

## Israel

### **B/41: Formulating a Process and Mechanism for Evaluating National Security Aspects of Foreign Investments (2022)**

*Unofficial translation*

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We hereby resolve, further to Resolution No. 372/B of October 30, 2019, "Formulating a Process and Mechanism for Examining National Security Aspects of Foreign Investments" (hereinafter: Resolution No. 372/B); recognizing that the State of Israel has a developed market economy that is open to foreign investments and capital flow; understanding the importance of foreign investments to advancing Israel's economy and international cooperation and the role of foreign investments in realizing the economic potential of the Israeli market; and understanding the need to provide a response to national security aspects that could be relevant to these investments:

## Terms

"Foreign Entity" - An entity for which one of the following applies: 1. For an individual – A person who is not an Israeli citizen or resident; 2. For a body of persons – A body of persons where control is in the hands of someone who is not a citizen or resident of Israel; or if at least 20% of the means of control are in the hands of someone who is not a citizen or resident of Israel; and in unusual cases where the advisory committee believes that there is reason for concern that there could be considerable harm to interests related to national security aspects, someone who is not a citizen or resident of Israel who is a stakeholder in the body of persons.

"Means of control" and "control" – as defined in the Banking (Licensing) Law – 1981;

"Stakeholder" – as defined in the Companies Law – 1999.

"Regulator" - The parties authorized by law to approve foreign investments in the Bank of Israel, the Securities Authority, the Capital Market, Insurance and Saving Authority, the ministries of Finance, Transport and Road Safety, Communications and Energy, including the Water and Sewage Authority, the Electricity Authority and the Natural Gas Authority.

"Approval" - A permit for holding or ownership, concession, possession or licensing.

"Foreign Investment" - A transaction or activity by a foreign entity whose execution requires the approval of the regulators by law.

"Interests related to National Security Aspects" - The interests listed below: 1. Preventing the creation of significant leverage of a foreign entity over foreign investment in a way that could harm national security or foreign relations. When examining this issue, the scope and characteristics of the investments by a foreign entity in Israel can also be considered; 2. Preventing the exposure or disclosure of information to a foreign entity that could harm national security or foreign relations; As long as these relate to the State of Israel's national security.

"The Security, Foreign Relations and Cyber Authorities" - The Israeli Security Agency, Israeli Secret Intelligence Service, Ministry of Defense, Ministry of Foreign Affairs and the Israel National Cyber Directorate.

## Advisory Committee Headed by the Ministry of Finance

### Article 1

The Ministry of Finance will operate an advisory committee to examine the national security aspects of foreign investments (hereinafter: the advisory committee), headed by the chief economist in the Ministry

of Finance or a senior representative on their behalf. The committee's members will include senior representatives from the National Security Council (hereinafter: NSC), the Ministry of Foreign Affairs and the Ministry of Defense. The advisory committee's tasks are detailed in Articles 3-6 below.

## **Article 2**

The committee will convene at the request of any one of its members; the advisory committee's decisions will be unanimous.

## **Article 3**

Contacting the advisory committee regarding a foreign investment:

- a. Prior to approving a foreign investment, if the regulator is of the opinion that approval of a foreign investment could raise concerns regarding harming interests related to national security aspects, they may, at their discretion and in accordance with the authorities granted to them by law, submit a reasoned query to the advisory committee and ask for its opinion.
- b. If the advisory committee believes there may be grounds for concern regarding significant harm to interests related to national security aspects, it may contact the regulator asking them to submit a query to the committee asking for their opinion regarding an approval for a foreign investment. It is hereby clarified that such a request by the advisory committee does not obligate the regulator to consent to the request, and the matter remains under the regulator's discretion.
- c. In order to conduct the inquiry outlined in Article 3(a), the advisory committee may contact the regulator or any other lawful governmental body to request information they have, including information regarding the conditions of the investment and progress made in its approval process, which the advisory committee requires to complete its duties to formulate an opinion regarding national security aspects. The governmental bodies will provide the committee with the information it requested, according to the law. The manner of the query described in this sub-section will be anchored in the committee's work processes.
- d. The advisory committee may contact the regulator or relevant governmental body to request information regarding expected investments or characteristics of the sector that are relevant to a potential foreign investment, in order to examine concerns raised as aforementioned in Article 3(b).

## **Article 4**

The advisory committee's opinion regarding the query:

- a. The advisory committee may respond to the regulator who submitted the query with a reasoned opinion regarding the interests related to national security aspects that pertain to the approval of the foreign investment. The formulation of the opinion will be in accordance with the State of Israel's international obligations, and will take into consideration relevant economic aspects.
- b. If the members of the advisory committee do not reach a unanimous agreement, no opinion will be sent to the regulator.
- c. The advisory committee will invite the regulator who submitted the query to present their opinion. The committee will also invite representatives of the National Economic Council, the Ministry of Economy and Industry and the Ministry of Finance to serve as observers in the committee's discussions. In addition, the advisory committee may invite to its discussions the director general of the relevant ministry, representatives of the security, foreign affairs and cyber authorities and representatives of other relevant ministries and the Government Companies Authority. The advisory committee is also authorized to invite representatives of the relevant government companies, with their agreement.
- d. The advisory committee will provide a reasoned opinion to the regulator who submitted the query within 45 days of receiving the query. The advisory committee may extend the timeframe for submitting the opinion by an additional 15 days. If it does so, it must inform the regulator of this in advance. The advisory committee may inform the regulator within 14 days of receiving the query that it will not provide an opinion on the matter. To avoid any doubt, it is hereby clarified that the submission of a query by the regulator or by the committee in accordance with sub-sections 3(b) and 3(c), will not be cause for delaying the approval of the foreign investment by the regulator.
- e. If the advisory committee does not provide its opinion in the timeframe detailed in sub-section 3(d) above, or if it informs the regulator that it will not provide an opinion as described in sub-section 3(d) above, it is to be understood that the committee is of the opinion that there are no grounds for preventing the regulator who submitted the query from going ahead with the approval process for the foreign investment.
- f. In accordance with the law, the members of the advisory committee and anyone privy to the information received by the regulator for, or as a result of, the committee's work will keep all information confidential and will not make any use of said information outside of the work of the committee, including formulating its response to the regulator who submitted the query.

## **Article 5**

Any regulator will submit a query to the committee within 60 days of passing this resolution, to consult with the committee regarding the areas and matters they will refer to the committee, while also taking into consideration other existing mechanisms related to foreign investments, subject to their legal

authority. It is hereby clarified that, at any time, the regulator, in consultation with the advisory committee, may make changes to the defined areas and matters. The committee will provide a list of these areas and matters to the Cabinet for their attention within 180 days of passing this resolution, and then annually. In any event, the regulator's query to the advisory committee, including in the aforementioned areas and matters, will be at the regulator's discretion. It is hereby clarified that even if a list as described above is not compiled, this will not prevent the regulator or the tenders committee from submitting a query to the advisory committee.

#### **Article 6**

Despite the aforementioned in Article 3, with regard to the approval given by the tenders committee after a competitive procedure these instructions will be applied exclusively, subject to the conditions outlined in sub-sections (f) and (g) below:

- a. For tenders in fields and matters defined by the regulator in accordance with Article 5, the tenders committee will include in the tender documents instructions concerning the regulator's approval of the candidates regarding national security aspects during the early sorting stage or during the stage outlined in sub-section 6(c)(ii).
  - b. The tenders committee will submit a query to the advisory committee regarding areas and matters defined in accordance with Article 5, during the early sorting stage or, if an approval is required, before approving a significant change in the holdings of the means of control of the foreign entity that is submitting a bid for the tender. This query is in order to get the committee's opinion regarding any concern related to interests pertaining to national security aspects that may arise from approving the foreign investment. The tenders committee's query will be sent to the relevant regulator for their attention at the same time.
  - c. Despite the aforementioned in sub-section 6(b), if the regulator requires it, the tenders committee will query the advisory committee in the following cases as well:
    1. If the regulator finds, in accordance with the message they sent to the tenders committee, that there has been a significant change in circumstances that leads to a reasonable concern that it could lead to harming interests related to national security aspects, the regulator may submit a query to the tenders committee along with their opinion, requesting that the tenders committee submit a query to the advisory committee even after the early sorting stage;
    2. If the tender does not include the early sorting process, or if a referral is required in order to examine an approval in addition to the approval for which the early sorting process was conducted, the query will be conducted as soon as possible during the competitive procedure.
  - d. If the advisory committee believes that the conditions outlined in Article 6(c)(i) are met, it may approach the regulator with a request that they submit a query to the tenders committee in accordance with the aforementioned article. It is hereby clarified that the advisory committee's request does not obligate the regulator to consent to the request, and the matter remains under their discretion.
  - e. The instructions in Article 4 will apply with the following changes:
    1. The phrase "the regulator who submitted the query" will be changed to "the relevant regulator";
    2. Sub-section 4(d) will be replaced by: "The advisory committee will provide a reasoned opinion to the relevant regulator within 30 days of receiving the query. The advisory committee may extend the timeframe for submitting the opinion by no more than 15 days. If it does so, it must inform the regulator and the tenders committee of this in advance. As long as the state committed, before the date of this resolution, to responding to the request to approve a change in holdings within a certain timeframe, it will reply in accordance with the timeframes outlined in this section or within no longer than 14 days before the aforementioned date, whichever is earliest. The advisory committee may inform the relevant regulator and the tenders committee, within 14 days of receiving the query, that it will not provide an opinion on the matter. To avoid any doubt, it is hereby clarified that the submission of a query by the tenders committee will not be cause for delay the tenders process."
    3. After sub-section 4(f), the following will be added: "(g) The advisory committee will provide its opinion to the regulator authorized to approve the foreign investment. The relevant regulator will, within 10 days of being provided the aforementioned opinion, inform the tenders committee of their decision regarding the impact of considerations related to interests pertaining to national security aspects on granting the license; and in cases when it has committed to replying to the request for approving a change to the holdings within a certain timeframe, the committee will inform the tenders committee of their decision within 10 days or up to one week at the latest before the aforementioned deadline, whichever is earliest. If the regulator does not submit their decision in this timeframe, it will be considered as if they determined that providing the license will not raise difficulties from the national security standpoint."
- In this article - "The tenders committee" – A governmental body's tenders committee or any other governmental body that administers a competitive procedure that results in an approval being given by a regulator, whether or not the committee operates by force of the Mandatory Tenders Law – 1992; "Competitive procedure" – including any procedure that is exempt from tender.

#### **Article 7**

The advisory committee will regularly examine all aspects of how this resolution is being implemented and will provide to the Cabinet, every year, and at any other time it is requested to do so by the Cabinet, a written report regarding the outcomes of its examinations, including recommendations, if needed, to amend the resolution, and regarding the work of the committee.

#### **Article 8**

The Chief Economist's Department will consolidate, as much as possible, all information regarding investments by foreign entities in the State of Israel, and, every year, will provide the advisory committee, in accordance with the law, an overview of the foreign investments made in the State of Israel in the preceding year. To this end, the department may submit queries to governmental bodies to obtain any information they might have, including information regarding the approval of the foreign investment. The information will be provided to the Chief Economist's Department in accordance with the law.

#### **Article 9**

To avoid any doubt, it is hereby clarified that this resolution does not authorize a regulator or any other party acting on their behalf to take national security considerations into account when they have not been granted such authorities by law. In addition, this resolution does not detract from the authorities granted by law to any regulator who submits a query to the advisory committee, including their authority to make the final decision regarding the approval of the foreign investment, even when that decision contradicts the opinion of the committee.

#### **Article 10**

The NSC, and the security, foreign affairs and cyber authorities will provide their opinion to the regulators regarding interests related to national security aspects that pertain to the approval of the foreign investment through the advisory committee only, as outlined in this resolution, including with regard to the timeframes determined, unless the prime minister determines otherwise on a specific matter. Further to the opinion of the advisory committee, and in accordance with the law, the security, foreign affairs and cyber authorities may contact the regulator regarding implementing the opinion.

#### **Article 11**

This resolution does not detract from the responsibilities granted by law to the Ministry of Finance regarding foreign investments in the State of Israel; from the authorities granted by law to the security, foreign affairs and cyber authorities and the NSC; from the authorities granted by law to the regulators; or from the provisions of Resolution 48/6 (מנ/6) of the Ministerial Committee for Privatization Affairs from June 1, 2014—"Procedure for Cooperation between the Security Authorities and the Government Companies Authority in the Process of Privatizing a Government Company."

## **Regulating a Procedure for NSC Consultations with the Security, Foreign Affairs and Cyber Authorities**

#### **Article 12**

The NSC will consult the security, foreign affairs and cyber authorities in order to formulate its opinion in response to a query submitted to the advisory committee in accordance with Article 2 above. The procedure for this consultation will be as follows:

- a. The NSC will forward to the security, foreign affairs and cyber authorities, in accordance with the law, the query received by the advisory committee from the regulator.
- b. The security, foreign affairs and cyber authorities will provide the NSC a written response regarding the national security aspects of the subject of the query within the timeframe determined by the NSC when it forwards the query.
- c. If required, the NSC will hold discussions with the security, foreign affairs and cyber authorities before sending its opinion to the advisory committee.
- d. The NSC will forward to the advisory committee its reasoned opinion in writing and, at the request of any of the members of the committee, the opinions of the Israeli Security Agency, Mossad, the Ministry of Defense, the Ministry of Foreign Affairs and the Israel National Cyber Directorate as well, in accordance with the rules for information security and classification.
- e. A copy of the NSC's response to the advisory committee will be forwarded to the security, foreign affairs and cyber authorities.
- f. Each security, foreign affairs and cyber authority will appoint a permanent contact person who will be responsible for the consultation procedure with the NSC, and will determine compartmentalization procedures regarding this procedure.
- g. It is hereby clarified that the timeframe for the consultation detailed in this Article 10 will not prolong the timeframes determined in Article 3 above for the advisory committee to provide its opinion to the regulator who submitted the query to the committee.

## **Continuing to Lay the Groundwork**

#### **Article 13**

Further to the recommendations of the report submitted to the Cabinet by the advisory committee on June 2, 2020, regarding regulators' authority to take national security considerations under advisement when approving foreign investments, to instruct the minister of finance, together with the Ministries of Justice, Economy and Industry, Foreign Affairs, and Energy, and other government ministries and relevant regulatory bodies, to advance amended legislation in order to regularize the authority of regulators to take national security considerations under advisement when deciding whether to approve a foreign investment, subject to the State of Israel's international obligations. The minister of finance will act to publish the aforementioned memorandum within 180 days of the passing of this resolution.

**Article 14**

To instruct the Ministry of Finance, in coordination with the Government Companies Authority, to examine with the relevant bodies, including government companies, regulators and government ministers, the possibilities for regularizing the implementation of this resolution with regard to government companies, in accordance with the law. To instruct the Ministry of Finance, the regulators and other relevant bodies to act to implement this resolution with regard to government companies, according to the outcomes of the aforementioned examination, in accordance with the law.

**Article 15**

To instruct the director of the Government Companies Authority to inform government companies of the instructions in this resolution.

**Article 16**

The government presents to the regulators its policy whereby interests related to national security aspects in fields under their regulatory authority are important and essential public interests that must be protected, and accordingly it believes that the regulators should weigh these interests, in accordance with and subject to their lawful authority, as part of the examination to approve foreign investments, whether or not the regulator submitted a query to the advisory committee as per this resolution.

**Article 17**

This resolution replaces Resolution No. 372/B.