BANKING REGULATION

Israel

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Banking Regulation

Consulting editors

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Debevoise & Plimpton LLP

Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; supervision and enforcement; resolution; capital requirements; ownership restrictions and implications; changes in control; and recent trends.

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REGULATORY FRAMEWORK

Key policies

What are the principal governmental and regulatory policies that govern the banking sector?

Banking legislation in Israel spans over the course of various decades, starting from the Banking Ordinance (1941) from the period of the British Mandate, which authorised the governor of the Bank of Israel to appoint a Supervisor of Banks (this ordinance was almost entirely replaced by the Banking (Licensing) Law of 1981) and through the Bank of Israel Law of 1954 (which was completely replaced by the Bank of Israel Law from 2010), by virtue of which a central bank was established.

Any banking corporation (bank, foreign bank, mortgage bank, investment finance bank, and so on) interested in operating in Israel requires a licence from the governor of the Bank of Israel. The examination of whether to grant a licence under the Banking (Licensing) Law – conducted by the Licensing Committee (composed of five members of the Advisory Committee of the Bank of Israel) – takes into account, inter alia, the following considerations:

- the plan of action of the applicant and the chances of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their position;
- the contribution of granting the licence to competition in the capital market and, in particular, to competition in the banking system and the levels of service therein;
- the economic policy of the government; and
- public policy.

These considerations accrue to other threshold requirements listed in the Banking (Licensing) Law, including the obligation to hold minimum equity as detailed in the First Addition to the Banking (Licensing) Law.

The most basic and fundamental principle in the activity of the Bank of Israel (and the Banking Supervision Department) is the stability value of a banking corporation. This fact finds support in the reality that the Israeli banking system is highly centralised and consists of a single number of players. Furthermore, only recently has a new digital bank been granted approval to begin its operations. Likewise, it is only recently that a merger between Bank Mizrahi and the Union Bank was approved (generally speaking, as the Bank of Israel prioritises stability over competition or multiplicity of players in the market).

The Banking (Licensing) Law fixes the areas of activity in which a bank is permitted to engage. Additionally, the Banking (Licensing) Law, inter alia, imposes restrictions on the holding of a means of control by a banking corporation or its controlling shareholder, pursuant to various reforms that were required to increase competition in the banking and financial systems in Israel.

In addition, the Banking (Customer Service) Law focuses on aspects of bank–customer relations.

Among other things, this law imposes obligations to provide certain services, such as receiving deposits, opening and managing a checking account, selling bank checks, and so on. Notwithstanding the aforesaid, a banking corporation is not obligated to provide a service that extends credit to the customer. This law also establishes:

- prohibitions on deception by act or omission, in writing or orally;
- general obligations of proper disclosure and publication of information (for example, on fees);
- a prohibition on conditioning services; and
- general provisions regarding the supervision of fees that a bank may charge its customers (including the governor's authority to monitor fee amounts or their rates).

The Supervisor of Banks has general supervision and audit powers over every banking corporation. By virtue of this, the Supervisor of Banks has the authority to require banking corporations – as well as directors, employees or accountants of banking corporations – to provide information and documents in their possession that relate to the transactions of the banking corporation and to any corporation under its control. Furthermore, the Supervisor of Banks is entitled to give instructions that relate to the methods of operation and administration of the banking corporation, of an officer in it and of anyone employed by it to ensure its proper management and to protect the interests of its customers (Proper Banking Management Directives).

In recent decades, the Supervisors of Banks have published many assorted Proper Banking Management Directives that deal with various areas under their trust supervision, inter alia:

- directives concerning capital measurement and adequacy (for example, requirements concerning supervisory capital; and the methods for calculating credit risks, operational risks, market risks and leverage ratio or liquidity coverage ratios);
- directives concerning management and control (for example, directives relating to the board of directors of a banking corporation and its methods of operation; directives concerning the remuneration policy, the auditor and chief accountant; and provisions relating to the internal audit function, the compliance function, the handling of public complaints and risk management);
- directives that relate to credit and investments (for example, provisions concerning the management of credit risk; the banking corporation's transactions with related persons; limitations on the liability of a borrower and a group of borrowers; proper assessment of credit risks and proper measurement of debt; capital market activity; financing the acquisition of means of control in corporations; financial support; restrictions on granting housing loans; and so on);
- directives that relate to financial risk (for example, directives concerning dividend distribution and self-acquisition; interest rate risk management; activity in the futures market; and market risk management and liquidity);
- directives concerning management risks (for example, provisions that relate to banking insurance; business continuity management; information technology management; cybersecurity; cloud computing; and communications banking);
- directives that relate to the relationship between the bank and the customer (for example, directives on the provision of benefits to customers; the management of anti-money laundering risks and terrorist financing; fees, reduction or increase in interest rates; and so on); and
- specific directives that relate to customer accounts, loans, securities and debit cards.

In addition to the collection of Proper Banking Management Directives that apply to various aspects of the day-to-day operations of banking corporations (only some of which have been listed above), there is a profusion of directives published by the Supervisor of Banks that deal with reporting obligations to the public and reporting obligations to the Supervisor of Banks. By virtue of these directives, a banking corporation is required to present an annual financial report and publish it. Specific instructions have been determined for the structure of the various reports, their appendices, the annotations required to appear in them, and so on. In addition, the Supervisor of Banks has determined a variety of directives concerning the reporting a banking corporation is required to submit to the Supervisor of Banks, including, inter alia:

- libra and off-balance sheet data;
- profit and loss and business results;
- reports concerning credit cards and risk management;

- costs and interest rates;
- borrowers and related persons;
- means of control and investee companies; and
- administrative and operational data.

Law stated - 11 March 2022

Regulated institutions

What are the defining characteristics of a bank to be caught by the banking laws and regulations? Is non-bank fintech regulated differently?

Any banking corporation (bank, foreign bank, mortgage bank or investment finance bank) interested in operating in Israel requires a licence from the governor of the Bank of Israel. The examination of whether to grant a licence under the Banking (Licensing) Law is carried out by the Licensing Committee.

The Banking (Licensing) Law fixes the areas of activity the bank is permitted to engage in, including:

- receiving cash deposits in checking accounts for use as payment towards cheques on demand;
- issuance of securities;
- managing a payment system, including the collection of funds, their transfer and conversion;
- providing credit;
- rental of safes;
- financial and economic advice in the field of the bank's field of business and other various areas (such as pension advice, investment consulting and marketing); and
- transactions that are expressly permitted to the bank by the Banking (Licensing) Law and other activities that accompany the transactions detailed in the Banking (Licensing) Law.

Additionally, the Banking (Licensing) Law establishes 'uniqueness of occupation' – namely, activities that only a banking corporation holding a licence from the governor is permitted to perform, such as receiving deposits (from 30 persons or more at one time) and providing credit at the same time as well as the issuance of securities that require a prospectus under the Securities Law and providing credit at the same time. It follows that while banking legislation, of course, does not prohibit competition in the extension of credit, only a bank or other banking corporation is entitled to provide credit against receiving deposits from the public.

The Financial Services Supervision (Regulated Financial Services) Law 2016 effected a revolution, inter alia, as it is the first law to regulate the activities of non-bank lenders, which until that point were only subject to sporadic legislation (such as the Non-Banks Loans Regulation Law 1993). However, they were not, until its enactment, subject to a designated regulator. By virtue of this law, a new regulator was established – the Supervisor of Financial Services – under the Capital Market, Insurance and Savings Authority, which has since become an independent authority (up to November 2016, it was subject to the Finance Ministry). This law establishes directives that are similar to the banking legislation described earlier and authorises the new regulator to issue directives regarding the proper management of the entities under its supervision, similar to the Proper Banking Management Directives of the Supervisor of Banks.

Various amendments have been made since the enactment of the Financial Services Supervision (Regulated Financial Services) Law that have introduced additional financial entities into the scope of its application, which are already competing in the banking system today (and are expected to compete more vigorously in the future), such as:

- peer-to-peer lending platforms;
- credit card issuers, which are not exempt from the application of the law, as credit card companies are; and
- credit unions, whose activities resemble the activities of small banks.

On 10 January 2022, a memorandum was published for the Law Regulating the Occupation of Payment Services, 5722-2022, which seeks to subject entities that provide 'payment services' to a different authority (such entities are defined in the memorandum as those engaged in, among other things, payment account management, issuance of payment means, acquiring of payment operations and initiating payment instructions). In accordance with the current wording of the memorandum, certain financial asset service providers currently supervised under the Capital Market, Insurance and Savings Authority (as well as small acquirers that are currently supervised by the Supervisor of Banks at the Bank of Israel) will be transferred to the supervision of the Securities Authority.

Law stated - 11 March 2022

Do the rules vary depending on the size or complexity of the banking institution?

The provisions of the law (including the provisions of the Banking (Licensing) Law; the Banking (Customer Service) Law and the rules issued pursuant to it; and the Proper Banking Management Directives published periodically by the Supervisor of Banks) apply in a similar way to all banking corporations. At the same time, certain banking corporations (for example, credit card companies or credit card acquiring service providers) are exempt from some of the Proper Banking Management Directives; for example, an acquirer whose scope of activity is relatively low is only subject to part of the Proper Banking Management Directives.

The same is true for entities supervised by the Capital Market, Insurance and Savings Authority by virtue of the Financial Services Supervision (Regulated Financial Services) Law. The difference between the various entities lies in the type of licence required (a ‘regular’ licence or an ‘extended’ licence), which impacts the scope of information that must be provided to the regulator in the framework of applying for a licence as well as the amount of equity that entity must hold.

In addition, a licensing obligation can be noted that applies to an entity engaged in providing deposit and credit services. This is an activity similar to bank activity, however, which is limited to providing services only to members of an association that provide these services. At the same time, to the extent that such entity exceeds a scope of activity of 1 billion shekels, supervision of that entity is transferred to the Supervisor of Banks of the Bank of Israel.

Law stated - 11 March 2022

Primary and secondary legislation

Summarise the primary statutes and regulations that govern the banking industry.

Banking legislation in Israel spans over the course of various decades, starting from the Banking Ordinance (1941) from the period of the British Mandate, which authorised the governor of the Bank of Israel to appoint a Supervisor of Banks (this ordinance was almost entirely replaced by the Banking (Licensing) Law) and through the Bank of Israel Law of 1954 (which was completely replaced by the Bank of Israel Law from 2010), by virtue of which a central bank was established.

Any banking corporation (bank, foreign bank, mortgage bank, investment finance bank and so on) interested in operating in Israel requires a licence from the governor of the Bank of Israel.

The Banking (Licensing) Law determines the areas of activity that the bank is permitted to engage in and includes:

- receiving cash deposits in checking accounts for use as payment towards check on demand;
- issuance of securities;
- managing a payment system including the collection of funds, their transfer and conversion;
- providing credit;
- rental of safes;
- financial and economic advice in the field of the bank's field of business and various areas (such as pension advice, investment consulting and marketing); and
- transactions expressly permitted to the bank by the Banking (Licensing) Law and other activities that accompany the transactions detailed in the Banking (Licensing) Law.

Additionally, the Banking (Licensing) Law establishes 'uniqueness of occupation' – namely, activities that only a banking corporation holding a licence from the governor is permitted to perform, such as receiving deposits (from 30 persons or more at one time) and providing credit at the same time as well as the issuance of securities that require a prospectus under the Securities Law and providing credit at the same time. It follows that while banking legislation, of course, does not prohibit competition in the extension of credit, only a bank or other banking corporation is entitled to provide credit against receiving deposits from the public.

Contemporaneous with the enactment of the Banking (Licensing) Law, the Banking (Customer Service) Law was also enacted. While the Banking (Licensing) Law naturally deals with aspects of licensing, permitted activities and control, the Banking (Customer Service) Law focuses on aspects of bank–customer relations. Inter alia, this law imposes obligations to provide certain services, such as receiving deposits; opening and managing a checking account; selling bank checks; and so on. Notwithstanding the aforesaid, a banking corporation is not obligated to provide a service that extends credit to the customer. Additionally, this law establishes:

- prohibitions on deception by act or omission, in writing or orally;
- general obligations of proper disclosure and transferring information (for example, on fees);
- a prohibition on conditioning services; and
- general provisions regarding the supervision of fees that a bank may charge its customers (including the governor's authority to monitor fee amounts or their rates).

By virtue of the Banking (Customer Service) Law, two main regulations have been enacted as at April 2021:

- the Rules of Banking (Customer Service) (Proper Disclosure and Delivery of Documents) from 1992, which expand on the general obligations stipulated in the Banking (Customer Service) Law and set forth obligations such as, inter alia:
  - the obligation to make written agreements (a provision later moderated in a circular from the Supervisor of Banks that fixes several types of agreements that do not require customer signature);
  - the obligation to provide customers with copies of agreements and to notify customers about various changes in their account management terms; and
  - specific provisions concerning the proper disclosure required in credit and financial leasing (for example, the details that are required to appear in the credit agreement and the obligation to provide the customer with a payment schedule); and
- the Rules of Banking (Customer Services) (Fees) from 2008, which detail the general obligations listed in the Banking (Customer Service) Law concerning fees, fixes fee rates and enumerates the types of fees that a banking corporation may charge its customers, along with the conditions for collecting them.

The Supervisor of Banks has general supervision and audit powers over every banking corporation. By virtue of this, the Supervisor of Banks has the authority to require banking corporations – as well as directors, employees or accountants of banking corporations – to provide information and documents in their possession that relate to the transactions of the banking corporation and to any corporation under its control. Furthermore, the Supervisor of Banks is entitled to give instructions that relate to the methods of operation and administration of the banking corporation, of an officer in it and of anyone employed by it to ensure its proper management and to protect the interests of its customers (Proper Banking Management Directives).

In addition to the collection of Proper Banking Management Directives that apply to various aspects of the day-to-day operations of banking corporations, there is a profusion of directives published by the Supervisor of Banks that deal with reporting obligations to the public and reporting obligations to the Supervisor of Banks. By virtue of these directives, a banking corporation is required to present an annual financial report and publish it. Specific instructions have been determined for the structure of the various reports, their appendices, the annotations required to appear in them, and so on. In addition, the Supervisor of Banks has determined a variety of directives concerning the reporting a banking corporation is required to submit to the Supervisor of Banks, including, inter alia:

- libra and off-balance sheet data;
- profit and loss and business results;
- reports concerning credit cards and risk management;
- costs and interest rates;
- borrowers and related persons;
- means of control and investee companies; and
- administrative and operational data.

A major piece of legislation that applies to the activities of banking corporations in Israel is, of course, the Anti-Money Laundering Law of 2000, as well as the Prohibition of Terrorist Financing Law of 2005. The general provisions determined by these laws are:

- the general offence of taking action on property (derived from an offence, used to commit an offence, that enabled the execution of an offence or on which an offence was executed) for the purpose of concealing or disguising its origin, the identity of its right holders, its location, its movements or action taken on it; and
- the offence of taking action on prohibited property or property serving terrorist purposes and an act on terrorist property.

Including the Anti-Money Laundering Order Obligations to Identify Reporting and Manage Listings, banking corporations are subject to specific provisions of the Anti-Money Laundering Order, enacted by virtue of the Anti-Money Laundering Law, and which determine the anti-money laundering regime that applies to banking corporations in its activities.

Similar to other provisions around the world in the area of anti-money laundering, the Anti-Money Laundering Order that applies to banking corporations generally determines obligations on the following levels:

- identification obligations of anyone wishing to open an account in a banking corporation (its owner, authorised signers and the applicant);
- performing know-your-customer obligations (inter alia, clarifying the source of the funds; the occupation of the applicant interested in opening an account; the purpose for opening the account or performing the action; the planned activity for the account; and so on);
- verification of details and documentation requirements;

- obtaining a statement on the beneficiary and controlling shareholder of the account;
- performing face-to-face identification according to the identification document of the account holder and the authorised signers;
- ongoing reporting obligations and reporting obligations concerning 'extraordinary' actions;
- the obligation to check the identification details provided to the banking corporation against 'the List' (a centralised list of declared terrorist organisations and of persons who have been declared terrorist operatives by the Anti-Money Laundering Authority);
- in addition to the provisions in legislation and the Anti-Money Laundering Order is Proper Banking Management Directive No. 411 on the issue of preventing money laundering and terrorist financing, published by the Supervisor of Banks, which adds to the obligations determined therein (for example, concerning the obligation to formulate a policy on know-your-customer; the connection required with internal auditing; instructions concerning risk management; customer identification; conducting ongoing monitoring; directives concerning accounts of high-risk customers; reporting obligations to the Supervisor of Banks; and so on) and
- a question and answer file that is updated periodically by the Supervisor of Banks and includes additional clarifications to what is stated in the directive.

Law stated - 11 March 2022

Regulatory authorities

Which regulatory authorities are primarily responsible for overseeing banks?

Any banking corporation (bank, foreign bank, mortgage bank, investment finance bank and so on) interested in operating in Israel requires a licence from the governor of the Bank of Israel.

The regulator appointed over these entities (including credit card companies and entities engaged in clearing debit card transactions) is the Supervisor of Banks of the Bank of Israel.

In addition, the Bank of Israel's Payment and Clearing Systems Department oversees the payment and clearing systems in Israel.

Non-bank financial entities (such as non-bank credit providers, financial asset service providers and so on) require a licence from the Capital Market, Insurance and Savings Authority. The regulator appointed over these entities is the Supervisor of Financial Services of the Capital Market, Insurance and Savings Authority.

On 10 January 2022, a memorandum was published for the Law Regulating the Occupation of Payment Services, 5722-2022, which seeks to subject entities that provide 'payment services' to a different authority (such entities are defined in the memorandum as those engaged in, among other things, payment account management, issuance of payment means, acquiring of payment operations and initiating payment instructions). In accordance with the current wording of the memorandum, certain financial asset service providers currently supervised under the Capital Market, Insurance and Savings Authority (as well as small acquirers that are currently supervised by the Supervisor of Banks at the Bank of Israel) will be transferred to the supervision of the Securities Authority. In addition to the aforementioned regulators, certain aspects of the activities of banks and non-bank entities are supervised by additional regulators (every regulator in the field under its trust) such as the Anti-Money Laundering and Terrorism Financing Authority, the Privacy Protection Authority and the Competition Authority.

Law stated - 11 March 2022

Government deposit insurance

Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

From 2004 to 2007, a comprehensive reform of the payment and clearing systems was conducted that included the Stock Exchange Clearing House, the Check Clearing House and the Bank Clearing House. In July 2007, a new payment system was implemented. The Zahav system (real-time credits and transfers) meets international standards and has brought the Israeli financial infrastructure to an advanced international level.

Israel's financial infrastructure includes interbank payment and clearing systems used to transfer and clear payments, communication systems and means of making payments. The participants in the various payment systems are primarily commercial banks and large institutional entities. The general public makes direct use of the various means of payment and requires the interbank payment systems to transfer funds from bank to bank. Transfer of funds from one account to another account within the same bank does not require the use of an interbank payment system.

The Zahav system significantly contributes to reducing the level of risks inherent in payment systems. The system effectively eliminates credit and liquidity risks (credit risk: that one of the parties to the transaction will not meet its full obligations at the time of the transaction or afterwards; liquidity risk: that one of the parties to the transaction will not meet its full obligations on the set date) as, immediately upon the completion of the transaction, the payment becomes final and the receiving bank can credit its customer without concern for cancellation of the payment. The Zahav system also reduces each participant's dependence on the other participants in clearing, a fact that greatly reduces the systemic risk of participating banks.

The construction of backup systems for various components of the Zahav system and the construction of a comprehensive backup site for the Zahav system reduce the operational risk (operational risk: that may result in unexpected loss due to deficiencies in systems or their environments, such as human error, technical failure in hardware or software and communication failures). The existence of the Payment Systems Law reduces the legal risk (legal risk: that one of the parties to the transaction will incur losses because the payment and clearing systems are not supported by clear laws and regulations) inherent in activity in the payment and clearing arrangement in Israel.

In addition to the reliability, security and efficiency involved in the clearing method, the Zahav system provides banks with an additional advantage. The immediacy and finality of the payment instructions allow banks to know at any given moment exactly how much money passes through their accounts and each bank can decide on immediate steps to improve its liquidity status in shekels. At the same time, the aforementioned clearing method requires banks to disclose greater responsibility for managing liquidity in their accounts. The bank's liquidity should be sufficient to perform any processing that reaches the system throughout the daily hours of operation. Temporary liquidity shortages may impair clearing work, starting with delays in processing individual payments and ending in blocking a set of payment instructions. To minimise these situations and allow the Zahav system to operate smoothly, the Bank of Israel provides banks participating in credit clearing with Intraday Credit, which can be used by the bank according to its needs throughout the operating hours of the system. Credit is provided to banks without interest, against full collateral for the day of activity only and must be repaid by the closing time of the Zahav system. The collateral required against intraday credit is comprised of government bonds and bank deposits in the Bank of Israel. The debentures used as collateral for credit must be deposited by banks in a special account at the Stock Exchange Clearing House, where a sub-account is allocated for the collateral of each participant. The TASE Clearing House has developed a unique system for the Bank of Israel, for managing collateral taken against intraday credit – ICS Intraday Credit System – so that system participants can dynamically change the amount of intraday credit that flows into their accounts over the course of the day. The system performs an automatic calculation of the amount of intraday credit based on the amount

and type of collateral the participant deposits.

While not etched in stone, past experience in the Israeli capital market (whether during the banking crisis in the 1980s or during the embezzlement episode in the Bank of Commerce) has proven that the Israeli government and the Bank of Israel do not hesitate to intervene and mobilise to ensure that no bank operating in Israel collapses, whether through nationalisation (in the 1980s) or by injecting funds to ensure that the interest of the depositors is not harmed.

Law stated - 11 March 2022

Transactions between affiliates

Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

The Supervisor of Banks published a Proper Banking Management Directive concerning the transactions of banking corporations with related persons. The aim of the directive is to minimise risks that derive from transactions a corporation makes with related persons by limiting the scope of liability of the related person to prompt the parties to conduct such transactions under strict corporate governance rules, in accordance with business considerations and under terms that do not deviate from the accepted terms of similar transactions with non-related persons. These directives enhance and do not detract from the provisions of general law (the Companies Law of 1999).

A 'related party' is defined most broadly by the directive, as follows:

- anyone who has a controlling interest in the banking corporation, a candidate and a relative of either of these;
- a corporation in which those listed in paragraph (a) control or hold more than 10 per cent of any means of control and a corporation in which the foregoing corporation holds more than 50 per cent of any means of control;
- the holder of more than 5 per cent of any means of control in the banking corporation or in a banking corporation that controls said banking corporation, and his or her relative;
- an officer of the banking corporation or of one of the following:
  - a corporation that holds the means of control of the banking corporation's controlling group, as defined in section 5; or
  - a corporation that holds the means of control of a corporation as set forth in subsection (c), and his or her relative;
- a corporation controlled by those listed in paragraphs (c)–(d);
- a corporation that the banking corporation controls or in which it holds more than 10 per cent of any means of control and a corporation controlled by a corporation noted in the beginning section;
- a party that holds 10 per cent or more of any type of means of control in a corporation controlled by the banking corporation and his or her relative; and
- any party whom the Supervisor of Banks defines as a related party, generally or in a specific case.

The directive sets forth various restrictions on transactions with related persons and on the liability of related persons, including:

- a prohibition for a banking corporation to make a transaction with a related person on more favourable terms than are accepted for its similar transactions with others;
- a prohibition for a banking corporation to accept as collateral for the liability of a related person's securities issued by the banking corporation; and

- a limitation of the total liabilities of all related persons to the banking corporation to the rate of 10 per cent of the banking corporation's capital, at any moment.

In addition, the directive establishes:

- mechanisms for approving transactions with related persons that are incumbent on the board of directors;
- provisions regarding an officer's personal conflict of interests;
- instructions regarding a related person who is an employee; and
- reporting obligations to the Supervisor of Banks, which include an obligation to submit a list of all related persons, and designate the liability of each related person and an obligation to immediately report any deviation that occurs therein.

This directive, like any other Proper Banking Management Directive, is updated periodically by the Supervisor of Banks.

Law stated - 11 March 2022

Regulatory challenges

What are the principal regulatory challenges facing the banking industry?

The banking system is subject to a broad and comprehensive set of legal and regulatory provisions that regulate broad aspects of its activities. Naturally, this regulatory system does not change frequently, and the regulator at times has difficulties making the necessary adjustments to create an empowering regulatory system that helps supervised entities to offer advanced services in the developing world, including the provision of remote banking services (e-banking), shortening the recruitment process (onboarding) and providing facilitations on identification and verification obligations, know-your-customer provisions, etc, when providing payment services (such as offering payment apps) and so on.

Several regulatory developments in recent years have impacted the activity of the banking system and have posed (or will pose) challenges, including the following.

- The publication of Amendment No. 5 to the Non-Bank Loans Regulation Law (enacted in 1992). While formally an amendment to an existing law, it is such a significant amendment that it even changes the name of the existing law to the Fair Credit Law. In the framework of the amendment, the interest ceiling mechanism was updated (which, prior to the amendment, applied exclusively to non-bank entities) and the application of the law was extended to banking corporations, alongside ensuring adequate protection for consumers in the credit market. To promote competitiveness in the retail credit market, the law equates the norms that apply to non-institutional lenders to those that apply to institutional lenders, including the banking system.
- In 2016, the Credit Data Law was published. The law repealed and replaced the Credit Data Service Law from 2002, and revolutionised the world of credit data collected and accumulated about private individuals. Under the old regime, most financial information accumulated about customers focused on 'negative data' – negative indications involving customer non-compliance with loan repayments and negative data from other public lists. Under the new regime, which integrates and complements the change in the industry that occurred with the enactment of the Fair Credit Law, a central credit database has been set up under the responsibility of the Bank of Israel, which includes negative data as well as positive data (compliance with repayment of credit, for example) on private individuals (households and small businesses). These data are provided to the database by various financial bodies and by public bodies such as the Execution Bureau, the Official Receiver of Assets and the court

system. Along with the enrichment of financial information accessible to the banking system, various restrictions were imposed on its access (for reasons of privacy protection) and, under the new regime, before applying to the database (through a credit bureau) the credit provider is required to disclose this application to the customer or obtain the customer's express consent (as the case may be, depending on the scope of information requested), in contrast with the regulatory situation prior to the enactment of the aforementioned law.

- The Payment Services Law, published in 2019, is designed to revolutionise all matters concerning the regulation of the provision of services that are related to Israel through payment. It is based, in part, on the European Payment Service Directive II. The Debit Cards Law of 1986 only regulates debit card issuance activity: its application is limited to debit cards only (ie, credit cards, rechargeable cards or ATM cards) and, likewise, its application is limited to cards with a physical dimension (a plate or object). As such, the Debit Cards Law did not regulate activities such as electronic wallets (an activity that also requires a licence under the Financial Services Supervision Act or a banking licence) or even virtual debit cards. The Payment Services Law, by contrast, includes the broadest definitions and applies to each activity related to making payments, from the issuance of the means of payment (including virtual currencies) and acquiring them to managing digital wallets and the like. The law imposes various obligations on a payment service provider (whether to the payer or the beneficiary), and also regulates the liability of the payment service provider towards the customer, such as when the payment method is misused. On 10 January 2022, a memorandum was published for the Law Regulating the Occupation of Payment Services, 5722-2022, which seeks to subject entities that provide 'payment services' to a different authority (such entities are defined in the memorandum as those engaged in, among other things, payment account management, issuance of payment means, acquiring of payment operations and initiating payment instructions). In accordance with the current wording of the memorandum, certain financial asset service providers currently supervised under the Capital Market, Insurance and Savings Authority (as well as small acquirers that are currently supervised by the Supervisor of Banks at the Bank of Israel) will be transferred to the supervision of the Securities Authority.
- The Insolvency and Economic Rehabilitation Law, published in 2018, implemented a comprehensive reform in the field of insolvency to provide the Israeli economy with modern legislation in this area by creating a codification of insolvency rules. The main purpose of the law is to bring about the economic rehabilitation of the debtor, from the perspective that failure to repay credit and insolvency constitute an 'economic accident' rather than a moral defect. At the same time, the goals of the law include efforts to increase the rate of debt that is repaid to creditors, increase the certainty and stability of the rule, shorten proceedings, and reduce the bureaucratic burden. Although the aforementioned law has only recently entered into force, it is expected to impair the solvency of banks in situations of insolvency of the debtor (individual and corporation alike).
- In the near future, an open banking system will begin operating in Israel. In recent years, an in-depth regulation has developed throughout the world that regulates the field of open banking. Open banking enables bank customers and credit card companies to share their financial information with third parties. New players, not banks necessarily, are able to access a customer's bank accounts upon consent and offer banking services tailored to the customer's needs. The Bank of Israel is working towards implementing open banking in Israel, in recognition of its importance to all customers and financial players and has, therefore, formulated a uniform standard for open banking in Israel. The standard also regulates the protection of customer information and the risk management of banking corporations. The technological standard is based on the working framework of NextGenPSD2, while making the necessary adjustments to suit the financial system in Israel. Proper Conduct of Banking Business Directive No. 368 issued by the Supervisor of Banks imposes an obligation on the banking system to act in accordance with this technological standard and to disclose assorted information to various players (in its first stage, only within the banking system).
- On 4 November 2021, the Financial Information Services Law, 5721-2021, was published, which seeks to apply the open banking reform to entities outside the banking system. This law includes provisions regarding the supervision of entities wishing to provide a financial information service to their clients (including the supervision of these entities, insofar as they are not already under the supervision of a financial regulator), under the

Securities Authority. In addition, the memorandum of the Law Regulating the Occupation of Payment Services mentioned above, includes, inter alia, provisions regarding the initiation of payments and the provision of payment instructions through open banking.

Law stated - 11 March 2022

Consumer protection

Are banks subject to consumer protection rules?

While the Banking (Licensing) Law relates to the issue, the Banking (Customer Service) Law focuses on aspects of bank–customer relations . Inter alia , this law imposes obligations to provide certain services, such as receiving deposits, opening and managing a checking account, selling bank checks, and so on. Notwithstanding the aforesaid, a banking corporation is not obligated to provide a service that extends credit to the customer. In addition, this law establishes:

- prohibitions on deception by act or omission, in writing or orally;
- general obligations of proper disclosure and transferring information (for example, on fees);
- a prohibition on conditioning services; and
- general provisions regarding the supervision of fees a bank may charge its customers (including the governor's authority to monitor fee amounts or their rates).

By virtue of the Banking (Customer Service) Law, two main regulations have been enacted as at April 2021:

- the Rules of Banking (Customer Service) (Proper Disclosure and Delivery of Documents) from 1992, which expand on the general obligations stipulated in the Banking (Customer Service) Law and set forth obligations such as, inter alia:
  - the obligation to make written agreements (a provision later moderated in a circular from the Supervisor of Banks that fixes several types of agreements that do not require customer signature);
  - the obligation to provide customers with copies of agreements and to notify customers about various changes in their account management terms; and
  - specific provisions concerning the proper disclosure required in credit and financial leasing (for example, the details that are required to appear in the credit agreement and the obligation to provide the customer with a payment schedule); and
- the Rules of Banking (Customer Services) (Fees) from 2008, which detail the general obligations listed in the Banking (Customer Service) Law concerning fees, fixes fee rates and enumerates the types of fees that a banking corporation may charge its customers, along with the conditions for collecting them.

In recent decades, the Supervisors of Banks have issued numerous and varied Proper Banking Management Directives, dealing with various areas under their trust, including directives concerning bank–customer relations (for example, directives concerning the provision of benefits to customers; concerning risk management; concerning anti-money laundering and terrorist financing; and procedures concerning commissions, reduction or increase in interest rates, and so on); as well as specific directives concerning customer accounts, relating to loans, securities and debit cards. These directives include, inter alia:

- directives concerning the opening days of banking corporation offices;
- directives that relate to providing banking services to new immigrants;
- directives that relate to billing clients with attorney's fees;
- procedures concerning fees and cost disclosures;
- directives concerning the accounts of minors;
- directives concerning maintaining documents; and
- directives concerning sending messages in the media and providing a professional human telephone answering service.

The Payment Services Law, published in 2019, is designed to revolutionise all matters concerning the regulation of the provision of services that are related to Israel through payment. It is based, in part, on the European Payment Service Directive II. The Payment Services Law includes the broadest definitions and applies to each activity related to making payments, from the issuance of the means of payment (including virtual currencies) and acquiring them to managing digital wallets and the like. The law imposes various obligations on a payment service provider (whether to the payer or the beneficiary), and also regulates the liability of the payment service provider towards the customer, such as when the payment method is misused.

Law stated - 11 March 2022

Future changes

In what ways do you anticipate the legal and regulatory policy changing over the next few years?

We anticipate the supervisory emphasis in the coming years will be given , inter alia, to the following issues.

- Continued efforts to implement open banking in Israel in recognition of its importance to all customers and financial players, and expand this activity beyond the banking system (so that fintech companies and other non-bank entities subject to proper regulation will be able to access banking information in order to provide various services, such as cost comparison services).
- Continued efforts by the Bank of Israel to make the necessary adjustments for creating an empowering regulatory system that helps supervised entities to offer advanced services in the developing world, including the provision of remote banking services (e-banking), shortening the recruitment processes (onboarding) and facilitating the identification and verification obligations, know-your-customer provisions, etc, when providing payment services (such as offering payment apps) and so on.
- A continued emphasis on protecting the interests of customers of the banking system – access to information, expanding the services that a banking corporation may provide remotely (e-banking), and so on.
- Changes concerning the supervision and structure of payment services and payment systems in Israel – with respect to payment service providers – through the unification of regulation or financial regulators to reduce the regulatory arbitrage, and with respect to payment systems, whether by increasing supervision of existing payment systems (eg, by declaring that additional payment systems are controlled payment systems) or by introducing competitors (local and international) into the Israeli market (which, in turn, could be a catalyst for establishing an Israeli central 'switch').

Law stated - 11 March 2022

SUPERVISION

Extent of oversight

How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The Supervisor of Banks has general supervision and audit powers over every banking corporation. By virtue of this, the Supervisor of Banks has the authority to require banking corporations – as well as directors, employees or accountants of banking corporations – to provide information and documents in their possession that relate to the transactions of the banking corporation and to any corporation under its control. Furthermore, the Supervisor of Banks is entitled to give instructions that relate to the methods of operation and administration of the banking corporation, of an officer in it and of anyone employed by it to ensure its proper management and to protect the interests of its customers (Proper Banking Management Directives).

Over the past decades, the Supervisors of Banks have published many assorted Proper Banking Management Directives that deal with various areas under their trust supervision, inter alia:

- directives concerning capital measurement and adequacy (for example, requirements concerning supervisory capital; and the methods for calculating credit risks, operational risks, market risks and leverage ratio or liquidity coverage ratios);
- directives concerning management and control (for example, directives relating to the board of directors of a banking corporation and its methods of operation; directives concerning the remuneration policy, the auditor and chief accountant; and provisions relating to the internal audit function, the compliance function, the handling of public complaints and risk management);
- directives that relate to credit and investments (for example, provisions concerning the management of credit risk; the banking corporation's transactions with related persons; limitations on the liability of a borrower and a group of borrowers; proper assessment of credit risks and proper measurement of debt; capital market activity; financing the acquisition of means of control in corporations; financial support; restrictions on granting housing loans; and so on);
- directives that relate to financial risk (for example, directives concerning dividend distribution and self-acquisition; interest rate risk management; activity in the futures market; and market risk management and liquidity);
- directives concerning management risks (for example, provisions that relate to banking insurance; business continuity management; information technology management; cybersecurity; cloud computing; and communications banking);
- directives that relate to the relationship between the bank and the customer (for example, directives on the provision of benefits to customers; the management of anti-money laundering risks and terrorist financing; fees, reduction or increase in interest rates; and so on); and
- specific directives that relate to customer accounts, loans, securities and debit cards.

In addition to the collection of Proper Banking Management Directives that apply to various aspects of the day-to-day operations of banking corporations (only some of which have been listed above), there is a profusion of directives published by the Supervisor of Banks that deal with reporting obligations to the public and reporting obligations to the Supervisor of Banks. By virtue of these directives, a banking corporation is required to present an annual financial report and publish it. Specific instructions have been determined for the structure of the various reports, their appendices, the annotations required to appear in them, and so on. In addition, the Supervisor of Banks has determined a variety of directives concerning the reporting a banking corporation is required to submit to the Supervisor of Banks, including, inter alia:

- libra and off-balance sheet data;
- profit and loss and business results;
- reports concerning credit cards and risk management;
- costs and interest rates;
- borrowers and related persons;
- means of control and investee companies; and
- administrative and operational data.

In addition, the Supervisor of Banks conducts various audits of supervised entities periodically with emphasis on aspects of the prohibitions on anti-money laundering and terrorist financing as well as audits concerning various consumer aspects. In recent years, the Supervisor of Banks has conducted audits (in the framework of which fiscal sanctions were imposed), inter alia, due to:

- malfunctions in cash withdrawal devices;
- failure to publish the required warning in the advertising and marketing of credit; and
- collection of fees not anchored in the bank tariff.

In addition to these, the Supervisor of Banks conducted several comprehensive audits several years ago on the issue of the compliance of banking corporations with the provisions of the Anti-Money Laundering and Terrorist Financing Order, which ended in the imposition of significant fines (ranging from approximately 1 million to 4 million shekels).

Law stated - 11 March 2022

Enforcement

How do the regulatory authorities enforce banking laws and regulations?

The Supervisor of Banks has general supervision and audit powers over every banking corporation. By virtue of this, the Supervisor of Banks has the authority to require banking corporations – as well as directors, employees or accountants of banking corporations – to provide information and documents in their possession that relate to the transactions of the banking corporation and to any corporation under its control. Furthermore, the Supervisor of Banks is entitled to give instructions that relate to the methods of operation and administration of the banking corporation, of an officer in it and of anyone employed by it to ensure its proper management and to protect the interests of its customers (Proper Banking Management Directives). Pursuant to the Banking Ordinance, a sanction of 1 million shekels may be imposed on a banking corporation for a violation of a Proper Banking Management Directive.

In addition, the Supervisor of Banks conducts various audits of supervised entities periodically with emphasis on aspects of the prohibitions on anti-money laundering and terrorist financing as well as audits concerning various consumer aspects. In recent years, the Supervisor of Banks has conducted audits (in the framework of which fiscal sanctions were imposed), inter alia, due to:

- malfunctions in cash withdrawal devices;
- failure to publish the required warning in the advertising and marketing of credit; and
- collection of fees not anchored in the bank tariff.

In addition to these, the Supervisor of Banks conducted several comprehensive audits several years ago on the issue of the compliance of banking corporations with the provisions of the Anti-Money Laundering and Terrorist Financing

Order, which ended in the imposition of significant fines (ranging from approximately 1 million to 4 million shekels).

Law stated - 11 March 2022

What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The Supervisor of Banks conducts various audits of supervised bodies periodically with emphasis on aspects of the prohibitions on anti-money laundering and terrorist financing as well as audits that concern various consumer-related aspects. In recent years, the Supervisor of Banks has conducted audits (in the framework of which fiscal sanctions were imposed), inter alia, due to:

- malfunctions in cash withdrawal devices;
- failure to publish the required warning in the advertising and marketing of credit; and
- collection of fees not anchored in the bank tariff.

In addition to these, the Supervisor of Banks conducted several comprehensive audits several years ago on the issue of the compliance of banking corporations with the provisions of the Anti-Money Laundering and Terrorist Financing Order, which ended in the imposition of significant fines (ranging from approximately 1 million to 4 million shekels).

Law stated - 11 March 2022

RESOLUTION

Government takeovers

In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

The situation of a bank that encounters difficulties is not expressly regulated in legislation beyond the general legislation on the insolvency of companies in Israel. There are a small number of cases in which banks in Israel have encountered stability difficulties. It should be borne in mind that the state's actions in those cases were carried out ad hoc, in a manner that could not be viewed as binding on future cases.

For example, there was an acute economic crisis in Israel in 1983 (the Bank Shares Crisis) that led, inter alia, to a significant decline in the value of public investments in bank shares and that was a culmination of the banks' practice of regulating their share prices over the years. The Bank Shares Crisis was created through the deliberate action taken by most large banks to regulate their share prices to ensure a steady and continuous increase in share prices and prevent a decline or stagnation in rates for even a single day.

Following the Bank Shares Crisis, a commission of inquiry was established: the Beisky Committee (named after Supreme Court Justice Moshe Beisky, the head of the committee). Pursuant to the Beisky Committee's conclusions, the heads of the banks were prosecuted and brought to justice, and various proposals were raised to reform the capital market (most of which were only implemented years later). Additionally, the main banks (Bank Hapoalim, Bank Leumi, Discount Bank and Mizrahi Bank) were nationalised by the state in 1983 to prevent their insolvency. Over subsequent years, the state sold its shares in the aforementioned banks and it no longer holds shares in any of those banks.

Law stated - 11 March 2022

Bank failure

What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

As at April 2021, there are no specific legal or regulatory provisions for the case of bank failure and therefore the general provisions of the law will apply.

On 15 September 2019, the Insolvency and Economic Rehabilitation Law of 2018 came into force. The law consolidates all prior legislation and case law that had accumulated over decades in the area of insolvency. Until the enactment of this law, insolvency laws regarding both corporations and individuals were composed of various provisions that were included in different laws, and were based mainly on judgments given over the years by Israeli courts. Along with the enactment of the Insolvency and Economic Rehabilitation Law, the Insolvency and Economic Rehabilitation Regulation 2019 also came into force.

Although the Insolvency and Economic Rehabilitation Law has adopted much prior legislation and judgment, it also includes substantial changes. For example, the law imposed, for the first time, liability on directors and chief executive officers of an insolvent company for failing to make reasonable efforts to reduce the scope of insolvency.

One of the reforms that the legislature is currently considering is allowing companies to receive protection from their creditors without a formal insolvency order, but only as part of a conditioning proceeding to approve debt settlements with its creditors. This situation is not currently possible under Israeli law and a company that wishes to be granted a stay of proceedings order, even in a track of rehabilitation, must apply for an insolvency order. In such a case and to the extent the court does order the issuance of the insolvency order as requested, an external trustee is appointed to the company and from that moment the trustee conducts all its business.

In addition to the aforesaid, the governor of the Bank of Israel and the Supervisor of Banks have the authority conferred on them by law to issue various directives to companies under their supervision, including aspects concerning stability and capital adequacy.

Law stated - 11 March 2022

Are managers or directors personally liable in the case of a bank failure?

The Companies Law of 1999 and case law determine the obligations imposed on a company's board of directors and management, and are generally divided into two types: property rules and liability rules.

Property rules are all the procedural obligations required for approving transactions of a certain type that a company must fulfil. Chapter 5 of the Companies Law deals with this issue and sets forth the method of approval that is required for each type of transaction. As a rule, the obligations and liabilities under the Companies Law will also apply to the board of directors and management of a bank.

Liability rules are the obligations that apply to the management of a company – that is, fiduciary duties. These obligations divide into a duty of care and a fiduciary duty, and are detailed in articles (a) and (b) in Chapter 3 of the Companies Law.

The duty of care is an obligation not to act in negligence and it is identical to the tort duty. Indeed, article 252 of the Companies Law refers to articles 35 and 36 of the Torts Ordinance.

To prove a breach of duty of care, the following must be established: a conceptual duty of care, a concrete duty of care, damages and causal connection. Article 253 of the Companies Law imposes this duty on every officer; that is, on the board of directors as well. As such, the duty of a director is to act as any reasonable director would and a director who

is negligent is a director who acts in a way in which a reasonable director, under the circumstances, would not have acted.

The Buchbinder case (CA 610/94) determines that a conceptual and concrete duty of care always exists between a director and the company (ie, the shareholders). At the same time, a decision of the board of directors is generally immune under the Business Judgement Rule – that is, there is a presumption of certain integrity. Therefore, in a claim of breach of duty of care, the burden is on the plaintiff to refute this presumption. In such a case, the plaintiff must prove one of the following three alternatives: the decision was made in absence of good faith; the decision was uninformed; or the decision was made out of a conflict of interests.

The fiduciary duty is defined in article 254 of the Companies Law as an obligation 'to act in good faith and for the interests of the Company'. Subsequently, article 4 lists examples of specific obligations. It is important to bear in mind that these obligations do not constitute a closed list. The duties are as follows: a prohibition against acting through a conflict of interests; a prohibition against competing with the company; a disclosure duty; and a prohibition against exploiting a business opportunity of the company.

The Buchbinder case determines that a corporate duty of good faith is different from a contractual duty of good faith. In contract law, the parties are inherently in a conflict of interests, each advancing its own interest; however, this conception is not true of a director with respect to the company. The corporate duty of good faith obligates directors to consider the interests of the company only and prohibits directors from lending weight to personal interests or to those of a controlling shareholder who appointed them.

A company has grounds for a claim against a director who breaches his or her fiduciary obligations to it. In this case, a shareholder or another director can file a derivative action.

Breach of the duty of care has been classified as tort liability and its remedy is in accordance with this fact. At the same time, the directors have a number of defences, which are stipulated in section (c) of Chapter 3 of the Companies Law: exemption, compensation and insurance. These involve defences the company chooses to provide its officers.

The company chooses which defences it will grant. However, at the same time, its power is not unlimited – the law itself restricts those defences. Such restrictions cannot be stipulated as it involves cogent law.

For example, article 263 of the Companies Law determines that a company's decision to exempt, compensate or insure an officer who deliberately or recklessly breached a duty of care for personal gain is not valid. In addition, there is no possibility to exempt, compensate or insure against financial sanctions or fines. Furthermore, the decision to provide one of the defences must be stipulated in the company's articles.

In a 2009 embezzlement case involving an Israeli bank, the state prosecutor informed nine officers and the bank's senior directors that it was considering, in a precedent-setting manner, filing indictments against them subject to a hearing. At the same time, the prosecutor ultimately determined to close the investigation files against the directors on the grounds of lack of evidence.

Law stated - 11 March 2022

Planning exercises

Describe any resolution planning or similar exercises that banks are required to conduct.

There are a number of Proper Conduct of Banking Management Directives that impose obligations on a banking corporation to define and maintain a plan for performing exercises of the various response systems in the corporation. For example, Proper Conduct of Banking Management Directive No. 361 that concerns cyber defence management determines an obligation for a banking corporation to define a programme for conducting drills (such as simulated attacks, war games and so forth) with the participation of the relevant factors (such as technical factors, crisis management teams, decision-making levels, spokespersons and so on).

Law stated - 11 March 2022

CAPITAL REQUIREMENTS

Capital adequacy

Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

Among the collection of Proper Banking Management Directives that apply to banking corporations in Israel, the Supervisor of Banks has issued a number of directives concerning capital measurement and adequacy. Inter alia, these directives deal with the requirement of supervisory capital with various risks, such as operational risks and market risks; treatment of illiquid positions; assessment of the adequacy of capital; leverage ratio; and liquidity coverage ratio.

Supervisory capital (in accordance with the Proper Banking Management Directive No. 202) is composed of two tiers:

- Tier 1 capital (capital on an ongoing basis), which includes:
  - equity;
  - Tier 1 (composed of, inter alia, ordinary share capital issued by the banking corporation that meets the criteria specified in the directive; premium on these shares; surpluses, including dividends offered or announced after the balance sheet date; other comprehensive income that is stated and other surpluses that have been disclosed; ordinary shares issued by a subsidiary; and so on); and
  - additional Tier 1 capital (composed, inter alia, of instruments issued by the banking corporation and not included in single Tier 1 equity that meet the requirements specified in the directive); and
- Tier 2 capital (insolvency capital) (composed, inter alia, of instruments issued by the banking corporation and are not included in Tier 1 capital, which meet the requirements specified in the directive, premium on these instruments and so on).

Law stated - 11 March 2022

How are the capital adequacy guidelines enforced?

The Supervisor of Banks has general supervision and audit over each banking corporation. By virtue of the aforesaid, the Supervisor of Banks has the authority to require banking corporations – as well as directors, employees or accountants of banking corporations – to provide information and documents in their possession relating to the transactions of the banking corporation and any corporation under its control. Furthermore, the Supervisor of Banks is authorised to issue instructions concerning the manner of operation and management of a banking corporation, one of its officers and anyone employed by it for the purpose of ensuring its proper management and maintaining the interests of its customers (Proper Conduct of Banking Directives). Pursuant to the Banking Ordinance, a sanction of 1 million shekels may be imposed on a banking corporation for a violation of a Proper Banking Management Directive.

In addition, the Supervisor of Banks conducts various audits of supervised entities periodically with emphasis on aspects of the prohibitions of anti-money laundering and terrorist financing as well as audits that concern various consumer-related aspects.

Law stated - 11 March 2022

Undercapitalisation

What happens in the event that a bank becomes undercapitalised?

The governor of the Bank of Israel and the Supervisor of Banks have the authority to issue various instructions to the supervised entities, such as reducing the credit portfolio, and various instructions to shareholders and controlling shareholders (by virtue of the licence and control permits issued to them). These authorities can even suspend or revoke licences, or holding or control permits.

Law stated - 11 March 2022

Insolvency

What are the legal and regulatory processes in the event that a bank becomes insolvent?

To date, there are no specific legal or regulatory provisions for the case of insolvency of a banking corporation, and therefore the general provisions of the law will apply.

On 15 September 2019, the Insolvency and Economic Rehabilitation Law of 2018 came into force. The law consolidates all prior legislation and case law that had accumulated over decades in the area of insolvency. Until the enactment of this law, insolvency laws regarding both corporations and individuals were composed of various provisions that were included in different laws, and were based mainly on judgments given over the years by Israeli courts. Along with the enactment of the Insolvency and Economic Rehabilitation Law, the Insolvency and Economic Rehabilitation Regulation 2019 also came into force.

Although the Insolvency and Economic Rehabilitation Law has adopted much prior legislation and judgment, it also includes substantial changes. For example, the law imposed, for the first time, liability on directors and chief executive officers of an insolvent company for failing to make reasonable efforts to reduce the scope of insolvency.

One of the reforms that the legislature is currently considering is allowing companies to receive protection from their creditors without a formal insolvency order, but only as part of a conditioning proceeding to approve debt settlements with its creditors. This situation is not currently possible under Israeli law and a company that wishes to be granted a stay of proceedings order, even in a track of rehabilitation, must apply for an insolvency order. In such a case and to the extent the court does order the issuance of the insolvency order as requested, an external trustee is appointed to the company and from that moment the trustee conducts all its business.

In addition to the aforesaid, the governor of the Bank of Israel and the Supervisor of Banks have the authority conferred on them by law to issue various directives to companies under their supervision, including aspects concerning stability and capital adequacy.

Law stated - 11 March 2022

Recent and future changes

Have capital adequacy guidelines changed, or are they expected to change in the near future?

Among the collection of Proper Banking Management Directives that apply to banking corporations in Israel, the Supervisor of Banks has issued a number of directives concerning capital measurement and adequacy. Inter alia, the aforementioned directives deal with the requirement of supervisory capital with various risks such as operational risks and market risk; treatment of illiquid positions; assessments of the adequacy of capital; leverage ratio; and liquidity coverage ratio.

These directives are updated periodically by the Supervisor of Banks through a continuous adoption of the Basel Committee's directives on various issues.

Law stated - 11 March 2022

OWNERSHIP RESTRICTIONS AND IMPLICATIONS

Controlling interest

Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank (or non-bank). What constitutes 'control' for this purpose?

In recent decades, various committees have been established, followed by various reforms with the aim of impacting the centralisation in the financial system in Israel and in the banking system specifically. However, such reforms were primarily with respect to the control of banking corporations over other entities (for example, separation of financial entities and non-financial entities, the reduction of centralisation and conflict of interests in the capital market in Israel, and so on), in contrast with control or possession of means of control in banking corporations. Pursuant to the Banking (Licensing) Law of 1981, holding more than 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, according to the definition of this term in the law) requires a permit issued by the governor of the Bank of Israel following consultation with the Licensing Committee. In granting such a permit, the considerations detailed in article 6 of the Banking (Licensing) Law will be taken into account (with the required amendments):

- the plan of action of the applicant and the chances of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their position;
- the contribution of granting the licence to competition in the capital market and in particular to competition in the banking system and the levels of service therein;
- the economic policy of the government; and
- public policy; and
- in terms of a foreign bank, reciprocity concerning:
  - the licensing of banking corporations between Israel and the state of the applicant's centre of business and, in addition, the suitability of the applicant to control;
  - holding the amount of means of control requested or to agree to a vote for appointing a director; or
  - for terminating a director's term of office.

Considerations also include the applicant's business experience, occupations, other businesses, economic strength and integrity. The possible implications of granting the permit for control on the banking corporation – or bank holding corporation, present or future – are also considered.

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, the considerations taken into account by the governor concerning the suitability of the applicant for obtaining the permit include four main aspects:

- personal and business integrity;
- financial strength;
- investment strategy; and
- the applicant's business experience, businesses and other occupations, and the potential for a conflict of interests in the banking corporation.

Control is defined in the Banking (Licensing) Law as follows:

Law stated - 11 March 2022

Foreign ownership

Are there any restrictions on foreign ownership of banks (or non-banks)?

As a rule, there is no such specific prevention. Pursuant to the Banking (Licensing) Law, holding over 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, as the term is defined by the law) requires a permit issued by the governor of the Bank of Israel after consultation with the Licensing Committee. In granting such a permit, the considerations detailed in article 6 of the Banking (Licensing) Law are taken into account (with the required amendments):

- the plan of action of the applicant and the chances of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their position;
- the contribution of granting the licence to competition in the capital market and in particular to competition in the banking system and the levels of service therein;
- the economic policy of the government; and
- public policy; and
- in terms of a foreign bank, reciprocity concerning:
  - the licensing of banking corporations between Israel and the state of the applicant's centre of business and, in addition, the suitability of the applicant to control;
  - holding the amount of means of control requested or to agree to a vote for appointing a director; or
  - for terminating a director's term of office.

Considerations also include the applicant's business experience, occupations, other businesses, economic strength and integrity. The possible implications of granting the permit for control on the banking corporation – or bank holding corporation, present or future – are also considered.

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, the considerations taken into account by the governor concerning the suitability of the applicant for obtaining the permit include four main aspects:

- personal and business integrity;
- financial strength;
- investment strategy; and
- the applicant's business experience, businesses and other occupations, and the potential for a conflict of interests in the banking corporation.

The Financial Services Supervision (Regulated Financial Services) Law includes similar provisions concerning control or holding a means of control in a financial services provider (non-bank entities that provide various financial services).

Law stated - 11 March 2022

Implications and responsibilities

What are the legal and regulatory implications for entities that control banks?

Pursuant to the Banking (Licensing) Law, holding over 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, as the term is defined by the law) requires a permit issued by the governor of the Bank of Israel after consultation with the Licensing Committee. The Banking (Licensing) Law does not stipulate the conditions for such a holding permit and the governor has broad discretion in determining its terms (which will naturally include provisions concerning the prohibition of a conflict of interests in the Israeli capital market, disposition of the means of control, and so on). The governor may revoke or amend a permit after consultation with the Licensing Committee if the governor has reasonable grounds to presume that one of the circumstances detailed in the Banking (Licensing) Law is met, such as:

- breach of a material condition;
- real concern the stability of the banking corporation will be harmed; or
- concern for harm to public interests if the permit is not revoked or changed.

Law stated - 11 March 2022

What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

Pursuant to the Banking (Licensing) Law, holding over 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, as the term is defined by the law) requires a permit issued by the governor of the Bank of Israel after consultation with the Licensing Committee. The Banking (Licensing) Law does not stipulate the conditions for such a holding permit and the governor has broad discretion in determining its terms (which will naturally include provisions concerning the prohibition of a conflict of interests in the Israeli capital market, disposition of the means of control, and so on). A recipient of the permit must act in accordance with it and subject to its terms.

Law stated - 11 March 2022

What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

One of the circumstances stipulated in the Banking (Licensing) Law in which the governor of the Bank of Israel may revoke or amend a permit after consultation with the Licensing Committee is the situation in which an order can be issued for liquidation or the appointment of a receiver for its assets, or a for an essential part of them for non-repayment of debts (and if the recipient of the permit is an individual, a receivership order was issued in bankruptcy proceedings or the recipient was declared incompetent). By contrast, the Banking (Licensing) Law does not relate to the implications on a controlling shareholder in the event that such circumstances apply to the controlled bank.

Law stated - 11 March 2022

CHANGES IN CONTROL

Required approvals

Describe the regulatory approvals needed to acquire control of a bank (or non-bank). How is 'control' defined for this purpose?

Pursuant to the Banking (Licensing) Law of 1981, holding more than 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, according to the definition of this term in the law) requires a permit issued by the governor of the Bank of Israel following consultation with the Licensing Committee. In granting such a permit, the considerations detailed in article 6 of the Banking (Licensing) Law will be taken into account (with the required amendments):

- the plan of action of the applicant and the chances of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their position;
- the contribution of granting the licence to competition in the capital market and in particular to competition in the banking system and the levels of service therein;
- the economic policy of the government; and
- public policy; and
- in terms of a foreign bank, reciprocity concerning:
  - the licensing of banking corporations between Israel and the state of the applicant's centre of business and, in addition, the suitability of the applicant to control;
  - holding the amount of means of control requested or to agree to a vote for appointing a director; or
  - for terminating a director's term of office.

Considerations also include the applicant's business experience, occupations, other businesses, economic strength and integrity. The possible implications of granting the permit for control on the banking corporation – or bank holding corporation, present or future – are also considered.

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, the considerations taken into account by the governor concerning the suitability of the applicant for obtaining the permit include four main aspects:

- personal and business integrity;
- financial strength;
- investment strategy; and
- the applicant's business experience, businesses and other occupations, and the potential for a conflict of interests in the banking corporation.

Control is defined in the Banking (Licensing) Law as follows:

The Financial Services Supervision (Regulated Financial Services) Law includes similar provisions concerning control or holding a means of control in a financial services provider (non-bank entities that provide various financial services).

Law stated - 11 March 2022

Foreign acquirers

Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

In accordance with the provisions of the Law for Increasing Competition and Reducing Centralization in the Banking Market in Israel (Legislative Amendments) of 2017, two Israeli credit card companies were recently separated from the banks controlling them. One of these companies was acquired by an international investment fund, which was granted a control permit by the governor of the Bank of Israel in accordance with the Banking (Licensing) Law. We are not aware that the process for granting such a permit to a foreign controlling shareholder differs from the process involving an Israeli controlling shareholder (although the aforesaid is not common).

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, the considerations taken into account by the governor concerning the suitability of the applicant for obtaining the permit include four main aspects:

- personal and business integrity;
- financial strength;
- investment strategy; and
- the applicant's business experience, businesses and other occupations, and the potential for a conflict of interests in the banking corporation.

Law stated - 11 March 2022

Under what circumstances can a foreign bank (or non-bank) establish an office and engage in business? For example, can it establish a branch or must it form or acquire a locally chartered bank?

In accordance with the Bank (Licensing) Law, the governor of the Bank of Israel may, at his or her discretion and after consultation with the Licensing Committee, grant a foreign bank licence to a foreign corporation that is registered in Israel and that is a bank in a foreign state. The bank must establish a legal entity in Israel, whether as a subsidiary or as an Israeli branch of a foreign corporation. In granting such a licence to a foreign bank, the following considerations will also be taken into account:

- the plan of action of the applicant and the likelihood of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their positions;
- the contribution of the granting of the licence to competition in the capital market and in particular to competition in the banking system and the levels of service therein;
- the economic policy of the government;
- public policy; and
- reciprocity concerning the licensing of banking corporations between Israel and the state of the applicant's centre of business.

The areas of activity of a foreign bank are limited to the areas of activity permitted to an Israeli bank according to the provisions of the Banking (Licensing) Law. A number of other restrictions have also been established with respect to a

foreign bank, such as the prohibition from controlling or holding an interest in a corporation that conducts business in Israel, unless an Israeli bank is permitted to control or hold an interest in such in accordance with law.

Law stated - 11 March 2022

Factors considered by authorities

What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank (or non-bank)?

Pursuant to the Banking (Licensing) Law, holding more than 5 per cent of a certain type of means of control in a banking corporation (or a bank holding corporation, according to the definition of this term in the law) requires a permit issued by the governor of the Bank of Israel following consultation with the Licensing Committee. In granting such a permit, the considerations detailed in article 6 of the Banking (Licensing) Law will be taken into account (with the required amendments):

- the plan of action of the applicant and the chances of its success;
- the suitability of the applicant's controlling shareholders, directors and managers for their position;
- the contribution of granting the licence to competition in the capital market and in particular to competition in the banking system and the levels of service therein;
- the economic policy of the government; and
- public policy; and
- in terms of a foreign bank, reciprocity concerning:
  - the licensing of banking corporations between Israel and the state of the applicant's centre of business and, in addition, the suitability of the applicant to control;
  - holding the amount of means of control requested or to agree to a vote for appointing a director; or
  - for terminating a director's term of office.

Considerations also include the applicant's business experience, occupations, other businesses, economic strength and integrity. The possible implications of granting the permit for control on the banking corporation – or bank holding corporation, present or future – are also considered.

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, the considerations taken into account by the governor concerning the suitability of the applicant for obtaining the permit include four main aspects:

- personal and business integrity;
- financial strength;
- investment strategy; and
- the applicant's business experience, businesses and other occupations, and the potential for a conflict of interests in the banking corporation.

Law stated - 11 March 2022

Filing requirements

Describe the required filings for an acquisition of control of a bank.

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, criteria were delineated that serve as a basis for examining the financial strength of the permit applicant, which ultimately serve as guidelines while exercising discretion based on data of the banking corporation and the potential controlling shareholders. However, this document does not specify the documents required to obtain such a permit.

Law stated - 11 March 2022

Time frame for approval

What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

In accordance with the document criteria and general conditions for an applicant for a permit to control and hold a means of control in a banking corporation published by the Supervisor of Banks in 2013, criteria were delineated that serve as a basis for examining the financial strength of the permit applicant, which ultimately serve as guidelines while exercising discretion based on data of the banking corporation and the potential controlling shareholders. However, this document does not specify the documents required to obtain such a permit.

Law stated - 11 March 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in banking regulation in your jurisdiction?

In the near future, an open banking system will begin operating in Israel. In recent years, an in-depth regulation has developed throughout the world that regulates the field of open banking. Open banking enables bank customers and credit card companies to share their financial information with third parties. New players, not banks necessarily, are able to access a customer's bank accounts upon consent and offer banking services tailored to the customer's needs. The Bank of Israel is working towards implementing open banking in Israel, in recognition of its importance to all customers and financial players and has, therefore, formulated a uniform standard for open banking in Israel. The standard also regulates the protection of customer information and the risk management of banking corporations. The technological standard is based on the working framework of NextGenPSD2, while making the necessary adjustments to suit the financial system in Israel. Proper Conduct of Banking Business Directive No. 368 issued by the Supervisor of Banks imposes an obligation on the banking system to act in accordance with this technological standard and to disclose assorted information to various players (in its first stage, only within the banking system).

On 4 November 2021, the Financial Information Services Law, 5721-2021, was published, which seeks to apply the open banking reform to entities outside the banking system. This law includes provisions regarding the supervision of entities wishing to provide a financial information service to their clients (including the supervision of these entities, insofar as they are not already under the supervision of a financial regulator), under the Securities Authority. In addition, the memorandum of the Law Regulating the Occupation of Payment Services, published on 10 January 2022, includes provisions regarding the initiation of payments and the provision of payment instructions through open banking .

Law stated - 11 March 2022

Jurisdictions

Andorra	Cases & Lacambra
Australia	Piper Alderman
Ghana	WTS Nobisfields
Greece	Zepos & Yannopoulos
Hungary	Nagy és Trócsányi
India	Shardul Amarchand Mangaldas & Co
Ireland	Dillon Eustace LLP
Israel	Tadmor Levy & Co
Italy	Ughi e Nunziante
Japan	TMI Associates
Lebanon	Abou Jaoude & Associates Law Firm
Luxembourg	Loyens & Loeff
Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
Singapore	WongPartnership LLP
South Africa	White & Case LLP
Sri Lanka	Tiruchelvam Associates
Switzerland	Lenz & Staehelin
United Kingdom	1 Crown Office Row
USA	Debevoise & Plimpton LLP