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A Watershed Year for Dual-Listing of Non-Israeli Public Companies on the TASE

Capping off a significant year of progress for Israel's dual-listing arrangement, on December 30, 2018, the Israel Securities Authority ("ISA") published its long-awaited Staff Legal Bulletin on dual-listed companies. The bulletin sets out the ISA's requirements relating to the initial listing process, the public offering process, ongoing reporting, delisting and other matters relating to dual-listed companies. It seeks to strike a balance between the policy underlying the statutory dual-listing arrangement to attract high-quality public companies to the Tel Aviv Stock Exchange ("TASE") by imposing minimal regulatory burdens, on the one hand, and the ISA's duty to protect Israeli investors, on the other hand. The ISA published the bulletin in both [Hebrew](#) and [English](#).

Background

The Knesset adopted the dual-listing regime in 2000 with the goal of strengthening the TASE by attracting companies that had listed on the New York Stock Exchange or the NASDAQ Stock Market. There are currently 55 dual-listed companies on the TASE, most of which are Israeli companies or have operations in Israel.

A New Trend

Beginning in late 2017, for the first time, U.S. public companies with no operations in Israel raised funds in Israeli public offering. One NASDAQ company and one NYSE company successfully completed debt offerings on the TASE, and another NASDAQ company successfully completed a preferred stock offering. Additional U.S. public companies are exploring the TASE opportunity and some have commenced the listing and offering process. Most are seeking access to Israel's robust debt market, which raised more than \$18 billion in 2018, primarily from institutional investors. Because of mandatory pension plans for all workers in Israel, pension funds have enormous amounts of capital to deploy in stable investments, and foreign public companies that agree to list on the TASE attract eager investor interest.

What is a dual-listed company?

A dual-listed company is a public company that has the same class of securities listed on a qualified non-Israeli stock exchange and on the TASE. The company may be incorporated in Israel or abroad,

and it can operate in any field. The foundation of the dual-listing arrangement is that the company's reporting obligation in Israel is satisfied simply by filing its non-Israeli disclosure reports with the ISA, with no need to translate them into Hebrew. Similarly, the company-related disclosure in the offering prospectus of a dual-listed company is based on the disclosure rules of the company's home market. Dual-listed companies do not become subject to any Israeli corporate governance requirements by virtue of the TASE listing .

What it's not

Dual-listed companies should not be confused with the more than 30 BVI companies that have been formed by U.S. or U.K. real estate developers to issue bonds on the TASE. These BVI companies do not have securities that are publicly traded outside of Israel. When they sell their bonds to the public in Israel, they become subject to all the same Israeli securities laws and corporate governance requirements that apply to Israeli companies with securities listed only on the TASE, including the need for Hebrew disclosure reports pursuant to the ISA regulations, IFRS financial statements and statutory external directors.

New Qualified Stock Exchanges

The dual-listing arrangement has long been available to companies listed on the NYSE, NASDAQ or the London Stock Exchange (Main Market). In June 2018, following an in-depth review by the ISA of the securities regulations, stock exchange rules and oversight mechanisms in multiple foreign jurisdictions, the Ministry of Finance and Knesset Finance Committee approved the addition of three additional stock exchanges to the list of exchanges that qualify for the dual-listing arrangement: Hong Kong (HKEX), Singapore (SGX) and Toronto (TSX).

New Preferred Stock Opportunity

In March 2018, the TASE published its final guidelines for listing preferred stock on the TASE. Although preferred stock is still new to Israeli investors, this alternative provides a welcome opportunity for a dual-listed company to issue securities at various levels of its capital stack – common stock, preferred stock and debt .

Legislative Relief

In June 2017, the ISA approved a legislative proposal to amend the Securities Law to formally exempt dual-listed companies from Section 46B. This section essentially prohibits the listing on the

TASE of companies with a dual-class voting stock structure, such as those with super-voting stock held by the company's founders. This proposed amendment has been winding its way through the legislative process and is expected to be approved by the Knesset in 2019. In the meantime, in keeping with the legislative intent to enable dual-listings, the ISA and the Israeli courts generally have taken a liberal approach in applying this rule to dual-listed companies.

Judicial Relief

A question that had haunted dual-listed companies for many years was recently put to rest. Class action plaintiffs who filed securities law claims against dual-listed companies in Israeli courts argued that the defendants should be held to the liability standards under Israeli law. Such standards are generally higher than the corresponding U.S. liability standards. For example, under Israeli law a company can be held liable for misleading disclosure caused by its negligence, as opposed to the SEC Rule 10b-5 standard of scienter. In October 2018, the Israeli Supreme Court, in response to the appeals by the plaintiffs in separate securities lawsuits against two dual-listed companies, affirmed the decisions of the Tel Aviv District Court (Economic Division) (and thus upheld the position of the ISA) that the U.S. liability standards apply to the SEC disclosure documents published by these companies in Israel.

Doing Our Part

With rich capital markets experience in Israel and abroad, our firm has taken a leading role in the evolution and implementation of the dual-listing arrangement. We worked on the first dual-listed TASE offering in 2004, on dozens of others over the years and on both of the recent successful debt offerings on the TASE by U.S. public companies. We have worked hand-in-hand with the regulators at the ISA and the TASE to resolve complex issues of first impression and are uniquely qualified to advise non-Israeli public companies in navigating the regulatory terrain when they seek to tap the Israeli capital markets.

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