Private Banking & Wealth Management 2022

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the sixth edition of *Private Banking & Wealth Management*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Brazil.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Shelby R du Pasquier of Lenz & Staehelin, for his continued assistance with this volume.

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1 | What are the main sources of law and regulation relevant for private banking?

These are:
- the Securities Law 1968.
- the Banking Ordinance, 1941; the Banking Supervision Department and its directives.
- the Banking Law (Service to Customers) 1981.
- the Banking Law (Licensing) 1981.
- the Trust Law 1979.
- the Agency Law 1965.
- the Tort Ordinance [New Version] 1968.
- the Protection of Privacy Law 1981.
- the Bar Association Law 1961.
- the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995.
- the Prohibition on Money Laundering Law 2000.
- the Bank of Israel Law 2010.
- the Payment Systems Law, 2008.
- the Contracts Law (General Part) 1973.
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- Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2001.
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- Prohibition of Money Laundering (Obligations of Portfolio Managers to Identify, Report and Retain Lists for the Purpose of Preventing Money Laundering and Financing Terrorism) 2010.
- The Reduction of Use of Cash Law 2018.

Regulatory bodies

2 | What are the main government, regulatory or self-regulatory bodies relevant for private banking and wealth management?

These are:
- The Israeli Securities Authority (ISA);
- the Banking Supervision Department (BSD);
- the Israel Money Laundering and Terror Financing Prohibition Authority;
- the Accountants Council;
- the Israel Bar Association (IBA);
- the Bank of Israel;
- the Registrar of Companies;
- Registrar of Hekdeshot (Registrar of Public Trusts); and
- the Commissioner of Business Service Providers.

Private wealth services

3 | How are private wealth services commonly provided in your jurisdiction?

Each of the large banks has an extensive private banking department. There are also highly experienced asset management and advisory companies. Multi-family offices are usually managed for the benefit of specific high net worth families, in most cases by accountants. There are also investment opportunities via insurance companies, which provide provident funds. The private wealth services can also be provided by licensed portfolio managers.

Definition of private banking

4 | What is the definition of private banking or similar business in your jurisdiction?

There is no one specific definition. The term 'private banking' is commonly interpreted as referring to the scope of financial services provided to high net worth individuals. In some banks, there is a threshold amount (a minimum amount of between US$500,000 and US$1 million) that must be held in an account to qualify for private banking services.

Licensing requirements

5 | What are the main licensing requirements for a private bank?

Under the Banking (Licensing) Law 1981, the Governor of the Bank of Israel (the Governor) may, at his or her discretion, and after consulting with the Licensing Committee, issue a banking licence to a company. In issuing licences under this law, the following matters shall be taken into consideration:
- the applicant's plan of action and probability of its fulfilment;
- the suitability of the holders of means of control, the directors, and the managers for their positions;
- the contribution of issuing the licence to competitors in the capital market and, in particular, to competitors in the banking industry and the standard of its service;
- the government's economic policy;
- the public interest; and

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- with respect to a foreign bank – reciprocity in banking corporation licensing between Israel and the country in which the applicant has its main business.

Furthermore, a licence shall not be issued unless the applicant's issued and paid-up capital is no less than the sum set out in the First Addendum of the Banking (Licensing) Law, according to which, for an Israeli bank the minimum paid-up capital is 10 million Israeli shekels, and for a foreign bank – foreign currency equivalent to 10 million shekels.

Licensing conditions

6 | What are the main ongoing conditions of a licence for a private bank?

A financial corporation must obtain a licence to operate as a bank in Israel. Most foreign banks do not obtain such a licence and are, therefore, not permitted to conduct banking activities in Israel. For this reason, foreign banks usually maintain a representative office in Israel. Israeli banks usually maintain an internal private banking department.

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The application procedure consists of five stages and takes a minimum of six months.

LICENCES

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8 | How long does it take to obtain a licence for a private bank?

The application procedure consists of five stages and takes a minimum of six months.

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9 | What are the processes and conditions for closure or withdrawal of licences?

Under the Banking (Licensing) Law, 1981, the Governor may, after consulting with the Licensing Committee, withdraw a licence under one of the following conditions, and after providing sufficient opportunity to the licence holder to object:

- the entity requested to cancel the licence;
- the entity did not start the business or stopped the business;
- the entity does not fulfil the requirements of the licence;
- the entity does not fulfil the capital requirements;
- the entity breached the law in a way that its credibility is affected;
- an order to liquidate the entity or to appoint a liquidator was given subject to certain exceptions;
- the entity decided to be voluntarily liquidated; or
- there is a public interest to withdraw the licence.

With respect to any entity engaging in investment advice, marketing investments or portfolio management, the Investment Advising Law establishes an independent disciplinary tribunal, whose job is to impose disciplinary sanctions on licensees who have violated the fiduciary duties of trust and care towards their clients. The tribunal is an independent committee appointed by the Minister of Justice, which is authorised to impose sanctions on licensees, including warnings, censures, fines or the suspension or revocation of licences.

In addition, an action can be brought before the courts on different grounds, such as the criminal offence of money laundering or the civil offences of violating fiduciary duties or fraud. Such a process can also result in the withdrawal of a licence.

Wealth management licensing

10 | Is wealth management subject to supervision or licensing?

Under the Banking (Licensing) Law, 1981, a company seeking to act as a bank must obtain a license. In addition, the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995 provides as follows:

- 'Investment advising' – giving advice to others on the profitability of investing in, holding, acquiring or selling securities or financial assets; for this purpose, 'advice' – whether direct or indirect, including by means of publication, in circulars, in professional opinions, by mail, facsimile or any other medium, exclusive of advertising by the state or by a body corporate that performs a lawful function within the limits of its responsibility.
- 'Investment portfolio management' – the performance of transactions, at the performer's discretion, on account of another person.

Although the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law distinguishes between investment advising (non-discretionary) and investment portfolio management (discretionary), both activities require that a licence be obtained.

Requirements

11 | What are the main licensing requirements for wealth management?

Under the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995, the legal requirement to be licensed applies both to individuals and entities engaged in providing investment advice, in marketing investments or in portfolio management. Individual investment advisers can either be self-employed or employees of a licensed advisory firm or a (commercial) banking corporation. Portfolio managers are entitled to work solely as employees of licensed portfolio management firms. However, there is no requirement for a director, CEO, shareholder, controlling person of a portfolio management firm to be licensed.

Licensing of individuals

An individual wishing to engage in a licensed investment profession must meet the following criteria:

- be at least 18 years of age;
- be a citizen or resident of Israel;
- has not been convicted of a crime (among the crimes stipulated in the Investment Advising Law);
- has successfully completed the professional exams administered by the Israeli Securities Authority (ISA) in the following subjects:
  - Securities Law, 1968, and professional ethics;
  - accounting;
  - statistics and finance;
  - economics;
  - securities and financial instrument analysis; and
  - portfolio management (for portfolio manager applicants only);
- has completed an internship (six months for investment advisers and marketing agents, nine months for portfolio managers);
- must secure professional indemnity insurance for the minimum amount stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management

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Regulations (Application for a Licence, Examinations, Internship and Fees), 1997; the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 1997; and the update of equity and insurance amounts required of licensees in 2016.

Notwithstanding the conditions mentioned above, in special circumstances the ISA is authorised to grant an exemption from examinations and internships under section 8A of the Securities Law.

The ISA reserves the right to withhold a licence from an individual who meets all the above criteria if circumstances exist that render the applicant unfit to be licensed (fit and proper tests).

Licensing of entities

Only entities legally established in Israel are entitled to obtain a licence. An applicant entity must comply with the following requirements:

- it must undertake that it will only employ licensed individuals for the purpose of rendering investment advice, investment marketing or portfolio management services;
- it must undertake that no individual that, to the best of the company's knowledge, has been convicted of one of the crimes stipulated in the law, or whose licence has been either suspended or revoked, will serve as an executive or director;
- it must fulfil minimum capital requirements as stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997; and the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 2000;
- it has secured insurance, a bank guarantee or deposit of the sum stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997; and the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 2000; and
- An additional requirement is placed on portfolio management firms. These firms are prohibited from engaging in underwriting services and can only engage in investment advice, investment marketing, portfolio management and ancillary activities.

Exceptions from obtaining a licence

The following occupations do not require a licence pursuant to the Investment Advising Law:

- investment advising or investment portfolio management for no more than five clients during a calendar year, by an individual who does not engage in investment advising or investment portfolio management in the framework of a licensed corporation or a banking corporation;
- investment advising or investment marketing that the person provides by virtue of his or her membership in an investment committee or a board of directors of a corporation, and which is provided only to that corporation while carrying out his or her function as a member of the committee or board of directors, whichever is relevant;
- management of a corporation's investment portfolios, by a party doing so as part of carrying out his or her function in that corporation or in a corporation that is affiliated with that corporation;
- investment advising or investment portfolio management for a family member;
- investment advising by a corporation whose main occupation is the appraisal of corporations, if it does not engage in other investment advising or in portfolio management;
- investment advising or investment portfolio management by an accountant, attorney, or tax adviser, when such activities accompany a service provided to a client within the field of their respective professions;
- investment portfolio management by a party that has been appointed by a court order or by the order of a competent tribunal to act with respect to the assets of another party, in the course of carrying out such duties;
- investment advising, investment marketing or investment portfolio management, for a qualified client, which is defined as one of the following:
  - a joint investment trust fund or a fund manager;
  - a management company or provident fund as defined in the Provident Funds Control Law.
  - an insurer;
  - a banking corporation or an auxiliary corporation as defined in the Banking Law (Licensing), other than a joint services company;
  - a licensee;
  - a stock exchange member;
  - an underwriter qualified under the Securities Law; or
  - a corporation, other than a corporation that was incorporated for the purpose of receiving services, with equity exceeding 50 million shekels; in this paragraph, the term 'equity' – includes the definition given to that term by foreign accounting rules, international accounting standards, and accepted accounting principles in the United States;
  - an individual for whom one of the following conditions is met and who has given his or her consent in advance to being considered a qualified client for the purpose of this law:
    - the total value of the cash, deposits, financial assets, and securities owned by the individual exceeds 12 million shekels.
    - the individual has expertise and skills in the capital market field or has been employed for at least one year in a professional position that requires capital market expertise; or
    - the individual has executed at least 30 transactions, on average, in each quarter during the four quarters preceding his or her consent; for this purpose, the term 'transaction' will not include a transaction executed by a portfolio manager for an individual who has entered into a portfolio management agreement with the manager;
  - a corporation that is wholly owned by investors who are among those listed above; or
  - a corporation that was incorporated outside Israel, whose activity has characteristics similar to those of a corporation listed above.

Licensing of trustees

Trustees are not required to obtain a licence. However, trustees of certain trusts must file tax reports with the Israeli Tax Authorities.

Trustees of public trusts (a trust whose objectives are the furtherance of a public purpose) are obliged to report to the Registrar of Hekdeshot (Registrar of Public Trusts) within 30 days of their appointment as trustee. The registrar must be informed of certain matters outlined in the law including changes concerning the purposes, assets, settlor or trustee.

A public trustee, which refers to the Administrator General, may be appointed by the court in certain situations.

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12 What are the main ongoing conditions of a wealth management licence?

Payment of an annual fee in accordance with the Regulations of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997.

ANTI-MONEY LAUNDERING AND FINANCIAL CRIME PREVENTION

Requirements

13 What are the main anti-money laundering and financial crime prevention requirements for private banking and wealth management in your jurisdiction?

The Directive titled 'Supervisor of Banks: Proper Conduct of Banking Business (6/15) [13] pages 411–1, Prevention of Money Laundering and Terrorism Financing, and Customer Identification' imposes identification of the client obligations (know your customer (KYC)) on banks in Israel. The Directive requires that each bank adopts a KYC procedure in accordance with the Directive, that an officer in charge of obligations under the Anti Money Laundering Law be appointed, that the bank identifies each new client, and monitors high-risk clients and certain transactions.

Furthermore, on 16 March 2015, the Supervisor of Banks issued a circular titled 'Managing risks deriving from customers' cross-border activity'. According to the circular, foreign resident clients of Israeli banks are required to declare their residency for tax purposes and confirm that their financial assets have been declared to the relevant tax authority in their jurisdiction of residence. Moreover, they are required to waive confidentiality vis-à-vis the relevant tax authority abroad. Failure to comply with all these requirements may result in the bank's refusal to open the account or blocking of activities in an existing account.

Under a circular of the Supervisor of Banks issued on 26 January 2016, titled 'Managing risks involved in operating a voluntary disclosure programme in Israel', the mere fact that the financial assets in the account have been declared to the relevant tax authority does not derogate from the bank's obligation to establish that the financial assets do not derive from a predicate offence under the applicable anti-money laundering legislation.

To comply with all the above, all banks require evidence with respect to the following:

- the origin of the funds and providing information of how the funds were accrued (earnings, savings, inheritance);
- confirmation that the financial assets have been properly declared to the relevant tax authorities;
- the nature of the transactions. In this respect, is should be noticed that Tax offences are predicate offences under the Anti Money Laundering Law 2000; and
- identification of all entities and persons involved (specifically, the identification of all beneficial owners).

Politically exposed persons

14 What is the definition of a politically exposed person (PEP) in local law? Are there increased due diligence requirements for establishing a private banking relationship for a PEP?

The Anti Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2014, imposes KYC obligations on attorneys and accountants when providing certain services, described as business services. The Order defines a 'foreign politically exposed person' as:

> *a foreign resident holding a senior public position abroad, including a relative of a resident as aforesaid or a corporation under his control or a business partner of one of them; in this context, 'senior public position' – including a head of state, president of a state, mayor, judge, member of parliament, government minister or a senior army or police officer, or anyone actually holding such office as aforesaid even if his official title is different.*

The Order further states that a client considered a 'foreign politically exposed person' is an indication of a high risk for money laundering or terrorist financing, and therefore requires broader KYC inspection.

The Israel Money Laundering and Terror Financing Prohibition Authority published a circular titled 'The Prevention of Money Laundering that Originates in Corruption and in Bribery of Foreign Politically Exposed Persons, and the procedure to Identify Irregular Activity Relating to them'. The circular provides guidelines for conducting increased due diligence processes for such clients.

Documentation requirements

15 What is the minimum identification documentation required for account opening? Describe the customary level of due diligence and information required to establish a private banking relationship in your jurisdiction.

The due diligence process includes identity, utility bills, source of funds for which the business service is being performed and confirmation that the funds were declared in the country of residence of the client, which may include professional confirmations (including evidence of tax compliance), documentary evidence of the specific financial transaction (eg, real estate contracts, gifts deeds).

Tax offence

16 Are tax offences predicate offences for money laundering? What is the definition and scope of the main predicate offences?

The Anti Money Laundering Law, 2000 was amended to include certain tax offences as predicate offences. The First Addendum of the Law lists the predicate offences. The tax offences listed in the Addendum are certain tax offences under the following tax legislation: Value Added Tax Law 1975, Income Tax Ordinance [New Version] 1961, and the Law for the Taxation of Real Property (Capital Gains and Purchase) 1963. For example, the tax offences under the Income Tax Ordinance that are considered as predicate offences are defined in subsection 17b of the Addendum, which requires that such an offence be committed under section 220 of the Income Tax Ordinance, and fulfil one of the following:

- The income resulting from the tax offence is in an amount higher than 2.5 million shekels in a period of four years, or in an amount higher than 1 million shekels in a period of a year.
- The tax offence, or an offence in accordance with sections 3 or 4 of the Anti Money Laundering Law which originated in the tax offence, was committed with sophistication, and the income from the tax offence is in an amount higher than 625,000 shekels;
- The tax offence, or an offence in accordance with sections 3 or 4 of the Anti Money Laundering Law that originated from the tax offence, was in relation to a criminal organisation or a terror organisation as defined in section 17a herein.
- An offence in accordance with sections 3 or 4 of the Anti Money Laundering Law that originated from the tax offence and was committed by someone other than the taxpayer.

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Subsections 17a and 17c provide similar conditions. Subsection 17a relates to offences under the Value Added Tax and subsection 17c relates to offences under the Law for the Taxation of Real Property (Capital Gains and Purchase). In both cases, the offence is considered a predicate offence provided it was committed with respect to a certain minimum amount, or if it was committed with sophistication, or with relation to a criminal or terror organisation, or with the assistance of a third party.

Compliance verification

17 | What is the minimum compliance verification required from financial intermediaries in connection to tax compliance of their clients?

Attorneys and accountants are subject to KYC obligations under the Anti Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2014.

Under the said Order, any attorney or accountant who is requested by a client to provide a business service as listed in the Order (ie, real estate transactions, mergers and acquisitions, entity incorporation, management and administration and management of assets (including financial assets)) is required to obtain a declaration from the client, as to the nature of the business service, the identity of the persons and entities involved and the source of the funds. Should the attorney or accountant suspect that the business service may be considered money laundering in accordance with red flags published as guidance, he or she must conduct further investigation into the matter, and if the suspicion persists, he or she must refrain from providing services to the client.

To facilitate the evaluation process of the attorney or accountant, the 2014 Order lists indications (red flags mentioned above) of a high-risk disposition, which require further examination, and may result in refusal of the attorney or accountant to provide the requested service.

The business service provider is obligated to maintain records in accordance with the Order. There is no filing requirement of a suspicious transaction report to any governmental agency or other third party, but the records of business service providers may be subject to inspection by the Israel Money Laundering and Terror Financing Prohibition Authority. Failure to comply with the requirements of the Order may result in an ethical violation.

Financial intermediaries (any third party dealing with the financial assets, other than attorneys or accountants) are required to obtain evidence that the client is tax compliant, and that the origin of the funds is not derived from money laundering activities.

The Designated Non-Financial Business and Profession Supervisor may review these records of attorneys and accountants at the Department of Justice.

Liability

18 | What is the liability for failing to comply with money laundering or financial crime rules?

This is a serious criminal offence. Under the Anti Money Laundering Law, a money laundering offence may be punishable by up to 10 years' imprisonment, or by a penalty of up to 4.52 million shekels. In addition, monies may be subject to seizure by the state in an amount determined to have been subject to the anti-money laundering legislation.

Furthermore, under the Anti Money Laundering Law, a bank corporation, as well as other financial bodies such as a financial services provider, a portfolio manager, and an insurance company, that fail to comply with the provision of the law commit a criminal offence, punishable by a fine of up to 2.26 million shekels for each employee committing the offence and for the corporation itself. In addition, such bank or corporation is subject to administrative sanctions such as losing its license to operate its business.

CLIENT CATEGORISATION AND PROTECTION

Types of client

19 | Does your jurisdiction's legal and regulatory framework distinguish between types of client for private banking purposes?

According to the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995, an entity engaging in investment advice, in marketing investments or in portfolio management is exempt from obtaining a licence if the client is a 'qualified client'.

A qualified client among those defined below:

- a joint investment trust fund or a fund manager;
- a management company or provident fund as defined in the Provident Funds Control Law;
- an insurer;
- a banking corporation or an auxiliary corporation as defined in the Banking Law (Licensing), other than a joint services company;
- a licensee;
- a stock exchange member;
- an underwriter qualified under the Securities Law;
- a corporation, other than a corporation that was incorporated for the purpose of receiving services, with equity exceeding 50 million shekels; in this paragraph, the term 'equity' – includes the definition given to that term by foreign accounting rules, international accounting standards, and accepted accounting principles in the United States;
- an individual for whom one of the following conditions is met and who has given his or her consent in advance to being considered a QC for the purpose of this law:
  - the total value of the cash, deposits, financial assets and securities owned by the individual exceeds 12 million shekels;
  - the individual has expertise and skills in the capital market field or has been employed for at least one year in a professional position that requires capital market expertise; or
  - the individual has executed at least 30 transactions, on average, in each quarter during the four quarters preceding his or her consent; for this purpose, the term 'transaction' will not include a transaction executed by a portfolio manager for an individual who has entered into a portfolio management agreement with the manager.
- a corporation that is wholly owned by investors who are among those listed above; or
- a corporation that was incorporated outside Israel, whose activity has characteristics similar to those of a corporation listed above.

Client categorisation

20 | What are the consequences of client categorisation?

According to the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995, an entity engaging in investment advice, in marketing investments or in portfolio management is exempt from obtaining a licence if the client qualifies as a qualified client. There is no other categorisation among clients, therefore as long as a client is considered as a qualified client, regardless of the value of his or her assets, he or she shall be dealt with similarly.

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Consumer protection

21 | Is there consumer protection or similar legislation in your jurisdiction relevant to private banking and wealth management?

There is no legislative protection; however, experience has indicated that the Israeli government and the Bank of Israel will attempt to avoid a bank's collapse that might result in an overall financial crisis. In certain cases of bankruptcy of a bank in the past, the Bank of Israel assumed the obligations of the bank and paid the clients the value of their bank deposits. Nevertheless, there is no guarantee that such actions will be taken in the future in an event of a collapse of a bank.

EXCHANGE CONTROLS AND WITHDRAWALS

Exchange controls and restrictions

22 | Describe any exchange controls or restrictions on the movement of funds.

The Currency Control Law 1978 provided that any transaction of an Israeli resident with a foreign resident or in a foreign currency required a permit. This law and its regulations were abolished with respect to individuals in 1998, and with respect to financial institutions in 2003.

Withdrawal restrictions

23 | Are there restrictions on cash withdrawals imposed by law or regulation? Do banks customarily impose restrictions on account withdrawals?

There are no restrictions on cash withdrawals, regardless of the currency in which the withdrawal is made. However, Under section 8(a)(1) of the Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2001, a banking corporation must report to the Israel Money Laundering and Terror Financing Prohibition Authority any deposit or withdrawal of cash , whether in shekels or in foreign currency, in an amount equivalent to 50,000 shekels at least. The procedure of submitting such reports can be found in the Prohibition on Money Laundering (Modes and Times for Transmitting Reports to the Data Base by Banking Corporations and the Entities Specified in the Third Schedule to the Law) Regulations 2002.

It should also be noted that certain limitations apply on cash transactions. The Reduction of Use of Cash Law 2018, came into force in January 2019. Its purpose is to prohibit the use of undeclared funds and to assist in the fight against criminal activity, including serious crimes, tax evasion, money laundering and terrorist financing. Under this law, limitations are imposed on cash payments in accordance with the identity of the parties to the transaction:

Restrictions on cash payments

- No cash payment may be given or received by a business (dealer) in a transaction carried out in the course of the dealer's business in an amount exceeding 11,000 shekels.
- No cash payment may be given or received by a person who is not a dealer in any transaction in an amount exceeding 50,000 shekels.
- No cash payment may be given by a person who is not a dealer to a dealer in the course of the dealer's business in a transaction in an amount exceeding 11,000 shekels.
- No cash payment may be received by a dealer from a tourist in a transaction carried out in the course of the dealer's business in an amount exceeding 55,000 shekels.
- No cash payment may be given or received by any person as a wage, donation, or a loan in an amount exceeding 11,000 shekels, except for such granted by a supervised financial entity.
- No cash payment may be given or received by any person as a gift in an amount exceeding 50,000 shekels.

Restrictions on lawyers and accountants

Lawyers and accountants are subject to the restrictions imposed on dealers as mentioned above. Without derogating from the aforesaid, lawyers and accountants who receive cash for providing a 'Business Service' are subject to the following limitations:

- no cash payment may be received from a dealer in the framework of his business in an amount exceeding 11,000 shekels; and
- no cash payment may be received from a person who is not a dealer in an amount exceeding 50,000 shekels.

A business service is any of the following:

- buying, selling or long-term leasing of real estate;
- buying or selling of a business;
- management of a customer's assets, including management of money, securities, and real estate, as well as the management of accounts of a customer in a banking corporation or in one of the entities listed in items 1 to 4 and 6 of the third schedule of the prohibition on money laundering law 2000;
- receipt, possession or transfer of funds for the purpose of establishing or managing a corporation; and
- establishment or management of a corporation, business or trusteeship for another.

The above restrictions shall not apply in the following instances

- Cash payment between family members, excluding cash payment for wages.
- Authorities that are exempt by the Minister of Finance. One such authority is the Israeli Security Agency.
- Businesses granting interest-free credit to persons or to other such businesses, with respect to donations, loans, and gifts. This exemption applies only until the coming into force of the Law for the Regulation of Granting Interest-Free Deposit and Credit Services by Charity Institutions 2019, currently scheduled for July 2022, unless the Minister of Finance issues an order stating otherwise.

Restrictions on the use of checks

No payment made through the medium of a check may be given or received by a dealer in the course of the dealer's business in a transaction or as a wage, a donation, a loan or a gift, without the name of the recipient noted on the check as a payee or endorsee, as the case may be.

No payment exceeding 5,000 shekels made through the medium of a check may be received by a person who is not a dealer from a dealer in a transaction or as a wage, a donation, a loan or a gift, without the name of the receipt of the check noted on the check as a payee or endorsee, as the case may be.

No payment made through the medium of a check may be given by a person who is not a dealer to a dealer in the course of the dealer's business in a transaction or as a wage, a donation, a loan or a gift, without the name of the dealer noted on the check as a payee or endorsee, as the case may be.

No payment exceeding 5,000 shekels made through the medium of a check may be given by a person who is not a dealer to another person who is not a dealer in a transaction or as a wage, a donation, a loan or a gift, without the name of the receipt of the check noted on the check as a payee or endorsee, as the case may be.

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A person shall not endorse a check nor receive an endorsed check, without the name and identification number of the endorser noted on the check.

A banking corporation, the Postal Bank or a licence holder for the provision of deposit and credit services (collectively – a Bank), shall not pay out a check in any of the following instances:

when the name of the payee is not noted on the check;

in the case of an endorsed check in an amount exceeding 10,000 shekels:

- When the names of the endorser and endorsee, as well as the identification number of the endorser, are not noted on the check.
- When the check has been endorsed more than once, unless after the first endorsement the check has been submitted to a bank for payment, or the second endorsement is to a regulated financial intermediary.

Sanctions on a violation

If the violation is made by a dealer, it is sanctioned as follows:

- A violation in an amount less than 25,000 qualified client is sanctioned at the rate of 15 per cent of the sum involved.
- A violation in an amount exceeding 25,000 qualified client and up to 50,000 qualified client is sanctioned at the rate of 20 per cent of the sum involved.
- A violation in an amount exceeding 50,000 qualified client is sanctioned at the rate of 30 per cent of the sum involved.

If the violation is made by a person who is not a dealer or a tourist, it shall be sanctioned in accordance with the Administrative Offenses Regulations (Administrative Fine – Reduction of Use of Cash), which will be enacted in the future.

24 Are there any restrictions on other withdrawals from an account in your jurisdiction?

There are no restrictions on withdrawals that are not of cash, yet certain reporting obligations may apply. Sections 8(a)(2)-(7) of the Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2001 (the Order), impose reporting obligations on a banking corporation in the following instances:

- section 8(a)(2): a cash transaction that is not performed in any customer account, including a deposit of cash for the purposes of transferring it abroad or withdrawal of cash received from abroad, other than through an account, whether in local or foreign currency, in an amount equivalent to at least 50,000 shekels, and a deposit of cash or withdrawal of cash as above in an amount equivalent to at least 5,000 shekels performed vis-à-vis a financial institution in a country or territory specified in the Fourth Schedule of the Order (these are territories the FATF organisation has published reservations with respect thereto concerning the fulfilment of the organisation's recommendations regarding the prohibition of money laundering and financing of terrorism, as well as other high-risk countries such as Iran and Syria).
- section 8(a)(3): the exchange of banknotes and coins, in cash, including conversion, whether in local or foreign currency, in an amount equivalent to at least 50,000 shekels;
- section 8(a)(4): the issue of a bank check, whether in local or foreign currency, in an amount equivalent to at least 200,000 shekels, excluding a bank check in an amount up to 1 million shekels issued against a housing loan;
- section 8(a)(5): the purchase or sale of travellers' checks or bill to bearer of a financial institution abroad in an amount equivalent to at least 50,000 shekels; if the financial institution is in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels;
- section 8(a)(6): the deposit of checks drawn on a financial institution abroad and payment of checks presented for payment by a financial institution abroad in an amount equivalent to at least 1 million shekels; if the financial institution is in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels;
- section 8(a)(7): the transfer from Israel to abroad or from abroad to Israel through an account, in an amount equivalent to at least 1 million shekels; in the case of a transfer to or from a country or territory specified in the Fourth Schedule, or a transfer to or from a correspondent account of a financial institution in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels.

In addition, section 9 of the Order provides that a banking corporation must report any unusual transaction or an attempt to conduct such a transaction, by a service recipient. In this context, an unusual transaction is a transaction for which, in view of the information in the banking corporation's possession, suspicion is raised that it is related to activity prohibited under the Prohibition on Money Laundering Law or the Prohibition on Financing Terrorism Law. For example, a transfer of 1 million shekels to a bank account of a student, whose net monthly income is 2,000 shekels. In addition, any transaction listed in the Second Schedule of the Order is deemed as an 'unusual transaction'. These include, inter alia, any activity that appears to have been performed in order to circumvent the reporting requirement pursuant to section 8, and any activity whose purpose appears to be to circumvent the identification Requirements.

On 14 March 2021, the Prohibition on Money Laundering (The Credit Service Providers' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order (Amendment) 2021, was published (the Amendment). One of the main purposes of the Amendment is to impose identification, supervision, record-keeping and reporting obligations to the Israeli Money Laundering and Terror Financing Prohibition Authority on certain financial service providers that have not been supervised until now, namely –

The highlights of the Amendment in this respect are set forth below:

- Imposing obligations on cryptocurrency service providers – these obligations have been determined specifically to the cryptocurrency service providers' unique activity, and on the basis of the FATF's recommendations. Accordingly, the Amendment addresses:
  - a client identification obligation (know your client) with respect to any occasional activity in an amount exceeding 5,000 shekels;
  - An obligation to record and submit the identification details of the parties to a transaction in cryptocurrency (Travel Rule).
  - The procedure for reporting to the Israeli Money Laundering and Terror Financing Prohibition Authority, and the details that must be included.
  - The obligation to keep records.
  - Specific activities relating cryptocurrency transactions that are deemed 'unusual', and therefore are subject to a reporting obligation.
- Electronic transactions – The Amendment includes a designated section that addresses electronic transactions and the transfer of cryptocurrency. The section requires that the details of the

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transferor and the transferee be recorded in the transaction documents in certain circumstances over certain amounts detailed in the section, in transactions within Israel and in international transactions.
- Checking in listings – A cryptocurrency service provider must ensure that he or she does not perform an action for an entity listed under the Terror Fighting Law as a terror organisation of terror activist, or an entity listed as assistant to the distribution and financing of weapons of mass destruction under the Law for the Prevention of Distribution and Financing of Weapons of Mass Destruction 2018.
- Various reliefs – the Amendment grants certain reliefs as well, such as:
  - The possibility to provide credit services under certain conditions prior to the fulfilment of all identification and confirmation obligations, provided the transaction can be regarded as a low-risk transaction.
  - The possibility to identify the recipient of the service, who is situated abroad, by a technological means for visual identification.
- Ongoing control – the Amendment imposes an obligation to conduct ongoing supervision, and in cases where there is a suspicion for money laundering or terror financing with respect to the action performed by the recipient of the service, the service provider must require from the service recipient information and explanations concerning these actions, and if necessary – documents, and update his or her records accordingly.

The Amendment will come into force in November 2021.

CONFIDENTIALITY

Obligations

25 | Describe the private banking confidentiality obligations.

Section 15a of the Banking Ordinance 1941 provides:
- a person shall not divulge any information delivered to him or her or present any document submitted to him or her under this Ordinance or under the Banking (Licensing) Law; however, it shall be lawful to divulge information if the governor deems it necessary to do so for the purpose of a criminal indictment, or if the information or document was received from a banking corporation and it consents to its disclosure.
- for the purposes of the disclosure of documents and information received under this Ordinance or under the Banking (Licensing) Law to a court, the Bank of Israel or the supervisor and his or her employees shall have the status of the state and its employees; and
- a person who violates this section or section 6(5) shall be liable to one year's imprisonment or to a fine of 10,000 shekels.

However, the court in the case of *Guzlan* (Civil Appeal 174/88), and in the case of *Scholar* (Permission for Civil Appeal 1917/92), has interpreted this section such that it does not refer to the relationship between the bank and the client, but rather to the information a bank provides to the Bank of Israel or to the Banking Supervision Department.

Nonetheless, in the past the Supreme Court in the case of *Scholar* (Permission for Civil Appeal 1917/92) held that a bank was under a confidentiality obligation with respect to the affairs of its client.

In the time since these judgments, the confidentiality obligation to which banks are subject has been drastically reduced. Under anti-money laundering legislation, banks are now required to report information concerning their clients to other authorities, such as the Israel Money Laundering and Terror Financing Prohibition Authority. Furthermore, banks are required to conduct a thorough due diligence procedure, and may even refuse a client, unless he or she releases the bank from its confidentiality. The recent amendment to the Anti Money Laundering Law, which provides that certain tax offences are considered as predicate offences, has further diminished this obligation.

In addition, Common Reporting Standard and the Foreign Account Tax Compliance Act regulation dramatically affect the confidentiality of the banks.

Scope

26 | What information and documents are within the scope of confidentiality?

The obligation would generally apply to all the documents and information exchanged between the bank and the client.

Expectations and limitations

27 | What are the exceptions and limitations to the duty of confidentiality?

The confidentiality obligation imposed on banks is relative, and therefore may be reduced when it is proper to do so. Such is the case when maintaining the confidentiality obligation may cause damage to the bank, or when it contradicts applicable reporting duties under anti-money laundering legislation.

In addition, there is one specific exception referring to foreign residents. According to the Supervisor of Banks's circular titled 'Managing risks deriving from customers' cross-border activity' (16 March 2015). foreign resident clients of Israeli banks are required to declare their residency for tax purposes and confirm that their financial assets have been declared to the relevant tax authority in their jurisdiction of residence. Moreover, they are required to waive confidentiality vis-à-vis the relevant tax authority abroad. Failure to comply with all these requirements may result in the bank's refusal to open the account or blocking of activities in an existing account.

Breach

28 | What is the liability for breach of confidentiality?

A claim for damages and compensation under the Contract Law on the ground of breach of contract or the Torts Ordinance on the ground of breach of duty of care and negligence.

CROSS-BORDER SERVICES

Framework

29 | What is the general framework dealing with cross-border private banking services into your jurisdiction?

There may be reporting obligations on the bank corporation with respect to a cross-border transaction.

Furthermore, a bank corporation is obliged to identify the persons involved and the nature of the transaction, and to establish that the funds do not derive from a predicate offence, including a tax offence. Also, foreign residents who wish to open an account with an Israeli bank must waive their right to confidentiality and declare that their financial assets have been declared to the relevant tax authority in the country of their residence.

Israeli residents are subject to tax and reporting obligations on their worldwide income.

On 24 April 2018, the Supervisor of Banks published Provisions No. A306 and 306 'Proper Banking Management' to regulate the supervision of foreign branches of Israeli banks. These provisions, which include

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instructions relating to the activity of the banking group and supervision of foreign branches, also enhance the current provisions for supervision and proper banking management and even make clearer the importance of the existence of corporate governance and quality supervision and compliance at the branches.

Licensing requirements

30 | Are there any licensing requirements for cross-border private banking services into your jurisdiction?

There are no specific requirements for cross-border private banking services. However, if such services include investment advice, marketing investments or portfolio management, a licence must be obtained.

Under the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995.

Regulation

31 | What forms of cross-border services are regulated and how?

There are no specific regulations for cross-border services. General anti-money laundering legislation applies.

Employee travel

32 | May employees of foreign private banking institutions travel to meet clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

Any investment advice, marketing of investments or portfolio management requires a licence. Employees of foreign private banking institutions may travel to meet clients in Israel for purposes other than those requiring a licence. Such employees should ensure that the banking relationship does not contradict anti-money laundering and tax legislation. In addition, they should be aware that their activity may reach a point where the foreign bank is deemed to be 'doing business' in Israel, which may have adverse tax and regulatory consequences.

Exchanging documents

33 | May foreign private banking institutions send documents to clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

There are no specific regulations and no restrictions restricting on the sending of documents to clients and prospective clients; however, such sending of documents must be done in accordance with the provisions of section 30A of the Communications Law (Telecom and Broadcasts) 1982, which generally prohibits the transmission of advertisements through fax, email, text messages (SMS) and robocalls, unless recipients have given their prior written consent.

TAX DISCLOSURE AND REPORTING

Taxpayer requirements

34 | What are the main requirements on individual taxpayers in your jurisdiction to disclose or establish tax-compliant status of private banking accounts to the authorities in your jurisdiction? Does the requirement differ for domestic and foreign private banking accounts?

To ensure that the account holder is tax compliant, banking corporations require a tax declaration, where the client confirms his or her tax residency, and the fact that his or she is tax compliant in all relevant jurisdictions. Such declaration is a prerequisite for opening a bank account of any type, any bank may even further require that an attorney or accountant make such confirmation with respect to the client. This requirement applies equally to both domestic and foreign accounts.

Reporting requirements

35 | Are there any reporting requirements imposed on the private banks or financial intermediaries in your jurisdiction in respect to their domestic and international clients?

The reporting requirements imposed on bank corporations are set out in section 8(a)(1)-(7) of the Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2001, and they provide as follows:

- section 8(a)(1): a banking corporation must report to the Israel Money Laundering and Terror Financing Prohibition Authority any deposit or withdrawal of cash, whether in shekels or in foreign currency, in an amount equivalent to 50,000 shekels at least;
- section 8(a)(2): a cash transaction that is not performed in any customer account, including a deposit of cash for the purposes of transferring it abroad or withdrawal of cash received from abroad, other than through an account, whether in local or foreign currency, in an amount equivalent to at least 50,000 shekels, and a deposit of cash or withdrawal of cash as above in an amount equivalent to at least 5,000 shekels performed vis-à-vis a financial institution in a country or territory specified in the Fourth Schedule of the Order (these are territories the FATF has published reservations with respect thereto concerning the fulfilment of the organisation's recommendations regarding the prohibition of money laundering and financing of terrorism, as well as other high-risk countries such as Iran and Syria);
- section 8(a)(3): the exchange of banknotes and coins, in cash, including conversion, whether in local or foreign currency, in an amount equivalent to at least 50,000 shekels;
- section 8(a)(4): the issue of a bank check, whether in local or foreign currency, in an amount equivalent to at least 200,000 shekels, excluding a bank check in an amount up to 1 million shekels issued against a housing loan;
- section 8(a)(5): The purchase or sale of travellers' checks or bill to bearer of a financial institution abroad in an amount equivalent to at least 50,000 shekels; if the financial institution is in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels;
- section 8(a)(6): the deposit of checks drawn on a financial institution abroad and payment of checks presented for payment by a financial institution abroad in an amount equivalent to at least 1 million shekels; if the financial institution is in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels; and
- section 8(a)(7): the transfer from Israel to abroad or from abroad to Israel through an account, in an amount equivalent to at least 1 million shekels; in the case of a transfer to or from a country or territory specified in the Fourth Schedule, or a transfer to or from a correspondent account of a financial institution in a country or territory specified in the Fourth Schedule, the banking corporation shall report the said transaction if it is in an amount equivalent to at least 5,000 shekels.

In addition, section 9 of the Order provides that a banking corporation must report any unusual transaction or an attempt to conduct such a transaction, by a service recipient. In this context, an unusual transaction is a transaction for which, in view of the information in the

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banking corporation's possession, suspicion is raised that it is related to activity prohibited under the Prohibition on Money Laundering Law or the Prohibition on Financing Terrorism Law. For example, a transfer of 1 million shekels to a bank account of a student, whose net monthly income is 2,000 shekels. In addition, any transaction listed in the Second Schedule of the Order is deemed as an unusual transaction. These include, inter alia, any activity that appears to have been performed in order to circumvent the reporting requirement pursuant to section 8, and any activity whose purpose appears to be to circumvent the identification Requirements.

The applicable reporting obligations vary with respect to financial intermediaries, in accordance with the specific financial intermediary. One example is of attorneys and accountants. Under the Anti Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2014, any attorney or accountant who is requested by a client to provide a business service as listed in the Order (ie, real estate transactions, mergers and acquisitions, entity incorporation, management and administration and management of assets (including financial assets)) is required to obtain a declaration from the client, as to the nature of the business service, the identity of the persons and entities involved and the source of the funds. Should the attorney or accountant suspect that the business service may be considered money laundering in accordance with red flags published as guidance, he or she must conduct further investigation into the matter, and if the suspicion persists, he or she must refrain from providing services to the client.

As evident, there is no obligation to report to the Israel Money Laundering and Terror Financing Prohibition Authority, yet other reporting and information retention obligations are imposed.

Similarly, the legislator has outlined specific reporting procedures with respect to other service providers, such as members of a stock exchange, portfolio managers, insurance agents, dealers in precious stones and the Postal Bank. A portfolio manager, for example, is obliged to report any transfer of securities or other financial assets from abroad to its client's managed account if it is in an amount equivalent to 200,000 shekels or higher.

Client consent on reporting

36 Is client consent required to permit reporting by the private bank or financial intermediary? Can such consent be revoked? What is the consequence of consent not being given or being revoked?

Anti-money laundering legislation does not require that the consent of the client be obtained to file relevant reports. However, the consent of foreign residents is required by banks in Israel to exchange information with the relevant tax authority abroad. Exchange of information is not usually carried out by the private bank or financial intermediary, but rather these entities file reports to the Israeli Tax Authority, which in turn exchanges this information with other tax authorities under applicable treaties, agreements and legislation.

One such treaty is the Convention on Mutual Administrative Assistance in Tax Matters. Israel joined this convention, which allows exchange of information for tax purposes, on 24 November 2015 and it was ratified in 2018.

In addition, Israel entered into an agreement with the United States for the implementation of the Foreign Account Tax Compliance Act (FATCA). The agreement is in force, and regulations were implemented.

To implement such treaties, the Income Tax Ordinance was amended in 2015 and 2016 to contain specific provisions allowing such exchange of information.

In 2018, Israel implemented the Common Reporting Standard (CRS) allowing for the exchange of information in accordance therewith by the end of 2018. The exchanged information will be the details valid as of January 2017.

STRUCTURES

Asset-holding structures

37 What is the most common legal structure for holding private assets in your jurisdiction? Describe the benefits, risks and costs of the most common structures.

The Trust Law 1979 provides for the creation of several types of trusts, while the common private trust created under the Trust Law for holding private assets is known under the law as a Hekdesh. Such a trust is not considered a legal entity, therefore an underlying company of the Hekdesh is usually established in order to hold the trust's assets. A Hekdesh is usually created upon the signing of the trust deed by the settlor before an Israeli notary, or alternatively, by the inclusion of the terms of the trust in a written will. The trust deed signed before a notary is not required to be deposited or registered other than at the private office of the notary; hence it is confidential. Such a trust, if properly settled under the procedure of the law, can be used to enable intergenerational wealth transfers, and avoid the requirement for probate or inheritance procedures, which are administratively complex. It may also be used to care for a family member with special needs.

The Anti Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2014, imposes Know-Your-Client obligations on attorneys and accountants when providing a Business Service. The creation of an Israeli trust is considered a Business Service in the context of the above-mentioned order. Accordingly, if the attorney or accountant suspects that there is a high risk for money laundering or terror financing, the attorney or accountant must refrain from providing the service and create the trust.

Although the Trust Law does not provide for the establishment of a foundation, a foundation established under foreign legislation is nonetheless recognised as a trust for tax purposes under the Israeli Income Tax Ordinance. Banks in Israel recognise a foreign Foundation and are able to open and administrate an account of the Foundation.

Foreign trust structures, such as a Liechtenstein foundation, are recognised as trusts under section 75C and the First Schedule A of the Income Tax Ordinance [New Version] 1961. Accordingly, such structures may be obliged to file tax reports with respect to assets held in Israel in certain circumstances detailed in the said Ordinance.

Know-your-customer

38 What is the customary level of know-your-customer (KYC) and other information required to establish a private banking relationship where assets are held in the name of a legal structure?

Under the Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2001, a banking corporation is required to obtain evidence concerning the following, regardless of whether the client is an individual or an entity, including an entity that is a part of a more complex structure:

- identification of all entities and persons involved (specifically, all beneficial owners and controlling persons);

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- the origin of the funds. It must be established that they do not derive from a predicate offence and how the funds were accrued (earnings, savings, inheritance, etc);
- confirmation of tax status. It must be established that the person and/or structure is tax compliant where it is resident for tax purposes and that taxes were paid in all the relevant jurisdictions; and
- some banks request a lawyer's or accountant's reference confirming the origin of funds and tax compliance.

On 3 April 2018, the Financial Crimes Enforcement Network published clarifications (frequently asked questions) for the implementation of KYC procedures for individual ultimate beneficial owners, as required by financial institutions under the regulations published in 2016, which came into force on 11 May 2018 (Regulations).

Under these Regulations, financial institutions have the duty to apply enhanced due diligence of their clients in connection with individual ultimate beneficial owners of legal entities and structures. The ultimate beneficial owner is defined as 'an individual holding, directly or indirectly, at least 25 per cent or more of the capital of the legal entity and/or an individual who has fundamental management responsibility in the legal entity'.

KYC duties were extended and include, among others, three main duties:

- collection, identification and verification of ultimate beneficial owners when the account is opened and on a regular basis. The financial institution has the duty to identify an individual who is the controlling person;
- the formation of a client profile, using procedures based on a risk profile, regulating the character and objectives of the activities in the account; and
- ongoing supervision procedures, based on the risk profile, to identify and report suspicious activity.

There is a duty to identify the ultimate beneficial owner in complex structures according to international standards.

Controlling person

39 | What is the definition of controlling person in your jurisdiction?

With respect to a controlling person in a corporation, the Securities Law 1968 defines 'control' as 'the ability to direct the activity of a body corporate, exclusive of that ability derived only from holding the position of Director or some other post in the body corporate, and the presumption is that a person has control in a body corporate if he or she has half or more of a certain means of control in the body corporate'.

Aaccording to the Prohibition of Money Laundering Law 2000 (Amendment No. 16, 2016) (the PML Law), a 'controlling person' is defined as follows:

- a natural person who has an ability direct the operations of a corporation, whether alone or together with others or through others, directly or indirectly, including such ability that is derived from the by-laws of the corporation, or from a written or oral contract, or from any other means, or such ability derived from any other source, except for such ability deriving solely from the fulfilment of a position as functionary in the corporation.
- without derogating from the generality of par. (1), a natural person shall be considered as a controlling person if he or she holds 25 per cent or more of a means of control of any sort, and there is no other person holding the same means of control of the same sort in a rate exceeding the rate of his or her holdings.
- without derogating from the generality of paragraphs (1) and (2), where there is no natural person in a corporation as mentioned above, the chairman of the board of directors of the corporation, a parallel functionary and the CEO shall be considered as controlling persons, and in the absence of such – the functionary with effective control in the corporation.

In this context, the PML Law also defines 'means of control' in a corporation as any of the following:

- the right to appoint signatories in the name of the corporation, who can direct via their signatory right, the operations of the corporations, except for the right of appointment granted to the board of directors, or the general assembly of the shareholders, or parallel bodies of another corporation;
- the right to vote in the general assembly of the corporation or in a parallel body of another corporation;
- the right to appoint directors of the corporation, or parallel functionaries of another corporation, or the CEO of the corporation;
- the right to participate in the revenues of the corporation; and
- the right to a portion in the net assets of the corporation, after the payments of its debts, at the time of its dissolution.

Amendment No. 26 of 2017 of the PML Law addresses trusts specifically and defines a 'beneficiary' as a natural person for whom assets are held, or an action in the assets is executed, or who can influence the company's assets – all directly or indirectly, including a controlling person in a corporation.

Obstacles

40 | Are there any regulatory or tax obstacles to the use of structures to hold private assets?

Withholding tax regulations, anti-money laundering legislation and KYC requirements may present obstacles when establishing and maintaining banking relationships. Foreign trust structures, such as a Liechtenstein foundation, are recognised as trusts under section 75C and the First Schedule A of the Income Tax Ordinance [New Version] 1961. Accordingly, such structures may be obliged to file tax reports with respect to assets held in Israel in certain circumstances detailed in the said Ordinance.

CONTRACT PROVISIONS

Types of contract

41 | Describe the various types of private banking and wealth management contracts and their main features.

There is no specific standard contract that relates to private banking and wealth management, but rather each bank or portfolio manager has its own designated contract. The contract is subject to the provisions of the Contracts Law (General Part) 1973 and other legislation concerning contracts. As such, it can be amended by the parties, but this is unusual. The governing law in any banking contract in Israel is Israeli law, as dictated by all banks.

According to the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995, the agreement must be in writing and include certain mandatory provisions as outlined in the law.

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Liability standard

42 What is the liability standard provided for by law? Can it be varied by contract and what is the customary negotiated liability standard in your jurisdiction?

To hold the bank liable, the court should be convinced that the bank has violated an obligation imposed on it under applicable legislation, such as the Tort Ordinance, case law, directives of the Supervisor of Banks and internal procedures of the bank. Not all lawful causes to file a claim against a bank are provided for in the legislation. Accordingly, a violation of a bank's duty of care, fiduciary duty or confidentiality duty has been recognised as a lawful cause by the court. In general, the Israeli court takes into consideration the balance of powers between the bank and the client and recognises the importance of banks to the Israeli economy, and therefore tends to impose a higher standard of obligations on the banks.

The liability of the bank is determined in accordance with the applicable legislation and case law. Israeli case law provides that any clause in the banking contract that releases the bank from liability may be considered as a depriving condition in a standard contract under the Standard Form Contracts Law 1982, and can therefore be disregarded.

Mandatory legal provisions

43 Are any mandatory provisions imposed by law or regulation in private banking or wealth management contracts? Are there any mandatory requirements for any disclosure, notice, form or content of any of the private banking contract documentation?

There are no special requirements concerning private banking contracts as opposed to other banking contracts. However, with respect to foreign clients, banks are obliged to comply with the Supervisor of Banks's circular titled 'Managing risks deriving from customers' cross-border activity' (16 March 2015). According to the circular, foreign resident clients of Israeli banks are required to declare their residency for tax purposes and confirm that their financial assets have been declared to the relevant tax authority in their jurisdiction of residence. Moreover, they are required to waive confidentiality vis-à-vis the relevant tax authority abroad. Failure to comply with all these requirements may result in the bank's refusal to open the account or blocking of activities in an existing account.

In addition, banks are obliged to obtain certain information under FATCA and CRS regulations and the instructions of the Supervisor on the Banks.

In the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995, there is a requirement to have an agreement in writing and to provide the client with a copy before the service can be provided. The agreement must include all the subjects required for the service to be provided and specifically the following:

- the client's details and ID number;
- the service must be adjusted to the needs of the client after evaluating his or her financial situation (including his or her securities, financial assets, etc) and his or her investment objects subject to the condition that the client agreed to provide the required information;
- fees and payment of expenses;
- a clause that the client is free to cancel the agreement whenever he or she wishes;
- a clause concerning whether the services may be provided by telephone;
- a clause to ensure that the client has been made aware of the fact that his or her information will be kept confidential, but such confidentiality is subject to the obligation to pass information in accordance with the law; and
- if the licence holder is a public company, a clause that the client has been made aware of the fact that the agreement is subject to the duties of the licence holder according to the Regulations of the Israeli Stock Market and the Securities Law 1968.

In addition, there are certain requirements to be included only if the agreement is with a portfolio manager:

- the scope of discretion and authority granted under the power of attorney, the investment policy and whether the portfolio shall be managed by way of a blind trust;
- whether credit to the client may be granted and under what conditions;
- how the portfolio should be formed (ie, types of securities and financial assets and the value thereof or whether this may be determined according to the portfolio manager's sole discretion); and
- whether securities, bonds and futures may be purchased at a higher rate than the exchange rate and sold at a lower rate than the exchange rate.

Limitation period

44 What is the applicable limitation period for claims under a private banking or wealth management contract? Can the limitation period be varied contractually? How can the limitation period be tolled or waived?

Under the Statute of Limitation Law 1958, the period within which a claim in respect of which an action has not been brought will be proscribed (hereinafter 'the period of prescription') is seven years in the case of a claim relating to a banking contract.

The law also provides that the period of prescription begins on the day on which the cause of action occurred, and case law shows that difficulty in determining that day may result in adverse consequences. For example, the court accepted a bank's claim against a client whose account was in debt for more than seven years as it considered the day the bank first demanded the repayment of the debt as the day on which the cause of action occurred.

DISPUTES

Competent authorities

45 What are the local competent authorities for dispute resolution in the private banking industry?

If a client wishes to complain against a licensed person providing investment advice, marketing investments or portfolio management, he or she may file a claim with the tribunal of the Banking Supervision Department.

Furthermore, the Israeli Securities Authority (ISA) was recently authorised to impose civil fines on licensees violating certain provisions of the Law. The ISA is also authorised to suspend or revoke licences in administrative proceedings of licensees who have failed to maintain threshold licensing requirements. This category includes persons served with criminal indictments. The Civil Fine Committee established under the Prohibition of Money Laundering Law and chaired by the ISA Chairman is empowered to impose civil fines for violations of this law.

In addition to the tribunals of the ISA, there are the tribunals of the Banking Supervision Department.

A lawsuit may also be filed with the competent court in any matter. Certain matters are considered criminal; for example, violations of restrictions on holding and proprietary securities trading as well as engaging in investment advice without a licence constitute criminal

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violations of the Securities Law, and therefore must be brought before the court in accordance with the proper criminal procedure.

Disclosure

46 | Are private banking disputes subject to disclosure to the local regulator? Can a client lodge a complaint with the local regulator? How are complaints investigated?

A complaint about a bank or credit card company may be submitted to the Public Enquiries Unit of the Banking Supervision Department. The Public Enquiries Unit was established under section 16 of the Banking (Service to the Customer) Law 1981, which empowers the Supervisor of Banks to investigate enquiries from the public related to their dealings with banking corporations – banks and credit card companies. The Unit is an objective and neutral authorised entity comprising lawyers, economists and accountants, who are very familiar with the banking sector and provide services for the general public.

The Unit thoroughly investigates all enquiries and complaints submitted to it based on legal criteria. If the complaint is found to be justified, the bank or credit card company must correct the deficiency, and it has the authority to enforce that.

While banks and credit card companies are required to fulfil the Unit's decisions, the one who petitioned (that is, the client) is not bound by those decisions.

There is no requirement to pay a fee or to be represented by an attorney in order to file a complaint. A complaint may be filed by mail, fax or online, on the Bank of Israel's website. A complaint should include the following information:

- full name, address and telephone number;
- name of bank or credit card company that is the subject of the complaint;
- a description of the events – as detailed as possible (include names, dates and documentation); and
- any additional information that can clarify the issue.

If the results of the investigation are not satisfactory, the client may submit the claim to court.

UPDATE AND TRENDS

Recent developments

47 | Describe the most relevant recent developments affecting private banking in your jurisdiction. What are the trends in this industry for the coming years? How is fintech affecting private banking and wealth management services in your jurisdictions?

In recent years, Israel has taken great measures to fight money laundering and comply with the Financial Action Task Force recommendations. Two notable measures are Israel's actions to limit the use of cash, and to regulate transactions in cryptocurrency, as detailed herein.

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