



ISRAEL SECURITIES AUTHORITY

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The rules of civil liability applicable to disclosure provided by dual listed companies

Further to inquiries made to the Israel Securities Authority (hereinafter: the "ISA") following the decision of the Tel Aviv-Yafo District Court dated May 27, 2021 to approve a class action in the matter of **Ceragon**¹ which, *inter alia*, dealt with the rules of civil liability applicable to dual listed companies, the ISA wishes to emphasize the following:

The ISA was not a party to the aforementioned proceeding and was not requested to file its position within the context thereof, so this reference does not relate to the specific proceeding. **At the same time, the general position of the ISA - as reflected in the past - is that in civil claims with regard to the report of dual listed companies, the rules of liability should follow the rules of disclosure. Therefore, when the disclosure is given pursuant to the provisions of foreign laws, the liability will be in accordance with such laws.**² The ISA holds that this interpretation best fulfill the purposes of the dual listing arrangement, to encourage listing companies traded on stock exchanges abroad on the Tel Aviv Stock Exchange, based on the rules of the foreign law to which they are obliged overseas, alongside protecting the investing public in Israel. This interpretation is consistent with the provisions of the law, prevents potential contradictions, and creates legal certainty. **Attached is the position of the ISA that was presented in detail before the Supreme Court in the matter of Tower**³ - [click here to open the document.](#)

¹ Tel Aviv (15-01-7363 **Hazan v. Ceragon Networks Ltd. et al.** (27.5.2021.)

² In contrast, in civil lawsuits for breach of a specific duty of disclosure which was imposed on a dual listed company pursuant to Israeli law, the rules of liability in accordance with the Israeli Securities Law should apply. There are a number of situations in which dual registration companies are also subject to additional disclosure pursuant to Israeli law - for example, when a dual registration company issues bonds that will be traded only in Israel, which are backed by collateral, it will be required to provide the relevant disclose in accordance with Israeli law.

³ C.A. 2889/18 **Cohen v. Tower et al.** (16.10.2018).

The position of the ISA was adopted in a series of rulings made by various courts - in the matter of **Verifone**⁴, in the matter of **MannKind**⁵ and in the matter of **Tower**.⁶ In the last two proceedings, appeals have been submitted against the judgments of the District Court, **and the Supreme Court has stated that, in its opinion the District Courts were right in their rulings regarding the applicability of the foreign law.**⁷ The Supreme Court further remarked that it is worth while considering a legislative amendment which would explicitly clarify the issue.

Further to the recommendation of the Supreme Court, the ISA is advocating an amendment to legislation that will clarify its aforementioned position as law. This amendment is set to clarify that the investors' right to sue remains unchanged, but prevents a situation whereby the rules of liability would affect the basic concept of the dual listing arrangement, which is based on disclosure in accordance with the provisions of the foreign law. Applying the rules of liability in adherence with the rules of disclosure is also intended to prevent a situation in which rules of liability of two different legal systems apply at the same time, in such a way as to impose on the dual listed companies a double burden, or submit them to conflicting rules. **The aforementioned amendment to the law is already in process; it was published for public comments in the beginning of February 2021 and was recently approved by the plenum of the ISA. It is the intention of the ISA to complete the legislation thereof as soon as possible.** Attached is the Securities Bill (Sections of Civil Liability) (Amendment No.) (5781 – 2021) - [click here to open the document](#).

⁴ C.F. (District) (22300-05-15 **Haight v. Verifone Systems Inc.** (rulings dated 14.05.2018 and 25.08.2015).

⁵ Civil A. (C.F.) 28811-02-16 **Damati et al v. MannKind Corporation et al.** (12.10.2017).

⁶ Civil A. (C.F.) 44775-02-16 **Cohen v. Tower Semiconductor** (rulings dated 07.11.2017 and 20.02.2018)

⁷ C.A.A. 8737/17 **Damati v. MannKind Corporation**, and C.A. 2889/18 **Cohen v. Tower Semiconductor Ltd.** (rulings dated 4.10.2018 and 16.10.2018).