

**A UK OFFERING  
PREPARATION OF AN ISRAELI COMPANY  
AND CERTAIN ASPECTS OF ISRAELI  
LAW**

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## OVERVIEW - THE LEGAL 'RULES OF THE GAME'

### ❖ The Israeli Companies Law 1999 (the "CL")

- ❖ Governs company's day-to-day operations
- ❖ Sets guidelines for corporate bodies (board, audit committee) and their responsibilities

### ❖ The Israeli Securities Law 1968

- ❖ Applies only if the company is already publicly traded in Israel; or
- ❖ If the offering constitutes an "offering to the public" – i.e. generally an offering to more than 35 'non institutional' investors under section 15(d)

### ❖ UK Listing Rules

- ❖ Rules governing admission for listing, on-going post offering obligations and sanctions in case of failure to comply
- ❖ Expected to be substantially revised in July 2005  
(single passport disclosure and incorporation by reference)



## THE STRUCTURE OF THE OFFERING - POSSIBLE OPTIONS

### ❖ Offering of shares

- ❖ The shares shall be of an ordinary type and their rights shall be governed by the articles and by the CL
- ❖ If the company is already a public company traded on TASE, than the shares will be tradable on TASE (subject to possible resale limitations)

### ❖ Offering of Global Depositary Receipts (“GDRs”)

- ❖ Often used where the company would like to reach foreign institutional investors which are not familiar with the company or with the settlement procedures in the local jurisdiction (in our case TASE)
- ❖ GDRs evidence units representing a package of company’s shares (a 1:1 ratio may also be used). The GDRs will be admitted to trading on the LSE
- ❖ GDRs will be issued by a depositary (usually a bank) which will receive at closing the company’s shares and in their stead will provide investors with the GDRs. GDRs and the rights of their owners will be governed by UK/US laws depending on the depositary, until their conversion into shares
- ❖ Company may combine and offer shares and GDRs

## POINTS TO CONSIDER IN CONNECTION WITH THE STRUCTURE

- ❖ **Existence of any registration rights**
- ❖ **If the company is already a publicly traded company**
  - ❖ Will controlling shareholder be participating in the offering?
  - ❖ Would the company require to obtain shareholders' approval under 270 of the CL?
  - ❖ May the sale be structured such that special majority requirements may be avoided?
  - ❖ timing of immediate reports- usage of section 36(b) exemption
- ❖ **Changes in the way financial information is edited and presented – Israeli GAAP vs IFSR**
- ❖ **Confidentiality throughout the process**

## PRE - PROCESS REORGANIZATION

### ❖ **Changes to the Articles of Association – why is it needed?**

- ❖ Old articles are in accordance with Companies Ordinance and so are not entirely in compliance with the CL
- ❖ Contradiction of old articles with provisions of the CL would require disclosure in the offering circular
- ❖ Old articles do not allow for indemnification in advance – narrower protection to officers
- ❖ Old Articles oftentimes include provisions which serve as a possible ‘road block’ to the process
  - ❖ For instance special majority requirements;
  - ❖ For instance – shareholders’ right to decide on preemption;

### ❖ **Increasing share capital**

- ❖ Increase should cover immediate issuance and any ‘green shoe’

### ❖ **Changes to the Board of directors**

- ❖ Most members of the Board should be independent directors – i.e. not engaged in any way with the company or its affiliates
- ❖ External directors are to be appointed in order to comply with CL, and if required, of the opposite gender

## PRE - PROCESS REORGANIZATION - CONTINUED

- ❖ **Adoption of appropriate indemnification and exculpation procedures**
  - ❖ Revision is needed in order to comply with CL and provide broader protection
  - ❖ As undertaking to indemnify must be limited to foreseeable liabilities we recommend the execution of indemnification and exculpation agreements between company and D&Os
  - ❖ If the company is already a public company in Israel, certain expectations of local investors exist which should be met if approval of institutional investors is required at the general meeting
- ❖ **Other important preparations and 'clean-ups'**
  - ❖ Formalization of employment agreements with top executives
  - ❖ Adoption of policies regarding confidentiality
  - ❖ Increasing D&O Insurance coverage



## NECESSARY REGULATORY AND THIRD PARTY APPROVALS

### ❖ Israeli Securities Authority

- ❖ In connection with the need to publish a prospectus in Israel – pending the structure of the offering
- ❖ In connection with possible restrictions on resale of offered securities
- ❖ If the company is already traded on TASE - in connection with dissemination of new information into the market (new financial statements, analysts' reports etc.)

### ❖ TASE

- ❖ If the company is already traded on TASE – registration of the offered shares

### ❖ Investment Center

- ❖ In case of issuance of more than 49% of the company (together with previous issuances)
- ❖ In case controlling shareholder will be selling in the offering

### ❖ Office of the Chief Scientist

- ❖ As 'means of control' will be issued to foreign entities
- ❖ In case of issuance of more than 25% of the company

### ❖ Financing Banks

- ❖ Under negative pledges, or pledges on unissued share capital
- ❖ Under financial covenants and 'change of control' limitations



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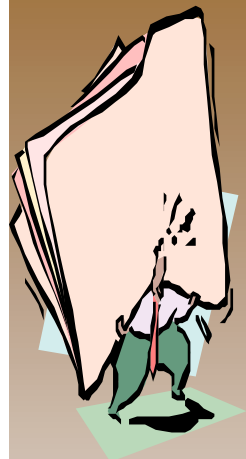


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## THE LEGAL DOCUMENTS USUALLY INVOLVED

### ❖ The prospectus or the offering circular. Governed by UK laws and includes the following information



- ❖ Information about the offering
- ❖ Recent developments (acquisitions, mergers, splits)
- ❖ MD&A (cash flows, indebtedness, R&D expenditures, acquisitions etc.)
- ❖ Company's business environment, products and segmentation
- ❖ Directors and senior management, executives compensation, bonuses and ESOP
- ❖ Material agreements, related party transactions
- ❖ Taxation
- ❖ Financial statements and pro forma - IFSR

### ❖ Underwriting agreement / engagement letter

- ❖ Governed by UK law and regulates company's obligations towards underwriters, company's representations, and underwriter's 'green shoe' option, if any.
- ❖ Governs underwriters' fees and rights to handle company's future transactions (usually ROFR)

### ❖ Depositary agreement

- ❖ Governed by UK laws, and becomes applicable once GDRs are to be issued by a depositary to foreign investors

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## THE DUE DILIGENCE PROCESS

- ❖ Performed by underwriters' counsel who reviews information and consistently compares its findings with the offering circular.
- ❖ Request for information oftentimes includes company's corporate governance documents, share purchase and debt financing agreements, material agreements, information about employees and compensation schemes, litigation, environmental issues and more
- ❖ The DD is a crucial element in the registration process – minimizes potential liability of each participant involved in the offering (liability for material misstatements or omissions). Management and people involved must be fully candid with the underwriters and their counsel
- ❖ During the process, company's management produces large body of documents and devotes time explaining aspects of the business.
- ❖ The process is repetitive
- ❖ Best to designate one of company's executives as focal point for the due diligence matters
- ❖ The advisable way to produce documentation is via a 'data room'

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## POST OFFERING COMPLIANCE AND REPORTING

### ❖ If the company is not traded in Israel

- ❖ In the UK - A company must notify the Regulatory Information Services without delay of any major new developments which are not public knowledge, and which may or which are likely to have an effect on the price of the securities
- ❖ In Israel - Reports to the Israeli Registrar of Companies as a private company (section 365 of the CL) – appointment of directors, annual report, issuance of shares (stamp duty), etc.

### ❖ If the company is traded on TASE

- ❖ In the UK- the same
- ❖ In Israel - reporting requirements under Securities Law of 1968
- ❖ According to ISA officials, LSE will be qualified as a ‘permitted stock exchange’ for ‘dual listed’ companies – this would allow a company to select its preferable method of reporting and disclosure in Israel

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ADDITIONAL INFORMATION**

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