



## Amended Companies Regulations - Foreign-Traded Public Companies

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### Background

On June 2, 2014, the Israeli Justice Ministry published amendments (the “**Amendments**”) to the regulations (the “**Regulations**”) under the Israeli Companies Law, 1999 (the “**Companies Law**”) related to the notice for a general shareholder meeting and shareholders’ ability to exercise their rights in connection with any such meeting.

This Client Alert focuses on the impact of the Amendments upon the required disclosure and procedures related to general shareholder meetings of foreign traded Israeli public companies—both (a) foreign-only traded companies (*chevrot chul*) and (b) dual Israeli/foreign traded companies (*chevrot kfulot*) that do not report pursuant to the Israeli Securities Law regulations (Periodic and Immediate Reporting), 1970. For convenience, we refer to the foregoing categories of companies as “**foreign traded companies**” throughout the remainder of this Client Alert.

The effective date of the Amendments to the Regulations described in this Client Alert is generally **July 2, 2014**, except for certain guidelines that will come into effect upon the effective date of Amendment No. 53 to the Israeli Securities Law, 1968, which has not yet been set.

### Summary

The Amendments relate, among other matters, to:

- Disclosure of compensation of the five highest compensated officers, on an individual basis, in the notice of an annual general shareholder meeting;
- Setting a 90 day deadline for publication of notice of a general shareholder meeting with respect to a particular agenda item following approval by the board of directors of that item (to the extent that board approval is required prior to shareholder approval for that item);

- Setting a timeline under which a shareholder may exercise his right to request that a company add an item to the agenda for a general shareholder meeting; and
- Other matters that are not applicable to foreign traded companies (and are therefore not addressed in this Client Alert. For further information concerning those additional matters, please see our [client alert dated June 11, 2014](#) (in Hebrew).

#### **(i) Individual Officers' Compensation Disclosure:**

The Amendments require that the notice of an annual general shareholder meeting of a foreign traded company include the following information, either in the notice itself or in a public document that is appended to it:

- A full description, on an individual basis, of the terms of engagement and compensation, broken down into their various components, that was actually received by the five highest compensated "office holders" (as defined in the Companies Law)<sup>1</sup> for the year covered by the annual financial statements to be presented at the annual meeting (i.e., the financial year preceding the year during which the annual meeting is held).
- The foregoing breakdown of the terms of engagement and compensation shall be described in accordance with the manner they are recognized in the company's annual financial statements that are to be discussed at the annual meeting.
- The description shall present the various compensation components separately.

A company may instead refer to reports it provides according to the rules of the country or the stock exchange in which its shares are listed for trading, if they include such information in the required detail.

#### **(ii) Time Limit for Publication of Notice for Matter Subject to Shareholder Approval Following Board Approval**

To the extent that a foreign traded company will be seeking shareholder approval for an agenda item that requires board approval prior to the shareholder meeting, the company must publish notice and send the notice to shareholders with respect to that agenda item within 90 days (at most) following the board approval. To the extent that foreign law or securities exchange listing requirements impose a shorter deadline, those requirements apply instead.

#### **(iii) Shareholder Proposal for Shareholder Meeting Agenda**

##### *Statutory Background to Shareholder Request Right*

Under the Companies Law, resolutions may only be adopted at a general shareholder meeting with respect to matters that are described on the agenda. Section 66(b) of the Companies Law provides that one or more shareholders holding, in the aggregate, at least one percent (1%) of the voting power entitled to vote at the company's shareholder meetings, may request that an item be included in the agenda of a future shareholder meeting, if the subject matter is appropriate to be considered a shareholder meeting. The Justice Minister is authorized under that section of the Companies Law to issue guidelines related to the foregoing right, but had not done so until the adoption of the Amendments.

##### *Requirements Related to Request to Include Shareholder Proposal*

Under the Amendments, a shareholder who meets the conditions of Section 66(b) of the

Companies Law must submit his request to include an agenda item within seven days following the company's convening of the meeting if the request relates to any of the following matters:

- Appointment or removal of director(s);
- Approval of related party transaction(s);
- Approval of a merger;
- Appointment of an existing CEO as Chairman of the Board or an existing Chairman of the Board as CEO pursuant to Section 121(c) of the Companies Law; or
- Setting the company's compensation policy for office holders.

For all other matters, a shareholder has up to three days following the company's convening of the meeting to submit an agenda item request. To the extent that the requested agenda item consists of the appointment of director(s), the Amendments impose particular information and documentary requirements that must be included in the request.

#### *Updated Notice of Meeting That Includes Shareholder Proposal*

To the extent that the board of directors determines that the shareholder-proposed agenda item is appropriate for consideration by the shareholders, the company shall publish an updated notice of the shareholder meeting within seven days following the deadline for shareholders to submit their proposed agenda items. The publication of the updated notice of the shareholder meeting by the company would not impact the record date as to shareholders entitled to participate in the meeting.

#### *Optional Early Announcement of Meeting by the Company*

A company can opt to make an early announcement of a prospective shareholder meeting, which must be published at least 21 days prior to publication of the official notice of the meeting. Following such early announcement, shareholders are given a 14 day period in which to submit proposed agenda items. The company may indicate in the early announcement that it will not accept proposals received after that 14 day period. Upon the lapse of the pre-notice period, a company must publish notice of the subject shareholder meeting that includes whichever shareholder proposals were accepted by the company for inclusion in the meeting agenda.

#### **(iv) Updates to Text of Form of Shareholder Meeting Notice and Newspaper Publication**

Conforming changes have been made to the information required to be included in the notice of a shareholder meeting.

#### **(v) Additional Changes Effected by the Amendments to the Regulations**

##### *Electronic Voting Portal for TASE-Held Shares*

For dual Israeli (TASE)/foreign traded companies, whose shares are held (among other manners) via brokers admitted for trading on the TASE, the Amendments introduce the additional option (but not requirement) for underlying beneficial holders of the shares to vote electronically, via the internet. Such electronic voting will be enabled (and the related Amendments to the Regulations effective) beginning on the effective date of Amendment No. 53 to the Israeli Securities Law, 5729- 1968 ("**Amendment No. 53**"), which has not been determined as of yet. These provisions do not apply to foreign-only traded companies.

##### *Deadline for Submission of Shareholder Position Paper*

A shareholder will be entitled to submit a position paper conveying the shareholder's view on a particular agenda item up to 10 days prior to the relevant shareholder meeting, and the company will be required to publish it on MAGNA (the portal on which TASE listed companies file their reports in Israel) and send it to record shareholders within one business day after its receipt. The company can respond to the position paper until five days prior to the subject shareholder meeting. These changes to the rules concerning shareholder position papers will become effective upon the effectiveness of Amendment No. 53, which, as indicated above, has not yet been determined.\*

#### *Changes to Word Limit for Position Papers*

The previous aggregate limit of 1,500 words for describing agenda items in a proxy card or position paper has been canceled. However, the 500 word limit for describing a single agenda item remains in place under the Amendments.\*

*\*Note re: Applicability of Regulations re: Position Papers and Proxy Cards*-A foreign traded company is not subject to the requirement under the Israeli regulations to deliver proxy cards to shareholders whose address is outside of Israel if it delivers it to them in compliance with the rules of a foreign securities exchange on which its shares are traded.

#### **Implications of the Compensation Disclosure Amendment for U.S. Only Traded Companies and Dual Israeli/U.S. Traded Companies**

Until now, an Israeli company with shares that are listed on a U.S. stock exchange (for example, NASDAQ or the NYSE) or are traded in the over-the-counter market in the U.S. and that qualifies as a "foreign private issuer" under U.S. securities rules did not include annual disclosure of compensation of its senior executive officers on an individual basis, in reliance on the fact that such disclosure was not required under Israeli law. The required disclosure should now be reconsidered in light of the adoption of the Amendments to the Regulations. We therefore encourage you to consult with the Meitar attorney who handles your matters to discuss the specific disclosure requirement for your company.

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<sup>1</sup> The term "office holder" is defined under the Companies Law as a director, general manager (i.e., chief executive officer), chief business manager, deputy general manager, vice general manager, other manager directly subordinate to the general manager or any other person assuming the responsibilities of any of those positions, regardless of that person's title.

This memorandum is provided solely for informational and educational purposes and should not be construed as legal advice.

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