GLG
Global Legal Group

The International Comparative Legal Guide to:

Corporate Governance 2009

A practical insight to cross-border corporate governance

Published by Global Legal Group with contributions from:

Advokatfirmaet Haavind AS
Al Tamimi & Company
ALRUD Law Firm
Anderson Mori & Tomotsune
Arnold Bloch Leibler
Ashurst LLP
Bae, Kim & Lee LLC
Basham, Ringe y Correa S.C.
BCM Hanby Wallace
Bernotas & Dominas Glimstedt
Čechová & Partners
Deneys Reitz Inc
Elvinger Hoss & Prussen
EMD Advocates
Garrigues
Gleiss Lutz
Kunz Schima Wallentin Rechtsanwälte OG
Law firm Miro Senica and attorneys
Lenz & Staehelin
Liepa, Skopina/ BORENIUS
Luiga Mody Hääl Borenius
Michael Shine, Tamir & Co.
Osler, Hoskin & Harcourt LLP
Pachiu & Associates
Rønne & Lundgren
Roschier, Attorneys Ltd.
Santa Maria Studio Legale Associato
Schulte Roth & Zabel LLP
Siemiątkowski & Davies
Spasov & Bratanov Lawyers' Partnership
Vasil Kisil & Partners
Vieira de Almeida & Associados
Weinhold Legal, v.o.s.
Zhong Lun Law Firm

www.ICLG.co.uk

Israel

Joseph Tamir

Michael Shine, Tamir & Co.

Shira Shine Fried

1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

The corporate entities covered in the answers below are officially listed public limited companies whose securities are admitted to trading on the Tel Aviv stock exchange ("**TASE**"), also known as "the Boursa".

The TASE was formed and constituted in accordance with certain provisions of the Israeli Securities Law, 5728 -1968 ("**the Securities Law**"). Its proper management is regulated by the Israeli Securities Authority ("**ISA**"), and is the only available public market for trading securities in Israel. The TASE, which currently lists some 650 companies, is a private company, owned by 29 members, comprised of banks and large brokers. Members are the only ones through which the trade of securities can be accomplished, although since 2005, market makers are also active in trading. The TASE is required to be managed as a public entity for all purposes, and therefore maintains a public representative majority in its Board of Directors, monitored by both the Minister of Finance and the Israeli Parliament (*Knneset*) Financial Committee.

Dual listed public companies are subject to different regulatory provisions as opposed to regular publicly listed companies, and are therefore not discussed in this article. However, it should be noted that the Securities Law allows Israeli as well as foreign companies, whose shares are traded in certain Stock Exchanges around the world, such as NYSE, NASDAQ, AMEX and London's Stock Exchange Main Market, a special swift route for registering their shares in TASE and dual list them, without going through further scrutiny and regulatory compliance.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The primary corporate legislation covering all types of companies is contained in the Companies Law, 5759-1999 ("**the Companies Law**"), which is complemented by certain provisions of its legislative predecessor - the Companies Ordinance [combined version], 5743-1983 ("**the Companies Ordinance**"). The Israeli Securities Law is also a paramount legislative item for publicly traded companies within the TASE. These laws, along with the regulations promulgated thereunder, as well as the inner regulations and guidelines enacted by the ISA and the TASE, encompass the relevant legislative and regulatory framework for Israeli corporate governance.

According to the Companies Law, which is mostly dispositive, a company may also administer and regulate its activities through detailed provisions inserted within its Articles of Association. However, the Companies Law does contain certain cogent provisional requirements, which cannot be circumvented even when approved by the company's shareholders.

The Companies Law is administered by the Ministry of Justice, which has powers to impose financial sanctions on companies which fail to comply with certain requirements stipulated therein. Such sanctions are differentiated from the criminal enforcement route, which is meant to provide additional determent. The Companies Law is also enforceable through private civil litigation

The Securities Law constitutes the basic regulatory structure for TASE Publicly listed companies. It is the law which enables the ISA to create a security net for the public, thus ensuring the prosperity of the Israeli capital market. In addition to the ISA, there are other governmental regulators, such as the Ministry of Finance and Bank of Israel, who are trusted with supervising the proper trade of securities within the TASE.

Apart from the relevant laws and regulations, the ISA publishes guidelines and instructions in its Internet Website (www.isa.gov.il). The TASE has also formulated rules which govern the trade of securities in the Boursa.

The ISA, lead by Professor Zohar Goshen since January 2008, is also active in pursuing the enactment of several amendments to the Laws detailed hereinabove, which will correlate with the 2006 "Goshen Committee for Adoption of Corporate Governance Code" ("**Goshen Committee**").

1.3 What are the current topical issues, developments and trends in corporate governance?

The field of Israeli corporate governance has changed significantly over the last few years, both through means of strict legislation, which is aimed to deter non-complying companies, sided with several initiatives which purport to assist listed companies to issue securities more easily, as well as to encourage foreign companies to become publicly traded in the TASE.

The Companies Law, which was originally enacted as a comprehensive corporate codex, has been amended several times. Additionally, the Securities Law and Regulations have been reviewed and altered, in light of the substantial progress made within the securities trade in the TASE, introducing market makers and providing numerous new financial products. A strong practical activism policy lead by the ISA, soon followed in the footsteps of the legislator.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Detailed below are some of the latest important improvements in corporate governance related laws and regulations:

In 2004, the Barnea Committee recommended to equalise the disclosure requirements of companies' annual reports, to those required when submitting stock exchange prospectus for IPO's. As a result, several amendments to the Securities Law and Regulations, which drastically changed reporting requirements in Israel, were published. The amendments included less strenuous requirements for public companies, upon issuance of short term securities, by means of allowing the use of a "ledge forecast", which is published periodically, for the issuance of such short term securities, and thus turns them into swift and financially viable procedures.

In 2005, an Amendment to the Companies Law involving derivative actions came into force. The Amendment, which presented relief for shareholders who wish to file a claim in the name of the company, has increased the percentage of derivative actions in Israel. The amendment included a payment by the plaintiff of only a portion of the court's fees, which will be reimbursed by the company in case the action is approved by the court. In any case, such derivative action will not be subject to dismissal due to non payment of court's fees. Additionally, the company will be forced to pay the plaintiff any expenses which the court ruled against it. In cases where a verdict was ruled in favour of the company, the court may decide to remunerate the plaintiff for his effort in filing the claim.

In 2006, the Goshen Committee published its report (see question 1.2 above). The Committee's recommendations were fully accepted by the ISA, and are therefore currently set as a voluntary standard, which will eventually most likely be incorporated into the relevant laws.

The Committee's recommendations involved the strengthening of control mechanisms in Israeli publicly traded companies, due to the centralised nature of the Israeli capital market and the traded companies within it, which creates an inherent concern for the existence of director's conflict of interests. Hence, it was the Committee's view that as of January 2007, companies should increase the percentage of independent members of the Board of Directors to one third (as opposed to the present requirement of at least two External Directors, regardless of the size of the Board).

As a complementary measure, the Committee recommended that an Audit Committee board will comprise out of a majority of External Directors, including the chairman of the Committee. Additionally, it is the Committee's standpoint that each transaction involving interested controlling stakeholders, shall require an approval by a majority of the non-interested shareholders, at least until a specialised Israeli court for companies and securities is established, in order to protect the interests of minority shareholders. Lastly, the Committee recommended that a publicly traded company should disclose in detail its outlay on remunerating executives, in its annual financial statements.

In 2006, the Israeli Accounting Standards Board published Accounting Regulations No. 29 "Adoption of International Financial Reports Standards - IFRS", according to which companies trading on the TASE are obliged to have adopted the international reporting terminology, no later than January 1st 2008.

In 2008, The Goshen Committee's recommendations to enhance the independence of Directors in public companies were accepted through means of enactment of the latest amendment (No. 8) to the Companies Law. The Amendment enabled companies to add a provision to the Articles of Incorporation, according to which their Board of Directors will comprise a majority of independent Directors (which include External Directors), in case the company does not have a holder of controlling interest, as opposed to one third of the Board in case such a controlling stake holder exists. Subsequently, the ISA published regulations which require companies to disclose in their annual financial statements if such independent Directors were indeed appointed, as part of the "Comply or Disclose" ISA's basic approach, by which the companies should either confirm that they comply with the ISA's Regulations, or disclose their non-compliance

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Whilst shareholders are the owners of companies, and control the composition of the Board of Directors, it is the latter which is trusted with the operation and management of the company.

However, the Companies Law and Regulations reserve certain powers to shareholders through the passing of shareholders' resolutions in a General Assembly of Shareholders, in which each shareholder is entitled to participate and vote. Among these mandatory capacities, one can include the change of the company's name, changes within the company's Articles of Association, appointment and removal of Auditors, change of Directors, increase and decrease in Registered Share Capital, approval of transactions which involve Directors and/or the controlling stakeholder as interested parties, as well as a merger of the company. Unlike Directors, shareholders are entitled to enter into agreements between themselves regarding their voting arrangements. However, as opposed to the unlimited access of members of the Board of Directors to corporate related documentation, shareholders can only review limited documents which the company is not required to disclose by law.

In cases where the Board of Directors is unable to exercise its authority, the Companies Law empowers the General Shareholders' Meeting with the ability to exercise the authority of the Board.

2.2 Can shareholders be liable for acts or omissions of the corporate entity/entities?

The general rule is that shareholders of limited liability companies are not liable for their company's acts or omissions. This is part of the basic principle that a company has an independent corporate personality.

Nevertheless, in extraordinary circumstances, such as where the corporate entity was used to defraud another person or creditors, or where it was used while taking un-reasonable risks, the courts have the authority to pierce the corporate veil and hold the shareholders liable.

According to the Companies Law, a shareholder shall act *bona fide* and in a fair manner towards the company.

Breach of the Duty of Fairness shall be treated as a breach of the Fiduciary Duty of an Office holder, which will be deemed as a contractual breach, and subject to contractual remedies as provided by law.

In cases where the corporate veil has been pierced, the court may prevent the liable shareholder from serving as director or General Manager, and to refrain from becoming involved in the formation or management of another company, for a period of up to five years from its decision.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

2.3 Can shareholders be disenfranchised?

Israeli law does not permit shareholders to become disenfranchised when their shares have been fully paid for. However, in respect of forced acquisition of shares, such as upon a takeover of a company, there are mandatory provisions which force the transfer of certain shares by minority shareholders.

2.4 Can shareholders seek enforcement action against members of the management body?

The general rule is that the proper claimant in an action which originates from a wrongdoing done to the company - is the company itself, rather than its shareholders, and therefore the courts will not interfere with the internal management of companies. There are, however, some exceptions. As mentioned in question 1.3, the Companies Law enables a shareholder to bring an action on behalf of the company through means of a derivative claim, subject to the court approval and the relevant provisions of the Companies Law (such as first addressing the company and demanding that it exercises its rights through means of filing of a claim), and to subsequently enjoy certain easements provided by Law.

The law confers on the company's shareholders or directors, to bring an action on behalf of the company, in cases where the company itself has refrained from exercising its rightful claim. Other instances where shareholders may seek enforcement action may include cases where there has been unfairly prejudicial conduct or otherwise deprivation of minority shareholders. Any discriminative action may result in the court's decision to remunerate the minority shareholders, or otherwise instruct the company to remove or prevent such discrimination.

Additionally, a company may include provisions in its Articles of Association, enabling the General Assembly to gain powers which are usually held by the company's Board of Directors and/or the General Manager, but merely in specific instances and for a limited time period, as determined in the company's Articles of Association.

In respect of securities trade related enforcement, it is within the powers of any shareholder who has an affinity to one of the company's securities (which is deemed as each one of the following: ownership, possession, sale or purchase), to initiate a class action against a company.

2.5 Are there any limitations on, and disclosures required, in relation to interests in securities by shareholders?

Subject to general takeover rules, there are no statutory limitations to the number of securities a shareholder can hold, or the timeframe in which he can build a stake in a company.

As regards disclosure, a shareholder holding more than five percent of any particular share is deemed as an Interested Party, as defined by the Companies Law, and is therefore subject to specific disclosure rules, such as reporting each purchase or sale of further securities, to the company. The company is then obliged to make regulatory disclosure of this information to the ISA, TASE, and to the public.

2.6 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

A shareholders' General Assembly will convene annually and at least 15 months following its last congregation. The agenda of such annual meeting, which is to be determined by the Board of Directors, will involve review and discussion in respect of the company's financial reports, as well as in respect of the report made by the Board. Further matters which can be discussed therein are: appointment of members of the Board of Directors; appointment of Certified Public Accountant; any matters which are to be discussed in the company's annual meeting; as well as any matters stipulated within the Articles of Association and also any matters approved by the Board of Directors.

Although the default position is for the Board of Directors to call shareholder meetings, according to the Companies Law it is within the powers of one or more shareholders, holding at least five percent of the issued share capital and at least one percent of the voting rights in the company, or one or more shareholders holding at least five percent of the voting rights in the company, to demand that the board of Directors will convene an Extraordinary General Meeting. Additionally, one or more shareholders, holding at least one percent of the voting rights at the General Meeting, is entitled to request that the Board of Directors include a matter on the agenda of a General Meeting.

Electronic voting through the internet, which is aimed to enable costs savings and improve the accessibility of information, is quite rare in Israel. Nevertheless, electronic voting is permitted when a shareholder is not registered and holds shares through a member of TASE. Such voting is subject to companies' confirmation of taking all precautionary measures for securing the information. In respect of online access for company's information, the ISA's electronic filing system (www.magna.isa.gov.il), along with the TASE filing system (www.tase.co.il) ensures access to free and continuous updated information regarding all material events involving the company, as well as trade information and corporate registration documents.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The company's organs are the General Assembly of the Shareholders, the Board of Directors which determines the company's general policy, and the General Manager who is responsible for executing the Board of Directors' plans and strategies as well as the day to day management. In principle, the General Assembly appoints the directors and the Board of Directors appoints the General Manager. Activities which are executed by the company's organs are deemed as the company's operations, and therefore bind the company even when exercised with deviance from proper authority.

The detailed capacities of each organ are specified in the Companies law. The residual authority, meaning any authority which was not specified by law or by the company's Articles of Association, is adhered to the General Manager, who operates under the Board of Directors' supervision, which may also exercise such residual authority.

It should be noted, that if the Board of Directors is unable to exercise its mandatory authorities, the General Assembly may exercise them instead, even without a proper stipulation in the corporate documents. The same rule applies as for the Board's mandate to exercise the General Manager's authorities if he is unable to act, or if he refuses to comply in accordance with the Board's instructions.

A public company has to appoint at least one General Manager, who shall be responsible for administrating the company's affairs in accordance with the Board of Directors' general policy and subject to its guidelines. Concurrent serving of the General Manager as chairman of the Board is limited. Generally, the powers of the

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Board of Directors may not be delegated to the General Manager.

Also, Generally the Board of Directors may not delegate its powers to a committee of the Board except for the purpose of recommendation. The General Manager may, with the approval of the Board, delegate any of his/her powers to any other subordinate person.

The Companies Law empowers the Board of Directors to establish committees, as it deems fit, unless the company's Articles of Association stipulate otherwise. The Board may delegate some of its capacities to committees, appointed by the Board, provided that they are not mandatory, non-conveyable capacities, and provided that all members of such committee are Board members, while at least one of the members is an External Director.

3.2 How the members of the management body appointed and removed?

Generally, it is the shareholders who control Board of Director's appointments, unless indicated otherwise in the company's Articles of Association. In that case, the law obligates the company to remove directors in the same way in which they were appointed.

However, in respect of the company's External Directors, they must be appointed by the General Assembly, while the latter cannot delegate its powers in relation to same. The term of service of an External Director of a public company is three years and that period may be extended for one additional term of three years. The External Directors can only be removed, by the order of the court, in special circumstances specified in the Companies Law.

The current mandatory requirement is for at least two External Directors to serve in a public company's Board of Directors, of which one must maintain financial accounting capabilities, and the others must have professional capabilities, as detailed by law. Additionally, if a director was convicted in any of the criminal offences stipulated within the Companies Law, his tenure will expire.

The General Manager in a public company is appointed and removed by the Board of Directors, unless otherwise provided in the Articles of Association.

Office holders in a public company, other than the Directors and the General Manager, shall be appointed and dismissed by the General Manager.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

When discussing the remuneration of Board members, the inner regulatory barriers include an approval by the company's Audit Committee, followed by approval from the Board of Directors and the General Assembly. The same rule applies when the decision to be made involves a director or otherwise a controlling shareholder's employment terms, whereas in relation to other senior executives' employment terms, approval by the General Assembly is not required.

Additional regulatory measures in respect to remuneration are also applied through the demand made by virtue of the Securities Law, to disclose the remuneration paid to its directors and certain other officers.

The remuneration of External Directors is governed by special regulations enacted under the Companies Law.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body?

Directors are permitted to own shares indefinitely in companies where they serve. However, they are required, as so are the company's senior managers, to disclose their holdings therein, and to report any changes in their shareholding within the company.

A shareholder holding at least 10% of the company's share capital, can demand to receive a full and detailed formal report from the Board of Directors, which will include a breakdown regarding payments, as well as any of the company's obligations for future payments, social benefits and pensions being paid to any of the board members within the course of three years prior to the demand for such disclosure.

Additionally, in cases of transactions made by the company with one of its Office Holders and/or directors, disclosures regarding such private interest, are required to be made to the proper company organs (Board of Directors, General Assembly, Audit Committee), which in turn are required to disclose it to the public in accordance with the proper requirements of the Securities Law and Regulations promulgated thereunder.

3.5 What is the process for meetings of members of the management body?

Board of Directors' meetings are convened whenever required, and at least once every three months, upon the request of at least two directors, and in companies where the Board consists of five directors, or where a violation of law or proper business conduct were revealed, to the request of only one director. The Chairman of the Board may demand the gathering of the Board at any time. A notice in respect of the meeting, which contains the topics on the agenda, will be served to all Board members in advance.

Nevertheless, the Board may pass resolutions without prior notice, and even without actually convening, provided that all of the Directors entitled to participate in the discussion and vote on the matter brought up for resolution have agreed thereto, unless this is prohibited by the Articles of Association. Usually, a majority of the Board is required as quorum, in order for a meeting to be convened. Agreements between Board members regarding their voting in Board meetings are prohibited and deemed as a breach of their Fiduciary Duties toward the company.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Directors are subject to strict Fiduciary Duties. They are required to hold and maintain proper capabilities, as well as to reserve the time to properly perform their duties and promote the company's success, and are accordingly required to declare their fitness prior to their appointment, as well as to notify if they have become unfit following their appointment and during their tenure. They are required to avoid conflicts of interest between their duties to the company and any personal interest they may have, and to notify and disclose any information relevant to the company's business or interests. The main duties of the Directors toward the company are the Duty of Care (means the duty to act and perform as a reasonable director and to obtain all information and data needed for the fulfilment of the director's duties) and the Fiduciary Duties, meaning the duties to act *bona fide* for the best interest of the company. A director who is in breach of the Duty of Care might be held accountable for being negligent, while breach of Fiduciary Duties are considered to be a breach of the contract between the

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Director and the company. It should be noted that in recent years, the Supreme Court has ruled that the level of performance which is required from the Directors in a public company is high, and include the duty to actively participate in the Board's meetings and constantly respond to any significant development in a company's position.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

Generally, the Board of Directors is charged with defining and prioritising the company's long term strategy and goals, and will supervise the General Manager's execution of same. In addition, the Board shall, *inter alia*: examine the company's financial status and set the credit limit of the company; determine the organisational structure of the company and its wage policy; be responsible for preparing financial reports; report to the Annual General Meeting on the position of the company's business and on the outcome of its activities; appoint and remove the General Manager; decide on general acts and transactions requiring its approval; allot shares and securities convertible to shares; resolve to affect a distribution; give its opinion on special tender offers; and establish Board committees as it sees fit. The aforesaid powers of the Board of Directors may not be delegated to the General Manager.

3.8 What public disclosures concerning management body practices are required?

The Board of Directors of each listed public company must submit immediate reports on all material matters involving its affairs, and may influence the public investors. Such Immediate reports are published in the ISA's filing system "Magna" (see question 2.6 above). Additionally, ISA regulations promulgated pursuant to the Goshen Committee's report, obligate public companies to disclose if they have adopted the Goshen Committee Corporate Governance Code, as well as the Laws, Regulations and Rules promulgated pursuant to its publication. However, the demand is to "comply or disclose", without any need of detailing the reason for non-compliance. Additionally, the company must disclose any unusual remuneration and/or bonuses to members of the company's management.

Apart from the disclosures pertaining to the company's Board of Directors as a whole, it is within the responsibilities of each member of the Board, as part of his Fiduciary Duty, to disclose to the company any information involving the company's affairs, which was brought to his attention by virtue of his capacities. Other specific mandatory disclosures, such as pertaining to a Director's criminal conviction, or whether upon loss of legal capacity, is mandated by certain provisions set within the Companies Law.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Although a company may not indemnify Office Holders in respect of breaches of their Fiduciary Duties, it may install an antecedental provision to exempt them from their Care Duties toward the company (except for such duties involving a distribution) as well as from their liabilities towards third parties.

A similar provision to exempt Office Holders from damages emanating from breach of their Duty of Care towards third parties is also viable. Another provisional exemption may be inserted in respect of debts, expenses or other financial liabilities imposed on Office Holders, when such liabilities emanated from actions or omissions were brought about by virtue of their capacities and due on account of breach of their Care Duties towards the company, or even by their breach of their Fiduciary Duty toward same, provided that they acted in good faith and had reasonable foundation of presuming that the act would not harm the good of the company.

A decision to exempt, insure or indemnify Office Holders and/or Directors must be approved by the Companies respective Organs, as detailed within the Companies Law.

4 Corporate Social Responsibility

4.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

The role of Corporate Social Responsibility ("**CSR**") in Israeli public companies has increased substantially within the past few years. Following the pioneer work of international wide spread corporate entities, whether Israeli based, or through their influence on Israeli subsidiaries or representatives, there are nowadays many public companies which employ CSR managers. However, not including two exceptions from 2007, reporting standards have yet to be exhausted by Israeli companies, so much as to enable the filing of reports to the private CSR promotional organisation known as the "Global Reporting Initiative" ("**GRI**").

In 1998, an Israeli private association called "MAALA-business for social responsibility" ("**MAALA**") was formed in order to facilitate and promote CSR within Israeli companies. The Association aspires to be the leading professional resource available to assist Israeli businesses in developing and implementing a CSR strategy that contributes both to the companies' success and to the enrichment of Israeli society. MAALA, which is mainly funded by its member companies, inaugurated a CSR rating in 2003, which was achieved by presenting a wide spread questionnaire for TASE companies, then examined by a public committee. Subsequently, a Socially Responsible Investing Index ("**SRI**"), which is comprised of the 20 top rated TASE companies in the field of CSR, was launched. This index is publicly traded.

In 2008, the rating included 39 public companies. This year's grading questionnaire inaugurated a chapter involving corporate governance.

4.2 What, if any, is the role of employees in corporate governance?

The Companies Law does not distinguish a specific role for employees in corporate governance. However, the Employment Protection Act (Exposure of Violations, Misconduct or administrative Impropriety) 5775 1997, as well as activists judicial rulings of labour courts, have been used for protection of employee's rights.

Courts may intervene in favour of employees whenever the latter's rights were violated and/or adversely affected under any applicable law, due to their attempt to safeguard theirs as well as their colleague's rights. For example, courts are entitled to award remuneration for any harmed employee, as well as rule a conjunction order which abolishes employee lay offs, in cases where such dismissal emanated from the employee's claims for the company's misconduct or violation of mandatory employment conditions.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

5 Transparency

5.1 Who is responsible for disclosure and transparency?

Under Israeli Law, it is generally the Board of Directors as a whole, which is responsible for the company's disclosure and transparency. Within the framework of its responsibilities and obligations, the Board will be in charge for the preparation and ratification of the company's financial reports, as well as for reporting the company's current status and affairs at each Annual General Meeting. As mentioned above, the Board must appoint an Audit Committee from among the Board members, who is trusted with the role of scrutinising the company's business management, in addition to an appointment of a Certified Public Accountant who is charged with reviewing and advising in respect of the company's financial reports. Accordingly, the Board, the Audit Committee and the Certified Public Accountant play a paramount role in ensuring proper internal disclosure of the company's affairs.

Other than the company's internal supervision mechanisms, it is required to report its financial status to the ISA, the TASE and to the Registrar of Companies. A public company must submit both annual and quarterly financial reports, as well as immediate reports relating to any material event involving the company, all of which are published on the ISA website and are open for review by the public.

5.2 What corporate governance related disclosures are required?

As regards financial reports, all listed public companies must prepare and publish audited annual reports, un-audited quarterly reports, and a Board of Directors' report which summarises and explains any recent changes within the company - all of which as per required by the Securities Law and Regulations enacted thereunder. Additionally, listed companies must submit *ad-hoc* reports such as inside information likely to have a significant effect on the company's affairs, and in regards to traded securities. The annual and quarterly accounts must contain prescribed financial information and Directors' and Auditors' reports, which will enable investors to properly review the company's status. Additionally, Israeli law obligates each company to keep accounting records which will enable contemporary inner regulations by the Board of Directors, as well as possibility for immediate disclosures.

5.3 What is the role of audit and auditors in such disclosures?

The Companies Law requires public companies to appoint an Audit Committee, as well as an Certified Public Accountant, both of which are trusted with supervising the company's proper business conduct, and serve as regulators from within the company. Unlike other Board committees, whose formation is optional, the establishment of an Audit Committee is mandatory. The chairman of the Board of Directors, as well any Director employed by or otherwise providing services to the company, and a controlling shareholder or any relative of a controlling shareholder, may not be a member of the Audit Committee, which must consist of at least three Directors. A decision made by the Audit Committee, where its official authorisation was delegated by the Board of Directors, will be deemed as a decision of the Board, unless otherwise indicated in the company's Articles of Association.

The Companies Law obligates companies to appoint an External Certified Public Accountant who is appointed by the General Assembly. The Certified Public Accountant will be unconnected, whether directly or indirectly, with the company's affairs and its appointment will be for one year.

The Certified Public Accountant has the right to review any of the company's documents, to receive an explanation regarding their content at any time, and to participate in the General Assembly, in which financial reports are submitted and/or reviewed. Accordingly, the Certified Public Accountant is obliged to report any irregularities discovered in the company's financial reports, the result of which will be the immediate gathering of the Board, and will be responsible toward the company for his opinion in respect of the company's financial reports.

In addition, the Board will appoint an Internal Auditor, at the proposal of the Audit Committee, whose role is to examine, whether the company's actions comply with the law and orderly business procedures.

5.4 What corporate governance information should be published on websites?

As mentioned in question 2.6 above, the ISA operates a filing system, which contains all mandatory reports required to be disclosed by public companies by power of the Securities Law and relevant regulations, among which are yearly audited financial reports, quarterly unedited financial reports, as well as immediate reports on all material matters concerning the company.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Joseph Tamir

Michael Shine, Tamir & Co.
49 Rothschild Blvd.
Tel Aviv
65784 Israel

Tel: +972 3560 3001
Fax: +972 3560 3002
Email: Joseph@shinelaw.com
URL: www.shinelaw.com

Joseph Tamir, is a graduate of the Hebrew University, LL.B., Bar-Ilan University, LL.M. He is the author of several law books in the area of commercial law and is the co-author of articles published in leading law journals on the subject of dispute resolution, M&As, and Israeli law. Tamir has extensive experience in litigation and handling commercial disputes, which has been acquired at all courts levels. **Practice areas:** litigation, arbitration, commercial law, corporate Law, property law. Mr. Tamir manages the Local Practice Division.

Shira Shine-Fried

Michael Shine, Tamir & Co.
49 Rothschild Blvd.
Tel Aviv
65784 Israel

Tel: +972 3560 3001
Fax: +972 3560 3002
Email: Shira@shinelaw.com
URL: www.shinelaw.com

Shira Shine-Fried, a graduate of the University of Manchester (U.K), chairs the Trust Committee of the Tel Aviv District Israel Bar Association and is the co-author of several articles published in leading law journals on the subject of M&As, international taxation and the use of trusts. Mrs. Shine-Fried manages the International Practice Division.
Practice areas: commercial law; family asset structuring and planning, trust law, international tax and estate planning and M&As.

Michael Shine, Tamir & Co. is a leader in Israel in multinational family asset protection and structuring. The firm maintains an "in-house" fully licensed foreign Trust Company, which solely services the highest due diligence and compliance standards. The firm offers a fully comprehensive group of service companies providing corporate directorships and corporate nominee and fiduciary services. The firm also specialises in commercial law, real estate, mergers and acquisitions, foreign investment transactions, commercial litigation, succession and inheritance and not-for-profit organisations.

The firm's staff complement is 33, comprising 3 Partners, 10 Associates, a Compliance Officer, 3 Financial Managers, 3 paralegals, and a back-up administrative staff of 11, as well as 2 in-house tax consultants.

© Published and reproduced with kind permission by Global Legal Group Ltd, London