



New Israeli Regulations regarding Exemptions from the Licensing Requirement for Credit Activities

On October 3, 2018 new regulations were published, setting forth various exemptions from the licensing requirement for extension of credit. The name of the regulations: Regulations for Supervision of Financial Services (Regulated Financial Services) (Exemption from the Licensing Requirement) (Temporary Order) – 2018 (the "**Exemption Regulations**").

Background

As of June 1, 2017 an entity engaging in extension of credit in Israel is subject to a licensing requirement under the Supervision of Financial Services Law (Regulated Financial Services) – 2016 ("**the Law**"). The Law is part of a major up and coming legislative process, the declared objectives of which are to provide comprehensive regulation in the field of financial services provided by non-institutional bodies, develop the non-institutional financial services sector in Israel and increase the competition in the financial services field by establishing an alternative to the banking system in Israel.

"**Extension of Credit**" is defined very broadly in the Law – "engaging, by way of business, in credit extension, including granting a credit line, inter alia, in one of the following: (1) cheques, promissory notes, or other bills of exchange discounting; (2) extending credit against an assignment of the debtor's right to receive Financial Assets from others, including "discounting Services"; (3) extending credit while financing a purchase or a lease of property or service (above ILS 30,000 to a single client); (4) granting a guaranty for liability of other; (5) extending a "non-recourse" credit, secured by an asset, without an entitlement to reimbursement from the debtor in case of a default."

The Exemption Regulations were promulgated under the authority granted in the Law to the Minister of Finance to determine various exemptions from the licensing requirement.

The regulator in charge of the Law is the Capital Markets, Insurance and Saving Authority at the Ministry of Finance (the "regulator").

The Main Exemptions under the Exemption Regulations

The main exemptions which may be applicable to foreign financial institutions are:

1. A corporate entity: (i) incorporated in a country which is a member in OECD; (ii) which holds a banking license from a regulatory body in an OECD country; which is subject to Anti Money Laundering ("AML") obligations in such country; and which is not subject to the licensing requirements under the Israeli Banking (Licensing) Law – 1981.



2. A corporate entity: (i) controlled by, or under the same control as, a corporation set forth in subsection (1); (ii) its credit extension activity is subject to supervision in an OECD country; (iii) is subject to AML obligations in such country; (iv) it does not provide in Israel credits to consumers¹.
3. A corporate entity: (i) incorporated in an OECD country; (ii) which holds an insurance license from a regulatory body in an OECD country; (iii) is subject AML obligations in such country; (iii) its credit extension activity is subject to supervision in an OECD country; (iv) is subject to AML obligations in such country; and (v) it does not provide in Israel credits to consumers.
4. A corporate entity: (i) incorporated in an OECD country; (ii) which its main business is the provision of securities trading services, for others or for its own account; (iii) is subject to supervision in an OECD country; and (iv) it is permitted to extend credit in connection with such trading activity.
5. A corporate entity engaging in extension of credit solely to business corporations, where the amount of any single credit transactions is not less than ILS 3 million.
6. Venture credit - engaging in extension of credit solely to companies, whose main business is R&D or manufacturing of novel high tech products or process, where the investment in such a company is a high risk investment in comparison to other investments.

The Exemption Regulations will remain in force at this stage until December 31, 2019, when the regulator will consider to extend or to amend them.

The Territorial Applicability of the Law – Credit Extended outside of Israel

Foreign financial institutions may rely on the exemptions detailed above, but they may also rely on the interpretation adopted by the regulator as to territorial applicability of the Law, namely, in which circumstances a credit transaction with an Israeli borrower will be considered as occurring outside of Israel and, therefore, outside of the scope of the Law.

According to a Position Paper published on January 1, 2018 the regulator expressed its position that credit extension activity undertaken by a foreign entity fully outside of Israel – is *not* within the territorial scope of the Law and therefore does not trigger the licensing requirement thereunder, provided, that all the following conditions are met: (i) the credit documentation (excluding regarding security interests) is not in Hebrew, is executed outside of Israel and its governing law provision does not adopt the Israeli laws; (ii) the accounts of the borrower into which the credit is extended are held in financial institutions located outside of Israel; (iii) the foreign entity does not contact new clients in Israel; and (iv) no physical meetings are conducted in Israel between the foreign entity and its clients.

Contact

For further information please contact Shiri Shaham at shiri@arnon.co.il

This memo is intended to serve as a general overview and does not constitute a replacement for legal counsel on the matters discussed herein.

¹ Credit to consumers – where the use of the credit is primarily for personal, domestic or family needs.