Corporate Law **April 2024**

Additional Regulatory Relief for Israeli Companies Traded on Certain Foreign Exchanges

Dear Clients,

On March 13, 2024, an amendment to the Israeli Companies Law Regulations (Relief for Companies whose Securities are Listed for Trading on Stock Exchanges Outside of Israel), 2000 (the "Relief Regulations") was approved by the Knesset's Constitution, Law and Justice Committee, the purpose of which is to ease the regulatory burden on Israeli companies whose securities are traded on certain foreign exchanges listed in the second or third addendum to the Israeli Securities Law, 1968, including companies that are listed only on such foreign exchanges ("Foreign Listed Companies") and companies whose securities are dually listed for trading on the Tel Aviv Stock Exchange and such foreign stock exchanges ("Dual Listed Companies").

Below is a summary of the key reliefs provided by the recent amendment to the Relief Regulations:

- **Shareholder Proxy Cards**. Foreign Listed Companies and Dual Listed Companies are exempt from the obligations of the Companies Law, 1999 (the "Companies Law") regarding voting ballots and position statements for shareholder meetings, provided that they comply with the law of the foreign jurisdiction in which they are traded regarding voting and proxy cards, as it applies to companies incorporated in such foreign jurisdiction. A company relying on such relief is required to act in the same manner towards all of its shareholders, including shareholders whose shares are held via a member of the Tel Aviv Stock Exchange.

- **Notification of existence or absence of a "Personal Interest."** A relief has been introduced that enables a shareholder of a Foreign Listed Company or Dual Listed

Company to notify the company of the existence of a 'personal interest' (as defined in the Companies Law) in certain resolutions that require a special majority of non-interested shareholders under the Companies Law, by means other than through the voting ballot or proxy card for a shareholder meeting. In addition, such shareholders may notify the company of the absence of a 'personal interest' by voting on the voting ballot or proxy card, if the voting ballot or proxy card explicitly state that a shareholder's vote by means of the voting ballot or proxy card shall constitute a declaration that the shareholder does not have a 'personal interest' in the resolution (unless the shareholder has otherwise notified the company).

- **Approval of Significant Private Placements**. The exemption from the obligation to approve a significant private placement (as defined in the Companies Law) in accordance with the Companies Law that applies to Foreign Listed Companies, has been expanded to apply also to Dual Listed Companies. In addition, a condition has been added to the exemption requiring a company relying on the exemption to comply with the law of the foreign jurisdiction in which such company is traded regarding the approval of private placements, as it applies to companies incorporated in such foreign jurisdiction (i.e., the company is required to comply with either Israeli law or the law of the foreign jurisdiction relating to the approval of private placements).

- **Shareholder Meeting Record Date**. The record date for shareholder participation and voting at a general meeting of shareholders of a Foreign Listed Company and Dual Listed Company has been extended from a maximum of 45 days to a maximum of 60 days prior to the date of a shareholder meeting. In addition, the requirement that Dual Listed Companies publish the notice of a shareholder meeting before the record date when relying on the exemption, has been removed.

- **Distribution by way of a Buy-Back that does not meet the Profit Test**. The Companies Law limits the distribution of cash dividends to the greater of retained earnings or earnings generated over the two most recent years (the "Profit Test"), in either case provided that the company reasonably believes that the dividend will not render it unable to meet existing and foreseeable obligations when due (the "Solvency Test"); otherwise, a dividend distribution may be approved by a court, provided that the court is convinced that the company meets the Solvency Test. A new relief has

been introduced that enables Foreign Listed Companies and Dual Listed Companies to distribute a dividend by way of a share repurchase program (buy-back) if the company does not meet the Profit Test, without seeking the approval of the court, subject to the following conditions: (i) the company meets the Solvency Test; and (ii) the company provides a notice to its material creditors and secured creditors of its intention to distribute a dividend by way of a share repurchase program in accordance with the notice requirements set forth in the Relief Regulations and no such creditor submits an objection within 30 days of the notice (otherwise, court approval would be required for such distribution in accordance with the requirements of the Companies Law).

- **Reporting Obligations**. The reporting obligations of Foreign Listed Companies to the Israeli Companies Registrar have been reduced and they are no longer required to report to the Israeli Companies Registrar with respect to the scope of matters for which Israeli private companies are required to report. Under the Relief Regulations, a Foreign Listed Company is required to submit reports to the Israeli Companies Registrar regarding (i) the foreign jurisdiction where its securities were publicly offered or the name of the foreign stock exchange on which its securities are listed; and (ii) the composition of its board of directors from time to time.

In addition, the Relief Regulations have introduced the following provisions in order to mitigate the exposure of Foreign Listed Companies and Dual Listed Companies to hostile takeovers resulting from generally low thresholds under Israeli law for a shareholder to demand to convene an extraordinary shareholder meeting or present a shareholder proposal to elect or remove a director. These new provisions in the Relief Regulations are intended to align Israeli law standards with the corresponding standards generally applicable to companies incorporated in foreign jurisdictions.

- **Increased Threshold for Shareholder to Convene an Extraordinary Meeting of Shareholders**. Under the Companies Law, a board of directors is required to convene an extraordinary general meeting of shareholders upon the written request of one or more shareholders holding, in the aggregate, at least (a) 5% of the issued share capital and 1% of the voting rights of the company; or (b) 5% of the voting rights of the company. A new relief has been introduced that increases such thresholds, such that the board of directors of Foreign Listed Companies and Dual Listed Companies shall

convene an extraordinary meeting of shareholders upon the written request of one or more shareholders holding, in the aggregate, at least (a) 10% of the issued share capital and 1% of the voting rights of the company; or (b) 10% of the voting rights of the company (unless the law of the foreign jurisdiction, as it applies to companies incorporated in such jurisdiction, specifies a lower threshold, in which case the 5% threshold under the Companies Law shall apply).

- **Increased Threshold for Shareholder Proposals for Director Election or Removal**. The ownership threshold to be eligible to submit a shareholder proposal for the election or removal of a director for inclusion in the agenda of a shareholder meeting of Foreign Listed Companies and Dual Listed Companies has been increased to one or more shareholders holding, in the aggregate, at least 5% of the voting rights of the company, from the 1% of the voting rights threshold under the Companies Law.

Please feel free to contact us with any questions that you may have regarding this update.

Sincerely,

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