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Israel Securities Authority
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Dual-listed companies: issuance, reporting, listing and delisting

This opinion is a summary of the most up-to-date information on the issuance processes, the reporting format, and listing and delisting of dual-listed companies (hereinafter: "dual-listed companies"). The aim of the opinion is to clarify and reflect those processes for dual-listed companies and companies considering dual listing.[1]

[1] This should not be considered as an exhaustive opinion on the dual-listing arrangement, and naturally, the provisions of the law, court judgments, the Stock Exchange rules, and additional references by the ISA should also be examined in order to obtain a complete picture.

1. Listing process of a dual-listed company

1.1 Registration document

The registration document is usually the way in to the dual-listing arrangement under Section E3 if the Securities Law, 5728-1968 (hereinafter: the "**Law**"). This document includes a kind of "identity card" of the dual-listed company, which includes a summary of important information regarding it and disclosure previously provided by the corporation pursuant to the foreign law on its operations, as set out in the Securities Regulations (Details, Structure and Form of Listing Document), 5761-2000.

As opposed to the standard reporting format of a dual-listed company, the reporting obligation of the registration document has its source in Israeli law and not in the foreign law, and the reporting language of the registration document is accordingly Hebrew.

The registration document is required for a listing pursuant to Section 35Q of the Law, and therefore is not required in the case of a reporting corporation already listed on the Tel Aviv Stock Exchange (hereinafter: the "**TASE**") seeking to transition to a reporting format under the provisions of section E3.[2]

1.2 Companies not incorporated in Israel

1.2.1 Listing permit

Section E3 relates to the listing of a foreign corporation defined as a corporation incorporated in Israel and whose securities are listed on a stock exchange outside Israel.[3] Alongside this, the ISA has the power to decide that all or some of the provisions of section E3 will apply to a foreign corporation incorporated outside Israel and whose securities are listed on a dual-listing stock exchange.[4]

In view of the aforesaid, a foreign corporation seeking a listing as a dual-listed company, must file along with the listing document also an application to ISA staff under Section 35 DD(e) of the Law on the grant of a listing permit pursuant to the provisions of section E3 of the Law. The listing of a foreign corporation

[2] In this case, the provisions of section 35II of the Law

[3] Section 1 of the Law

[4] Section 35DD(e) of the Law

on the TASE as a dual-listed company is stipulated on the approval of the application.

1.2.2 Undertaking to adopt the provisions of the Companies Law

Dual listing on the TASE does not impose on a company listed on a stock exchange outside Israel a regime of companies laws any different from the one that has applied to it until now, and similar to the reporting concept, also from the aspect that there is reliance on the rules applying to the company on the foreign stock exchange. A foreign corporation making a dual listing in Tel Aviv is therefore not subject to the provisions of section 39A of the Law on the application of various provisions of Israeli company law regime on a foreign company listed in Israel.

Against this background, a foreign dual-listed company must include an undertaking in the registration document that if it is delisted from a foreign stock exchange for any reason whatsoever, such that its shares will be traded only in Israel and the provisions of Chapter F of the Law will apply, the provisions of Section 39A of the Law will apply to make it subject to the provisions under the Companies Law and the Regulations under that Law as stated in the section. This undertaking is a precondition for obtaining permission for a listing as stated in paragraph 1.2.1 above.

1.2.3 Comparative law summary

In the case of a foreign company, it is not always clear which regulatory framework applies to the corporation in the foreign market. Thus for example, in the case of corporations considered foreign in the foreign market, different laws may sometimes apply from aspects of corporate governance, or domestic rules may apply only partially. In view of this, a foreign company will be asked to include in its registration document a comparative law summary, which will address in brief the regulatory arrangements applying to it in the market on which it is listed and in the country in which it is incorporated.

This is the place to express the main corporate governance arrangements applying to the company and any other special provisions. Note: This is a purely selective summary and the intention is not to include an extensive and comprehensive comparative law chapter describing all the regulations applying to the company in the foreign market in force from time to time for foreign corporations reporting under the Israeli securities laws.

1.3 Taxation implications

In various cases, the holding and/or trade in the company's securities may expose holders to tax, in particular when it is a foreign company, in which case the taxation provisions applying to the company and the holders are not always clear.

1.4 Supporting documents

When the foreign law allows the inclusion of reports by way of reference using a hyperlink to reports on the foreign stock exchange, the company has the option to make the inclusion by way of said reference with respect to any additional document it may be required to file along with the registration document, provided that it includes an explicit declaration with the registration document that the company is assuming responsibility for that information as if it was originally reported in Israel.

1.5 Conditional listing

A company can decide that it would like to make a dual listing subject to making a securities issuance in Israel. In that track, a listing will be made only subject to the success of the issuance, similar to an IPO by reporting corporations.

In the case of a listing conditional on an issuance, the company must file as part of the process all the documents required for the listing process and for the issuance process as set out in this paper, including: a listing document, an application for permission for a listing (in the case of a foreign company, an application for an exemption under section 35CC (Structure and Form of a Prospectus), a foreign legal opinion on the prospectus and any other relevant supporting document required by law.

1.6 Listable securities

Reporting under the provisions of Chapter E3 is conditional on a listing of the same security that is traded on the foreign stock exchange. It is not enough for a company to be listed in both markets; a dual listing of the specific security is also required, and the dual listing in Tel Aviv cannot be based on a security that is not traded on the foreign stock exchange. For example, a company the ordinary shares of which are traded on the NASDAQ will be required to list its ordinary shares in Tel Aviv in order to bring it under the dual umbrella. A listing or issuance in Israel only of bonds not listed on the NASDAQ, with no dual shares listing, will not allow use of the reporting format under Chapter E3 and will make the company a reporting corporation subject to the reporting format under Chapter F of the Law. Against this, a listing or issuance of bonds in Israel only,

as a dual-listed company, will be allowed when the company's shares are dual listed as set out below in paragraph 2.8.

It should also be clarified in this context that the dual listing is conditional on a trading of the dual security on one of the stock exchanges listed in the Second or Third Schedule to the Law ("dual-listing stock exchanges"). Trading on stock exchanges or boards that do not appear in those Schedules, such as the OTC platforms in the United States or the secondary market in London, does not enable dual listing under Chapter E3 of the Law.

2. The issuance process of a dual-listed company – prospectuses and supporting documents

2.1 Background

The dual listing arrangement is basically intended to apply to the listing of a dual-listed company, as distinct from an issuance of shares to the public by it. Thus, whereas for a listing only a registration document based on the foreign disclosure is required, there is no such exemption for an offer of shares to the public in Israel and it is mandatory to publish a prospectus in Israel.

Section 35CC of the Law gives the ISA the power to exempt from the provisions on the details, structure and form of a dual-listed company's prospectus, so that subject to that exemption, the dual-listed company's prospectus will be based on the company's foreign reports and the foreign disclosure arrangement to which it is subject (hereinafter: "dual prospectus"). The grant of said exemption may be subject to various conditions as set out below.

2.2 ISA examination of the prospectus

In general, similar to its practise in the current supervision, in the context of the issuance prospectus the ISA bases itself on the disclosure made by the company under the provisions of the foreign law. The examination focuses on the partial filing of the various parts of the prospectus, the opinions, and the required applications for an exemption, and the inclusion of disclosure and prospectus undertakings concerning the actual issuance in Israel as set out below in this document.

2.3 Eligibility and extension of a shelf prospectus

A dual-listed company's eligibility for a shelf prospectus is examined under Section 23A of the law and the Regulations promulgated under it. The Regulations state a requirement for the existence of a reporting obligation

applying to the corporation, and in the case of a dual-listed company, the relevant obligations are mainly the provisions of the foreign law applying to it. Instead of a regular violations report, a dual-listed company must attach to the first draft prospectus submitted to the ISA the opinion of an attorney expert in the foreign law stating that the company meets the requirements of the foreign law for shelf prospectus eligibility and that it would be eligible for permission for a shelf prospectus in a foreign stock exchange if it sought such permission there. It should be clarified in this context that if the company's foreign shelf prospectus was conditional or subject to restrictions under the foreign law, those conditions and restrictions will also apply to the dual-listing shelf prospectus.[5]

In accordance with the aforesaid, the extension of the validity of a dual-listing shelf prospectus by an additional year also requires the submission of a similar opinion stating that the company is still meeting the eligibility conditions for a shelf prospectus under the foreign law.

The company's eligibility for a shelf prospectus under the foreign law is under constant examination, not only on the date permission is granted for the prospectus. Consequently, every shelf offering report under the shelf prospectus must be accompanied by an up-to-date declaration from the company pursuant to legal advice it has been given, to be sent to ISA staff in a non-public format, according to which to the company's best knowledge, it still meets the conditions allowing it to offer the securities of the class it is to offer under a shelf prospectus.[6] Note: This does not mean that the company must have positive permission from ISA staff for the shelf offering report when no such permission is required by law.[7]

2.4 Details, structure and form of a dual-listed company's prospectus

As stated above, subject to obtaining an exemption under Section 35CC of the Law, the dual-listed company's prospectus will be similar in structure, form and the details it includes to a prospectus submitted by the company in the foreign

[5] Thus, a restriction in American law according to which the use of a shelf prospectus is restricted to one third of the value of the public's holdings in the company, also applies to the issuances under the dual shelf prospectus. See on this a preliminary inquiry in the Kitov Pharma case (July 2017). ISA link

[6] See on this a prospectus undertaking that a company must include in connection with the aforesaid, as set out in paragraph 2.6.1.

[7] The Securities Rules (cases in which the publication of a shelf offering report will require permission from the Israel Securities Authority), 5776-2016

stock exchange. If the prospectus includes by way of reference reports that are not published in Israel (reported in the foreign market prior to the company being dual listed), the documents will be attached to the prospectus itself. When the foreign law allows the inclusion of the reports by way of reference through a hyperlink to reports on the foreign stock exchange, the company has the option to make the inclusion by way of said reference, provided that included in the prospectus is an explicit declaration that the company is assuming responsibility for that information as if it was reporting in Israel.

The prospectus language may be English or Hebrew at the company's option, and the prospectus may also be divided into parts in Hebrew and parts in English. Thus for example, if a company is listed in the United States, the annual report may be included in the latest form F-20 published without translating it into Hebrew, with the rest of the prospectus, including the offer chapter, in Hebrew.

Prominent on the prospectus wrapper will be the fact that the company is reporting pursuant to Chapter E3 of the Law and that the current reports the company may file in the future will be in English. The company must also prominently display on the prospectus wrapper the prospectus undertakings associated with the issuance in Israel, as set out below.

2.5 Supporting documents

As a rule, a dual-listed company must, like any other reporting corporation, file all the documents supporting the prospectus, including TASE approval, certificate of power of attorney, attorney's approval for the implementation of changes, confirmation of receipt of the mandatory permissions, protocols, and a copy of the issuer's incorporation documents where required (IPO), etc.

Additionally, a dual-listed company must include in the prospectus the consent of the company's auditing accountant to the inclusion of its opinion in a prospectus for a public issuance in Israel.

Along with filing the prospectus and its supporting documents, a dual-listed company must file two additional documents with ISA staff along with the draft prospectus as set out below –

2.5.1 Foreign attorney's opinion

The opinion will be filed with ISA staff on a non-public form and will state that:

- The company meets the foreign eligibility conditions for the acceptance of a prospectus of the type for which it is applying for

approval in Israel. Thus, if a dual-listed company listed on a dual-listing stock exchange in the United States wishes to publish a shelf prospectus in Israel, the opinion must make it clear that the company meets the eligibility conditions for the acceptance of a shelf prospectus in the United States.

- The shelf prospectus actually filed meets the requirements of the foreign law on the structure, form and details of a prospectus that would have been filed by it in the foreign market if it had filed the prospectus there.[8] The opinion may exclude certain information included in the prospectus due to the fact that the issuance is being made in Israel and which would not have been included in the foreign prospectus, such as aspects connected with the offer chapter or other undertakings by the company in connection with the issuance in Israel (see below).

  Note: Such exceptions will only be the result of the force of reality. Thus for example, since the company's undertaking to implement a hybrid disclosure model[9] was not included in the prospectus for issuance on the foreign stock exchange, the opinion will exclude it from consideration. Against this, in the absence of special justification, an opinion will not be accepted if it states that the company is not including information or undertakings that the company must provide under the foreign law, only because the aforesaid is not required under Israeli law.

2.5.2 Application for exemption under Section 35CC of the Law

An application for an exemption will be submitted on a non-public reporting form and will include the following information:

- Information on the identity of the issuers (name and trading location);
- Type of prospectus for which the exemption is requested;
- Details of the prospectus that will be submitted pursuant to the application for the exemption – including its structure, form and the disclosure therein; [10]

[8] If the company has also submitted the prospectus for actual examination by the foreign regulator, the opinion must state that.

[9] See paragraph 2.6.3 below.

[10] For example, if the prospectus has been entirely drafted according to the foreign law or the exemption is requested for specific sections.

- The conditions and restrictions, if any, applying to the company's issuance on the foreign stock exchange according to the type of prospectus and in general;
- Other relevant circumstances, if any, connected with the issuance;
- The conditions on which the exemption is stipulated, including the existence of the company's undertakings in connection with the issuance in Israel, the existence of a foreign attorney's opinion as set out above and additional conditions that may be relevant to the company's case, if there are any;
- A request for the ISA to exert its authority under Section 35CC of the Law and determine that the company is entitled to draft the prospectus according to the aforesaid.

2.6 Undertakings in the prospectus of a dual-listed company

The ISA may make applications for an exemption concerning the prospectus of a dual-listed company conditional on the company's undertakings to investors in Israel connected with the issuance to be made in Israel. The undertakings will be in Hebrew or English at the company's choice on the wrapper of the prospectus that the company publishes in Israel.

2.6.1 Undertaking of continued eligibility for a shelf prospectus

As stated in paragraph 2.3, when a dual-listed company makes an issuance under a shelf prospectus, the shelf offering report must be accompanied by the company's declaration that to the best of its knowledge it still meets conditions allowing it to offer securities of the class it wants to offer under the shelf prospectus.

In view of the aforesaid, the company will include an undertaking in the shelf prospectus that future offers made under the prospectus will be subject to the company's continued eligibility to make an offer under the shelf prospectus in the foreign stock exchange,[11] if the prospectus had been valid there.

2.6.2 The content of Section 350 of the Companies Law

In the case of a foreign dual-listed company to which the Companies Law does not apply, the company will be required to include in the prospectus for a bonds issuance an undertaking that the company, the controlling shareholders and the officers in it will not object to a request from the trustee and/or bondholders filed in a court in Israel to apply Israeli law on compromise or an insolvency

[11] As will be explained in the context of these future offers.

arrangement, if filed, and not to object if the court in Israel seeks to apply Israeli law in that matter, and not to raise any claims against the local jurisdiction of the court in Israel in connection with proceedings that may be filed by the trustee and/or the company's bondholders. Along with the aforesaid, the company will include a declaration in the offering that there is nothing in the foreign law or by virtue of the company's undertakings to third parties to prevent said proceeding being conducted in Israel.

2.6.3 The hybrid disclosure model

A dual-listed company issuing bonds in Israel under a prospectus, is required to give an undertaking to adopt the hybrid disclosure model pursuant to Plenary Resolution 2013-1.12 According to that undertaking, the hybrid disclosure model will apply to the company only when the company has bonds that are being traded only in Israel, with no similar, parallel bonds on the foreign stock exchange.13

The hybrid disclosure model states that such a company will be required to make an additional and special disclosure to the bondholders in Israel, pursuant to Israeli law, that includes among other things a reference to the existence of warning signs under Regulation 10(b)(4) of the Securities Regulations (Periodic and Immediate Reports), 5730-1970, hereinafter: the "Reports Regulations") and the attachment of an anticipated cash flows report in the required cases in the Regulation: disclosure of the examination conducted by the board of directors into the company's state of liquidity pursuant to Regulation 10(b)(1)(d) of the Reports Regulations; immediate reports for the benefit of the holders of promissory notes in circulation pursuant to section 35A of the Reports Regulations: and details of any dividend distribution, early repayment of bonds, compromise or arrangement, and a corresponding disclosure on this issue pursuant to the Reports Regulations.14

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[12] Plenary Resolution 2013-1: change in the treatment model and grant of exemption to dual-listed companies issuing bonds in Israel only. ISA link 1

[13] As stated in the Plenary Resolution, the similarity to the foreign bonds is not examined in relation to the trading conditions of the bonds, for example the existence of a pledge or the rate of interest the bond carries, but in relation to the legal rights accompanying the bonds series, such as the creditor ranking or the grounds for calling for immediate payment. On this issue, each case will be examined on its merits.

[14] For more information, see the full text of the Plenary Resolution as set out in bylaw 12 above, and Q&A No. 111.3 on reporting of the content of the hybrid disclosure model: ISA link 2

An undertaking in the prospectus on the adoption of the hybrid disclosure model is required whenever bonds are issued by a dual-listed company, whether they are issued only in Israel or in Israel and on an additional foreign stock exchange. Thus, the existence of parallel bonds in a dual-listing stock exchange does not make the requirement for an undertaking in the prospectus unnecessary, as long as the condition exempting it from application exists.

2.6.4 Issuing preferred stock

The issuance of preferred stock requires detailed disclosure in connection with, among other things, the conditions of the securities, including the features of the preferred stock, aspects of taxation, dividend distribution policy and a history of the company's actual distributions, and the arrangements in the event of a purchase offer for common stock or an arrangement proceeding with the preferred shareholders. Along with this the company must give the following undertaking:

- If the preferred stock is listed only in Israel (and for as long as that is the situation) – an undertaking not to make use of Section 35CC of the Law to delist the common stock and an undertaking to list the preferred stock on the dual-listing stock exchange if for any reason the company's shares are delisted in Israel.[15]
- If the preferred stock is dual listed – an undertaking not to delist the preferred stock on the dual-listed stock exchange.

2.6.5 General undertakings required from the company in the foreign market

Sometimes companies state in the foreign attorney's opinion that the prospectus filed in Israel does not include certain undertakings which the company would have had to include in the foreign prospectus. Such undertakings sometimes relate to a procedure in the foreign market that is irrelevant to the Israeli market, but sometimes they also have implications for information that will be given to investors and/or for the company's standard of responsibility to the investors.

In view of the aforesaid, ISA staff consider the inclusion of the aforesaid undertakings in the dual-listing prospectus, mutatis mutandis, to be important. If a company does not want to include certain undertakings, either because they are irrelevant or because there is an answer to them in Israeli law that will apply

[15] For example, in the event of a full purchase offer for common stock.

to the company in any case, the company will set this out in the opinion and it will be discussed with ISA staff.

In such a case, the company will also be required to include an undertaking in the dual-listing prospectus according to which the rights of holders in Israel will not be infringed as a result of non-adoption of those undertakings by the company as part of the dual-listing prospectus.

2.7 Issuance of collateral-backed bonds

Similar to the rationale at the basis of disclosure on the hybrid model as set out in paragraph 2.6.3 above, dual-listed companies issuing collateral-backed bonds listed in Israel only must make full disclosure of the collateral according to Israeli law. This disclosure will be made on the date of the issuance (in the prospectus) and on an ongoing basis. Thus, among other things, various disclosure provisions will apply to the company in connection with the collateral, such as:

- An event or matter that has or may have a significant effect on the value of the collateral pursuant to Regulation 35A of the Reports Regulations;
- Attachment to the company's reports of a current valuation of the asset pledged pursuant to Regulation 28 of the Reports Regulations;
- Various details such as a description of the pledged assets and the existence of conditions for exercising collateral pursuant to the provisions of Regulation 10(b)(13) and the Eighth Schedule to the Reports Regulations.

Note: These are representative provisions and not necessarily exhaustive. As far as pledges given in connection with bonds issued in Israel are concerned, the dual-listed company will be required to make a disclosure like any reporting corporation under existing and future law, including reference to the clarifications and positions published by ISA staff on the matter.

Accordingly, a dual-listed company requesting permission for a prospectus under which there will be a collateral-backed bonds issuance, will include in the prospectus (or in the shelf offering report, whichever applies) an undertaking according to which in all aspects of disclosure and reporting in connection with the collateral, the company will act pursuant to the provisions of Israeli law as set out above.

2.8 Issuance of securities that will be listed in Israel only

In certain cases, a dual-listed company has an option to issue securities that will be listed only in Israel in a dual-listing framework. Until now, such issuances have been made possible for two types of securities: bonds and preferred stock. These issuances under the dual-listing regime are only possible when the company's common stock is dual-listed – on the TASE and on the foreign stock exchange.

Accordingly, companies issuing such securities are restricted in their ability to use Section 35CC of the Law which allows unilateral delisting of the company's securities from the Tel Aviv Stock Exchange. Thus, a company that has issued bonds listed in Israel only and that delists its dual-listed shares in Tel Aviv will consequently become a reporting corporation subject to Chapter F of the Law, due to the bonds in circulation. As far as preferred stock is concerned, since the stock exchange rules do not allow trading in preferred stock without trading in ordinary shares, a dual-listed company that has issued preferred stock in Tel Aviv only will not be able to delist its common stock without listing the preferred stock on the foreign stock exchange.[16]

2.9 Notice of intention to submit an application for permission

As opposed to practice in the case of reporting companies that are not dual-listed companies, and considering the nature of the test conducted by ISA staff in connection with dual-listing prospectuses as set out in paragraph 2.2 above, dual-listed companies do not have to give the ISA prior notice of their intention to submit an application for permission. Notwithstanding the aforesaid, in special cases in which the issuance has unique features or in special circumstances, ISA staff will recommend that the company should notify them in advance of the anticipated issuance.

2.10 Dates

2.10.1 Date for filing the prospectus

A dual-listed company is not subject to the dates determined in Israeli law for filing the prospectus document and obtaining permission. That is to say that from the aspect of the dual-listed company, transfers from quarter to quarter are of no importance, similar to the rules applying to reporting corporations that are not dual listed. The dual-listed company's prospectus is based, as previously stated, on disclosure pursuant to the foreign law, and must be identical to the prospectus that would have been filed abroad on the same date and until the date permission

[16] See on this issue, Chapter 23 of the instructions under the second part of the stock exchange rules.

is granted. That is to say that if between the date of filing the first draft prospectus with ISA staff and the date when permission is obtained, there is a change that under the foreign law requires a change in the structure, form or details of the prospectus under the foreign law, the company must update the prospectus and the foreign attorney's opinion accordingly.

2.10.2 The time period for obtaining permission

In most case, the prospectuses of dual-listed companies are examined in a short and intense procedure with only certain matters being examined as set out in paragraph 2.2 above and a short timetable generally being achieved for dealing with the prospectus until the process of granting permission. Alongside this, there may be cases in which a partial examination will be required, such as in the case of an issuance of special securities or in special circumstances, such as the issuance of bonds with collateral, or if the time needed to deal with the prospectus is expected to be longer.

2.11 Reporting on special forms

Two different forms are available to a dual-listed company for reporting associated with the issuance process – Form C-220 for non-public reports (such as the draft prospectus, the attorney's opinion and the application for an exemption) and Form C-222 for public reporting (such as a public draft, a final prospectus and a shelf offer report). Dual-listed companies must report on these forms only during the issuance process.

3. The disclosure obligation of dual-listed companies

In view of the rationale at the basis of the dual listing arrangement, and without entering into any discussion on issues of interpretations of the foreign law (including the extent of the disclosure required under it in different matters), the ISA staff position is that as a rule there does not need to be any difference between the reporting obligations applying to Israeli companies to which Chapter E3 applies and the reporting obligations applying to Israeli companies listed on the dual-listing stock exchanges only. This is apart from exceptional cases in which a company may be required to make additional, special disclosure in Israel, such as in the aforementioned case in which a dual-listed company wants to issue a security in Israel that will not be listed on the foreign stock exchange as well.[17]

The conclusion that in general there will be no difference between those reporting obligations, arises clearly from the purpose of the dual-listing arrangement and the

[17] See on this paragraphs 2.6.3 and 2.7 above.

provisions of Israeli law in connection with the reporting obligations of dual-listed companies. The dual-listing arrangement is intended to encourage companies listed on the foreign stock exchanges to come and be listed also on the stock exchange without any additional disclosure being required only due to that action.

Section 35EE(e) of the Law states that a dual-listed company will file reports to the ISA and the stock exchange under Chapter E3 of the Law. Section 35EE(d) of the Law gives the ISA authority to instruct dual-listed companies to file any immediate report they are obliged to file under the foreign law. Similarly, Section 35E(e) gives the ISA the authority to instruct dual-listed companies, after giving them an opportunity to state their case, to file an amending report, if it is proved that the company filed a report not under the provisions of the foreign law. The ISA may also confer with the body charged with the supervision or enforcement of the foreign law. ISA staff have previously clarified that these powers will be used sparingly and taking into consideration the fact that dual-listed companies are under the supervision of the foreign regulator. In connection with the aforesaid and in accordance with the purpose of the dual-listing arrangement and its provisions, subject to the above exceptions, ISA staff have clarified that in general they have no intention of using their powers to require dual-listed companies to make disclosure that is not made by other Israeli companies listed on those foreign stock exchanges.

Along with the aforesaid and on the basis of the principle according to which the reports in Israel generally mirror the reports on the company's affairs in the foreign stock exchange, there is room to clarify that this principle also applies when under the foreign law, the reporting obligation applies to another party associated with the company, and the report is not from the company itself. Thus for example,[18] when according to the foreign law interested parties must report their holdings in the company, the dual-listed company must ensure that these reports are also published in the MAGNA system, as arises from the provisions of Regulation 5 of the Securities Regulations (Periodic and Immediate Reports of a Foreign Corporation), 5760-2000. **Delisting**

3.1 Delisting from the Tel Aviv Stock Exchange

Section 35BB of the Law deals with delisting on a foreign corporation's initiative and states that a foreign corporation may ask for its securities listed on a stock

[18] Another example can be the company's correspondence with the SEC published on EDGAR by the latter.

exchange to be delisted from it provided it has notified its intention to do so in an immediate report filed three months before the date it has asked to be fixed for the end of trading. This right a corporation has is restricted to a situation in which the corporation's securities are listed in a dual-listing stock exchange provided that trading in them has not been suspended or a notice has been received from the dual-listing stock exchange of an intention to suspend trading in them or to delist them from it.

Questions have previously been directed to ISA staff concerning the implementation of Section 35BB of the Law in cases in which there is doubt that holders of securities in Israel will be able to trade in their securities on the foreign stock exchange immediately after delisting on the stock exchange. These question concerned, among other things, the technical and other difficulties with regard to the amount of equity or the number of ADR's registered by the company on the foreign stock exchange.

As stated above, Section 35BB of the Law gives the dual-listed corporation the ability to delist from a stock exchange without needing the permission of holders of securities in Israel. The basis for the delisting arrangement, as also arises from the explanatory notes to the Law, is that the corporation's securities will continue to be listed on the foreign stock exchange.[19] That provision is intended to guarantee the rights of securities holders in Israel and to give them the option to hold a negotiable security on a recognized stock exchange abroad after the date of delisting of the company from the stock exchange.

In view of the aforesaid, ISA staff consider that a precondition for the implementation of Section 35BB is that the company has satisfied itself that after its securities have been delisted from the stock exchange, holders will have the option to trade in the securities on the foreign stock exchange. The company must disclose this matter in the immediate report on the intention to delist under Section 35BB(a) of the Law. As part of the disclosure, the company will confirm that it has ensured that there is nothing to prevent – technically or materially – immediately after the delisting, full trading on the foreign stock exchange of the company's securities that were listed on the stock exchange.

3.2 Delisting on a stock exchange abroad

[19] In the words of the explanatory notes to the section as they appear in bills, 2887, 23 Sivan 5760, 26.6.2000: "It is proposed under certain conditions to allow a foreign corporation, provided its securities are listed on a foreign stock exchange, to ask for its securities to be delisted in Israel".

Under the provisions of Section 35Z(b) of the Law. A dual-listed company listed on the stock exchange under the provisions of Chapter E3 the securities of which have been delisted from the foreign stock exchange, will be subject to the provisions of Chapter F like any reporting corporation.[20] Against that background, a concession is stated in Section 36(2a) of the Law, according to which said company may continue to report under the provisions of Chapter E3, in other words, according to the foreign disclosure rules, for six months from the date the securities were delisted from the foreign stock exchange, provided that its reports include every item that may be of importance to the reasonable investor.

This concession was intended to allow companies sufficient time to arrange for the creation of financial statements and the drawing up of the disclosure in the seasonal and annual statements according to Israeli law. This is the place to clarify that this concession does not apply to current immediate reports for which no special drafting is generally required and which the company must make pursuant to the provisions of Chapter F from the moment it is delisted abroad. These reports are an important item for the reasonable investor as stated at the latter part of section 32(2a).

[20] Unless less than a year has passed since the date of listing on a stock exchange and said delisting, in which case the provisions of Section 35Z(a) of the Law will apply.

4. Changing to a dual-listed company reporting regime

Section 35FF of the Law states that TASE-listed companies whose shares are listed on certain stock exchanges abroad will be able to switch to a current reporting format in Israel as part of dual listing if approval to do so has been obtained by a majority of the votes of the holders of the corporation's securities, apart from the controlling shareholder, participating in a vote at a meeting on this issue of the holders of the various classes of securities.

Switching from one reporting format to another is not to be taken lightly. For holders of the securities of a corporation reporting under the Securities law, a transition to the foreign reporting format is an extremely important change since it is not only a change of the reporting language but also concerns reporting rules that are not identical to the rules it knows and is familiar with, in a different language and under the supervision of another regulator.

In view of the extent and importance of that change, the legislator saw fit to determine that reporting format will only be changed with the agreement of the holders of the corporation's securities, on the understanding that the investors who invested in the corporation relying on the application of the Securities Law in all its aspects (the disclosure and supervision provisions) may be damaged by the planned change. Accordingly, the arrangement determined in Section 35FF of the Law is intended to ensure that a company's decision to waive reporting under Chapter F of the law will be accepted by the holders of securities that purchased the company's securities when it was a reporting corporation and relied on the corresponding reporting format.

In previous cases, the ISA staff have expressed the opinion that an interpretation of the purpose of the provisions of Section 35FF(c) of the Law requires that a resolution to change the reporting format from reporting under the provisions of Chapter F of the Law to reporting under the provisions of Chapter E3 of the law will be passed separately by the holders of the company's securities listed on the stock exchange, and who are the group of holders who purchased the company's securities relying on the application of the reporting provisions in Chapter F to the company, as set out above.

In view of the aforesaid, in cases in which the company has made an issuance on a recognized stock exchange abroad for the purposes of a dual listing and thereafter asked all the holders of its securities to allow it to switch to reporting under the provisions of Chapter E3, it must hold class meetings pursuant to the provisions of Section 35FF(c) of the Law, distinguishing on this issue between the holders of the

different classes of securities traded on the stock exchange and the holders of the different classes of securities traded on a foreign stock exchange.

This interpretation is binding and necessary considering that the holders of the company's securities abroad have no interest in retaining the reporting format in Israel and it could even be said that due to the fact that Israeli law is in no way relevant to them, they have a clear interest in cancelling its application. To avoid a situation in which the holders of securities abroad, who as previously stated are relying on the company's reports in Israel, will be the ones to decide on a change in the company's reporting format, they should be considered as one class of shareholders for voting purposes pursuant to the provisions of Section 35FF of the Law.

Contact persons: Adv. Ron Klein, Adv. Adi Huberman-Mazuz (CPA)
Telephone: 02-6556444 Fax: 02-6513160