outside of Israel) (Amendment), 5784-2024

Client Update – March 2024

**Dear Clients,**

On March 11, 2024, an amendment to the Companies Regulations (Reliefs for Companies Whose Securities are Listed on a Stock Exchange Outside of Israel) 5760-2000 was published (the "**Amendment**" and the "**Reliefs Regulations**", respectively). According to the explanatory notes to the Amendment, against the backdrop of the Iron Swords war, and while noting its economic impact on the economy, it is becoming increasingly necessary to reduce the burden on Israeli companies traded only on foreign stock exchanges (the "**Foreign-Listed Companies**") and on Israeli companies traded both on Israeli and foreign stock exchanges (the "**Dual-Listed Companies**"), and to encourage these companies to continue to incorporate in Israel. The Amendment focuses on two main categories: one is 'leveling the playing field' on which Foreign-Listed Companies and Dual-Listed Companies operate, by way of increasing the congruence between the laws that apply to the Israeli companies and the laws that apply to the foreign companies traded on the same markets, in order to allow them to operate under similar regulatory conditions; the other is expanding the reliefs already applicable to Foreign-Listed Companies, such that they will also apply to Dual -Listed Companies, in order to encourage companies to list in Israel as well.

Below are the main changes proposed in the Amendment.

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- **Amendment to the definitions of 'Foreign Jurisdiction Law' and 'Dual-Listed Company'**

The amendment to the definition of Foreign Jurisdiction Law is designed to regulate the cases in which the rules and regulations of the stock exchange on which the company is traded are of the 'adopt or explain' type (as is the case in the United States with respect to companies classified as a 'foreign private issuer'). The company can choose to be subject to the rules and regulations of the foreign stock exchange or to 'explain', through the company's filings, that the company has chosen not to be subject to such rules and regulations. The applicability of the reliefs that are based on the Foreign Jurisdiction Law which is of the 'adopt or explain' kind, is contingent on the company having chosen the alternative of adopting the rules and regulations, and they will not apply where the company has chosen the 'explain' alternative.

In addition, the definitions of Dual-Listed Company and Dual-Listing Stock Exchange were amended such that in order to benefit from the reliefs, the foreign stock exchange on which the Dual-Listed Company is traded, in addition to being traded on the TASE, is required to be one of the stock exchanges listed in the Second or Third Schedules to the Israeli Securities Law, 5728-1968 (the "**Securities Law**"), in order to ensure that the foreign law which applies to Dual-Listed Companies provides sufficient protection for the shareholders.

- **Relief regarding special tender offers**

Similarly to the exemption which currently applies to Foreign-Listed Companies, a Dual-Listed Company will not be subject to the provisions of Sections 328-335 of the Companies Law, 5759-1999 (the "**Companies Law**") which regulate terms for acquiring control of a public company, if the Foreign Jurisdiction Law places a limitation on the acquisition of a specific percentage of control of the company or if acquiring a specific percentage of control obligates the purchaser to make a tender offer to shareholders from the public as well.

- **Relief regarding voting in writing**

A Foreign-Listed Company and a Dual-Listed Company will not be subject to provisions pursuant to Sections 87(b) through 89 of the Companies Law which regulate voting in writing at the general meeting and sending of position statements, if the company provides voting cards to all of its shareholders and allows them to vote and give powers of attorney for items that are on the agenda of the general meeting, according to the Foreign Jurisdiction Law as it applies to companies that incorporated in that jurisdiction.

- **Relief regarding the manner of giving notice of a personal interest or the absence thereof**

It was determined that a shareholder voting through a voting card has two alternatives when notifying the company of a personal interest or the absence thereof with regard to an item on the agenda, insofar as such notice is required with respect to the matter of the vote – (a) by the mere signing of the voting card, if the voting card states that the mere signing thereof constitutes a declaration of no personal interest, (b) notifying the company of the personal interest not on the voting card.

- **Relief regarding material private placements**

Similarly to the exemption which currently applies in respect of Foreign-Listed Companies, a Dual-Listed Company will not be subject to Section 274 of the Companies Law which determines that a material private offering has to be approved by a board of directors and a general meeting, if the Foreign Jurisdiction Law contains provisions with regard to private placements and the company follows the Foreign Jurisdiction Law as it applies to companies that incorporated in that jurisdiction, with regard to private placements.

- **Relief regarding the record date**

The new relief extends the period in which the record date can be determined, such that it will not exceed sixty days prior to the date of convening of the general meeting, in lieu of the forty-day limitation which applied prior to the Amendment.

- **Relief regarding an application to include a proposed candidacy for the board of directors on the agenda of a general meeting**

The new relief raises the holdings threshold required of (one or more) shareholders in order for them to be eligible to propose an appointment (or removal from office) of a director at the general meeting, from 1% of the voting rights set in the Companies Law in respect of proposing to include any matter appropriate for deliberation at a general meeting to be included on the agenda of a general meeting, to 5% of the voting rights in the company.

- **Relief regarding convening a special meeting**

The new relief increases the holdings threshold required for eligibility of one or more shareholders to request to convene a special general meeting, from 5% of the issued share capital and 1% of the voting rights in the company or 5% of the voting rights set in the Companies Law, to 10% of the issued share capital and 1% of the voting rights or to 10% of the voting rights; provided that if the Foreign Jurisdiction Law, as it applies to companies incorporated in that jurisdiction, determines a right to convene a meeting as aforesaid with less than 10% holdings, the provisions of the Companies Law will apply in this regard (in other words, in such a case, the holdings threshold will remain at 5% of the issued share capital and 1% of the voting rights in the company, or 5% of the voting rights).

- **Relief regarding a distribution by way of a purchase that does not meet the 'profit test'**

In accordance with the provisions of the Companies Law, a company wishing to make a distribution, including a dividend distribution and a buyback, that does not meet the 'profit test' (but does meet the 'solvency test' which is also required in order to approve a distribution), is required to apply to the court for approval of the distribution, and the court may approve the company's motion, in whole or in part, reject it or make its approval conditional.

The new relief enables the board of directors of a Foreign-Listed Company or a Dual-Listed Company to adopt a buyback resolution without meeting the 'profit test', subject to fulfillment of all of the following conditions:

- a. The 'solvency test' is met.
- b. The company notified its material creditors and secured creditors<sup>1</sup> of its intention to make a distribution that does not meet the 'profit test' in the manner stated in the regulations, and posted the notice on the company's website on the date of the notice to the creditors as aforesaid.
- c. Thirty days have elapsed from the date of posting the notice and no objection to the distribution was submitted by a creditor of the company.

A creditor of a company adopting a buyback resolution as aforesaid, may contact the company and object to the distribution within the aforesaid thirty days, and in such a case, the distribution requires filing a motion with the court and approval thereof pursuant to the provisions of Section 303 of the Companies Law.

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1. Creditors listed in Sub-regulation 2(b) of the Companies Regulations (Approval of a Distribution), 5761-2001.

- **Miscellaneous**

In addition to the main changes specified above, the Amendment expanded the reliefs pertaining to independent outside directors such that they will apply to Foreign-Listed Companies and to Dual-Listed Companies traded on stock exchanges listed in the Second or Third Schedules to the Securities Law.

In addition, the Amendment facilitated the reporting obligation of a Foreign-Listed Company to the Registrar of Companies, and introduced several technical changes to the Reliefs Regulations, such as the omission of transitional provisions and provisions that have become redundant.

- **Applicability**

As no applicability date was set, the Relief Regulations will be effective and apply from the date of publication thereof.

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*\* The information provided above is general and concise information only, it does not constitute an opinion or legal advice, and separate professional advice should be obtained before instituting legal or other action in relation to the issues we reviewed.*

**We are available for any questions you may have:**



**Adv. Dafna Achiam Tal, Partner**

Hi tech and Venture capital department

dafnaa@agmon-law.co.il



**Adv. Shirel Guttman Amira, Partner**

Head of Corporate, Securities and  
Capital Markets department

shirel@agmon-law.co.il



**Adv. Iris Cibulski Havilio, Consultant**

Corporate, Securities and Capital  
Markets department

irisc@agmon-law.co.il



**Adv. Alon Nahear**

Hi tech and Venture capital department

alonn@agmon-law.co.il