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FINANCIAL ASSETS AGREEMENTS LAW, 5766-2006

Definitions

1. In this Law -

"*Official*" – a receiver or liquidator, including a temporary liquidator that has been appointed in accordance with the Companies Ordinance, and an official that has been appointed in accordance with section 350 of the Companies Law.

"*Early termination provisions*" within a Master Agreement – the provisions as follows:

- (1) a provision stipulating that the Master Agreement constitutes a single agreement regarding all transactions included therein;
- (2) a provision prescribing terms which upon the fulfillment thereof, all transactions included in the Master Agreement shall come to early termination, or which upon the fulfillment thereof,– a party to the agreement may bring to early termination all of the aforesaid transactions;
- (3) a provision stipulating that at the time of early termination of transactions included in the Master Agreement, as aforesaid in clause (2), the value of rights or liabilities of a party to the agreement vis-à-vis the other party shall be equal to its rights or liabilities, with deduction of the rights or liabilities of the other party toward it;
- (4) a provision prescribing ways of calculating fair value of rights and liabilities of the parties to the Master Agreement, at the time of early termination of transactions included in it, as aforesaid in subsections (2) and (3), including by estimation of the value of substitute transactions on the market where the aforesaid transactions take place, provided such ways are based on generally accepted commercial rules for valuation of rights and liabilities of parties on the aforesaid market, including a provision prescribing the way of calculating the conversion of each value that was calculated pursuant to this subsection into a particular currency;

"*Insolvency proceedings*" – liquidation or receivership proceedings, pursuant to the Companies Ordinance, or proceedings pursuant to section 350 of the Companies Law;

"*Master Agreement*" - an agreement, including a contractual arrangement between a clearing house and a member of the clearing house that regulates a number of transactions in derivatives or repurchase transactions in securities, and that includes all the provisions specified in subsections (1) to (4) of the Provisions for early termination, regarding these transactions, provided that the parties to the aforesaid agreement are corporations and at least one of them is a financial institution or the State of Israel;

"*Transfer to hedge exposure*" - transfer of money or securities (in this Law – transferred asset) from one party to the Master Agreement (under this definition – the transferor) to another party to the same agreement (under this definition – the transferee), pursuant to the provisions of the agreement, on the date specified in the agreement or upon the fulfillment of conditions specified in the agreement, which are carried out in order to hedge the exposure of the transferee, and which is not a prepayment of any liability of the transferor toward the transferee pursuant to the agreement; and provided that the transferee is entitled to carry out any transaction in the transferred asset, including its sale to another;

In this definition "*exposure*" - an amount that a transferor must transfer to the transferee, on the date of maturity of the transactions pursuant to the agreement or on the date of early termination of all transactions as aforesaid under subsection (2) of the definition of "Provisions for early termination"; however for this purpose the parties are entitled to specify ways of calculation of the fair value of rights and liabilities of the parties, which differ from ways prescribed for actual early termination as aforesaid under subsection (4) of the definition of "Provisions for early termination", provided such different ways are based upon acceptable commercial rules for the valuation of rights and liabilities of parties on the market where the aforesaid transactions are carried out;

"*Companies Law*" - Companies Law, 5759-1999¹

"*Joint Investment Trust Law*" - Joint Investment Trust Law, 5755-1994²

"*Securities Law*" - Securities Law, 5728-1968³

"*Clearing house rules*" - Rules prescribed by a clearing house, which regulate the relationship between the clearing house and its members, as published on the website of a stock exchange as defined in the Securities Law;

"*Financial institution*" - any one of the following:

¹ Book of Laws 5759-1999, p. 189

² Book of Laws 5755-1994, p. 308

³ Book of Laws 5728-1968, p. 234

- (1) A banking corporation as defined under the Banking Law (Licensing) 5741-1981⁴, including an ancillary corporation as defined under the aforesaid law;
- (2) An insurer as defined under the Supervision of Financial Services Act (Insurance) 5741-1981⁵;
- (3) The Bank of Israel as defined under the Bank of Israel Law, 5714-1954⁶;
- (4) A stock exchange member pursuant to the stock exchange by-laws as such term is defined under section 46 of the Securities Law;
- (5) A management company as defined under the Supervision of Financial Services Act (Provident Funds) 5765-2005⁷;
- (6) A fund manager as defined under the Joint Investment Trust Law;
- (7) Any entity similar to the entities listed under subsections (1) to (6), that has been incorporated outside Israel and is supervised by the relevant competent authorities in its country of incorporation;
- (8) Other entities supervised by law, as determined by the Minister of Finance, by Ordinance, with the consent of the Minister of Justice.

"*Financial instruments*" - "financial asset", "financial obligation" or "equity instrument" within the meaning of such terms pursuant to generally accepted accounting rules;

"*Clearing house*" and "*member of a clearing house*" – as defined under section 50 of the securities Law;

"*Derivative*" – a financial instrument, the value of which is derived from the value of a underlying asset, as well as a future contract and an option as such terms are defined under section 64(b) of the Joint Investment Trust Law, of a type in which financial institutions transact in their normal course of business and for which a market exists in which it is possible to establish its value;

"*Underlying asset*" – including a currency, a loan, a payment obligation, interest, an exchange rate, commodities and services traded on the Commodities market, securities traded in Israel or outside Israel, price indexes and securities indexes;

"*Securities Repurchase Transaction*" – a transaction, the parties to which are corporations and at least one of them is a financial institution or the State of Israel, where a party to the transaction (in this definition – the transferor) transfers to another party (in this definition – the transferee) securities, for consideration, and pursuant to which:

⁴ Book of Laws 5741-1981, p. 232

⁵ Book of Laws 5741-1981, p. 208

⁶ Book of Laws 5714-1981, p. 192

⁷ Book of Laws 5765-2005, p. 889

- (1) The transferee is entitled to carry out any transaction in securities, including their sale to another;
- (2) At the end of a pre-agreed term, or upon the fulfillment of a pre-determined condition, the transferee shall transfer to the transferor securities of the same type, or the securities that have been transferred to it within the framework of the aforesaid transaction, insofar as they remain in its possession, or the right to transfer or receive, securities as aforementioned, is conferred upon the transferee or the transferor, as applicable, all for a pre-determined amount or in accordance with a pre-determined manner of calculation;

"Securities", for the purpose of the Securities Repurchase Transaction" – any of the following:

- (1) An obligation or certificate, which is not convertible into shares: registered for trade on a regulated market as defined under the Joint Investment Trust Law, issued by a corporation in a series and that confer a right to claim money from a corporation on a fixed date or upon the fulfillment of a certain condition and which do not confer a right to membership or participation in a corporation;
- (2) An obligation or certificate, as set forth in clause (1) issued by the Government;
- (3) A security as defined under the Companies Law, as stipulated by order of the Minister of Finance;

"Companies Ordinance" – Companies Ordinance [new version] 5743-1983,⁸

Validity of provisions for early termination at the time of insolvency

2. Provisions for early termination in a Master Agreement, including a provision stipulating that transactions included in the agreement shall come to an early termination due to existence of insolvency proceedings against one of the parties to the agreement, will be valid notwithstanding the insolvency proceedings; nothing in these regulations derogates from the provisions of any law with regard to the date for the submission of debt claims and the date for their evaluation.

Repudiation of an onerous asset

3. An Official is not entitled to relinquish part of the transactions included in a Master Agreement by power of its authority to repudiate an onerous asset, pursuant to any law, including sections 360 through to 365 of the Companies Ordinance.

Classification of a Securities Repurchase Transaction and transfer to hedge disclosure

⁸ State of Israel Laws, New Version 37, p. 761

4. (a) A Securities Repurchase Transaction and a transfer to hedge exposure shall be considered for all means and purposes as a sale transaction, and the provisions of the Pledge Law 5727-1967⁹, shall not apply thereto even if the transferor retains certain rights in the transferred securities or assets after their transfer, all if the parties did not explicitly stipulate otherwise in the agreement pursuant to which the transaction or the transfer were created, as aforesaid.
- (b) Nothing in the provisions of this section derogates from the classification of a repurchase transaction, to which this Law does not apply, as a sale transaction pursuant to the provisions of any law.

Implementation and Regulations

5. The Minister of Justice is responsible for the Implementation of this Law and he is entitled to issue regulations for the implementation thereof.

Amendment to the Income Tax Ordinance

6. In the Income Tax Ordinance¹⁰, in section 101(a), after subsection (12) shall come:
"(13) conditions and circumstances which, upon their occurrence , a Securities Repurchase Transaction or a transfer to hedge exposure - as defined under the Financial Assets Agreements Law 5766-2006, notwithstanding the provisions of subsection 4 of the aforesaid Law, shall be deemed a loan and not as sale of securities."

⁹ Book of Law 5727-1967, p. 48

¹⁰ State of Israel Laws, New Version 6, p. 120, Book of Laws 5765-2005, p. 935