

**FDI Guide
Israel**

Contact

Daniel Rosenblatt

Herzog Fox & Neeman, Tel Aviv

rosenblattd@herzoglaw.co.il

Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of FDI into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Israel
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <p>There are no laws that generally restrict inbound foreign investment. Under the Israeli constitutional/administrative Principle of Legality, citizens (individuals and entities) are permitted to act freely wherever they are not bound by law.</p>
2.	Legal regime Authority(ies) in charge	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>As background, Israeli FDI controls are sector specific. There is no single regime that cuts across all sectors to review foreign investment in all sectors from a national security perspective. Thus, each regulator has its own toolkit for overseeing foreign investment in its own sector.</p> <p>However, in 2019, the Israeli Government established an inter-ministerial advisory committee (with subject matter expertise) to act as an internal adviser to a closed list of regulators (see the list below) that need expertise when considering national security risks in the context of foreign investment. This committee was created in Security Cabinet Decision No B/372 ('Decision 372/B'), which sets out the authorities and procedures of the committee.</p> <p>The advisory committee's composition under Decision 372/B is as follows:</p> <ul style="list-style-type: none"> • Ministry of Finance's Chief Economist (committee chair); • senior representatives from the National Security Council (NSC); and • senior representatives from the Ministry of Defence (the MOD). <p>Additionally, observer rights are granted to representatives from the Ministry of Foreign Affairs, National Economic Council (an economic advisory body within the Prime Minister's Office (PMO)), Ministry of Finance (in addition to the Chief Economist), and Ministry of Economy and Industry.</p>

	Topic	Explanation/Description of what is expected	Israel
			The advisory committee also may include in its discussions the General Security Service (Shin Bet), Institute for Intelligence and Special Operations (Mossad) and Israeli National Cyber Directorate (INCD).
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>FDI controls are not triggered by the acquisition of a certain threshold of shareholdings. Rather, they are triggered when a constellation of circumstances is met. In this regard, foreign investment transactions are subject to review when the following (cumulative) conditions are met:</p> <ul style="list-style-type: none"> • there is a potential foreign investment;¹ • by a ‘foreign party’;² • in a transaction whose execution requires obtaining a permit for either controlling or holding a concession or licence from one of the following regulators: <ul style="list-style-type: none"> – Bank of Israel; – Israel Securities Authority; – Capital Markets, Insurance and Savings Authority; – Ministry of Finance (other functionaries with regulatory powers); – Ministry of Transport and Road Safety; – Ministry of Communications; and – Ministry of National Infrastructure, Energy, and Water Resources (including the Israel Water and Sewage Authority; the Public Utilities Authority (Electricity); and the Israel National Gas Authority); • the applicable regulator may (or must) consider ‘national security interests’³ when granting or denying such permits under its own authorising legislation; and • the applicable regulator voluntarily submits an inquiry to the advisory committee. <p>A few points should be emphasised:</p>

1 ‘Foreign investment’ is defined as a transaction or activity by a ‘foreign party’ (defined below) whose execution requires obtaining a permit for controlling or holding a concession or licence from an applicable regulator.

2 ‘Foreign party’ is defined as: (1) for a natural person, someone who is neither an Israeli citizen nor resident of Israel; and (2) for a body of persons, one in which control is not in the hands of an Israeli citizen or resident of Israel, including an enterprise incorporated outside of Israel that does not have a controlling stake and in which no Israeli citizen or a resident of Israel holds 25 per cent ownership or more (‘control’, as defined in the Banking (Licensing) Law, 1981).

3 ‘National security interests’ are defined as: (1) preventing the creation of a position of substantial influence on the target of foreign investment by a ‘foreign party’ that might detract from the state’s security or its foreign relations; and (2) preventing the exposure or disclosure of information, the exposure or disclosure of which to a ‘foreign party’ might detract from the state’s security or its foreign relations. In cases of both (1) and (2), to the extent that these interests affect the national security of Israel.

	Topic	Explanation/Description of what is expected	Israel
			<ul style="list-style-type: none"> As noted, there is no single centralised FDI control regime in Israel. Rather, FDI controls are regulated separately in each sector of the economy by the applicable regulator. There is only a closed list of such regulators who have at their disposal access to the above-mentioned advisory committee. Other regulators that are competent to consider national security issues must do so on their own or advise (informally) with subject matter experts in line with their competencies under authorising legislation. Regulators in the defence establishment (eg, the Defence Export Control Agency of the MOD) are strikingly absent from this closed list of regulators. At the same time, the MOD (and other stakeholders in the defence establishment) play central roles in the advisory committee. Each regulator has sole discretion to trigger a foreign investment review.
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Transactions that are potentially covered by this regime include both ‘transactions’ and ‘activity’, but the trigger for a review is sector specific.</p> <p>Thus, indirect acquisitions of assets or shares; transfers involving a group internal restructuring and greenfield investments can all be subject to this regime, depending on the applicable sector’s specific regulations and (if applicable) prior regulatory licences issued. In other words, each sector within the closed list of regulatory sectors must be analysed independently in line with the specific circumstances of the investment.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>No. The advisory committee’s authorities are triggered at the discretion of the applicable regulators. The advisory committee may elicit inquiries from regulators about specific transactions; however, the regulator ultimately decides whether or not to seek advice.</p>
4.	<p>Sectors falling under the FDI scope</p>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign</p>	<p>As noted above, entities subject to oversight by the following closed list of regulators are included within the scope of the aforementioned FDI control regime:</p> <ul style="list-style-type: none"> Bank of Israel; Israel Securities Authority; Capital Markets, Insurance and Savings Authority; Ministry of Finance (other functionaries with regulatory powers); Ministry of Transport and Road Safety;

	Topic	Explanation/Description of what is expected	Israel
		investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<ul style="list-style-type: none"> • Ministry of Communications; and • Ministry of National Infrastructure, Energy, and Water Resources (including the Israel Water and Sewage Authority; the Public Utilities Authority (Electricity); and the Israel National Gas Authority). <p>Additionally, the following sectors have their own separate mechanisms for overseeing foreign investment oversight, which are independent of the main regime (ie, they do not formally involve the advisory committee):</p> <ul style="list-style-type: none"> • defence sector (primarily in relation to controlled defence exporters who are subject to the Defence Export Control Agency of the MOD under Israeli export controls, as well as classified ‘defence corporations’, which is a unique classification under Israeli law of sensitive companies that can trigger additional regulatory requirements); and • real estate sector (which is subject to oversight by the Israel Lands Council under the Israel Lands Law, 1960).
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Investors can be any type of foreign party. As noted above, Israeli FDI controls define a ‘foreign party’ as follows:</p> <ul style="list-style-type: none"> • for a natural person, someone who is neither an Israeli citizen or resident of Israel; and • for a body of persons, one in which control is not in the hands of an Israeli citizen or resident of Israel, including an enterprise incorporated outside of Israel that does not have a controlling stake and in which no Israeli citizen or a resident of Israel holds 25 per cent ownership or more (‘control’, as defined in the Banking (Licensing) Law, 1981).⁴ <p>To a large extent, Israeli FDI controls were established at the behest of the United States Government (in the context of the US–China trade war). Thus, Western Bloc countries and countries that have adopted similar (pro-West) FDI controls are lower risk under Israeli FDI controls.</p>
6.	Procedure 6.1 Before or post-closing filing		The purpose of the advisory committee is to opine on a potential foreign investment transaction before the transaction closes.

⁴ ‘Control’, is defined in the Banking Law as ‘the ability, either individually or in conjunction with others, to direct the activity of a corporation, excluding ability originating solely in holding the post of director or other office in the corporation; without derogating from the generality of the foregoing, a person shall be deemed as having control of a corporation if one of the following is fulfilled: (1) he holds half or more of any particular type of the means of control of the corporation; (2) he has the ability to prevent the making of business decisions in the corporation, except decisions concerning the issuance of means of control of the corporation or decisions concerning the sale or liquidation of the major part of the corporation’s business or a material change thereof.’

	Topic	Explanation/Description of what is expected	Israel
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	There are no filing requirements under Israeli FDI controls (mandatory or optional). Rather, certain regulators can submit inquiries and request opinions on the national security implications of foreign investment transactions and then take such opinions into account when acting under their own statutory authorities.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Not applicable.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	The advisory committee is not competent under Decision 372/B to engage industry and, therefore, there is no pre-ruling process. Its purpose is to advise certain regulators (internally) upon request. Thus, obtaining a pre-ruling for a foreign investment transaction is sector specific.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	There is no filing requirement and the advisory committee's timeframe for responding to a regulatory inquiry (see below) has no bearing on the regulator's own statutory deadlines. Therefore, the lead time required for an approval is sector specific.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	<p>If a regulator submits an inquiry to the advisory committee (triggering its authority), the committee has either 30 days to communicate its view to the regulator (which can only be done with the unanimous consent of the committee members) or ten days to inform the regulator that it has no intention to take a position. Failure to respond within ten days is deemed an approval of the transaction.</p> <p>This 30-day timeframe does not derogate from the advising regulator's own requirement to act within its own statutory deadlines under applicable authorising legislation. In other words, a regulator cannot rely on the submission of an inquiry to the advisory committee to extend its own response deadlines.</p> <p>This timeframe is set out in Decision 372/B. There is not enough practice yet to determine de facto flexibility.</p>
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	There is no formal process for negotiating with regulators (and no process for engaging the advisory committee). However, in Israel, it is not uncommon to reach out to regulators to discuss these issues and negotiate (informally). However, there are advantages and disadvantages to

	Topic	Explanation/Description of what is expected	Israel
			such engagement, and the content of a position for negotiation should be considered carefully ahead of time.
		Are there any guidelines issued by the authority?	Not for the advisory committee. There may be sector-specific guidance.
13.	(iv) Filing fees	Is there a filing fee?	Not applicable for the advisory committee. However, each sector may have its own filing fees.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	Not applicable for the advisory committee. However, each sector may have its own rules regarding information required by the regulator for filings.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	If the advisory committee fails to respond within its allotted timeframe, this is deemed an approval of the foreign investment transaction. Otherwise, the consequences for not issuing a response within the legal timeframe are sector specific.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	This is sector specific and will change from one case to another. Conditions or commitments (theoretically) can include the nationality or Israeli security clearance requirements for directors; proxy requirements or restrictions on voting for certain issues by directors or shareholders; access restrictions to certain types of information within a company; or restrictions on the transfer of intellectual property (IP) or know-how out of Israel.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	Under Israeli administrative law (and the Principle of Legality), governmental institutions are only competent to act in accordance with powers afforded to them under law. Action beyond such powers would be <i>ultra vires</i> and, therefore, void. The advisory committee's authority to review transactions is narrow (the many specific cumulative conditions described above must be met in order for the committee's authority to be triggered). While, in theory, the committee might try to engage regulators behind closed doors regardless of its authority being triggered or not, any opinion that it issues is non-binding, which limits the committee's power in practice.

	Topic	Explanation/Description of what is expected	Israel
			Moreover, with respect to individual regulators, they must be competent to consider national security issues in order to submit an inquiry to the committee. This may be set out explicitly in a regulator's authorising legislation or may be provided in broader terms (eg, in certain cases, regulators have broad discretion, like considering 'the public good', which reasonably includes national security concerns).
18.	(iii) Risk of veto	Describe a topical case. Statistics	As noted, the advisory committee issues non-binding decisions and has no veto power. Moreover, regulators generally do not have veto power either. However, they may have powers that include rescinding regulatory licences; refusing to issue new regulatory licences in the future; or issuing licences with cumbersome conditions – actions that, in practice, may have the same impact as a veto.
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	The advisory committee comprises members or observers that cover most governmental institutions that would have a specific interest in Israeli national security.
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	This would depend on the specific regulator. If regulatory licences are issued on the basis of conditions, then the violation of those conditions would be likely to lead the regulator to rescind the licence issued (and block the licensee's ability to operate). Moreover, each sector may have specific sanctions anchored in law for violating regulatory licences issued.
		<ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	
		<ul style="list-style-type: none"> • investment carried out without prior approval. 	See the previous response.
	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable.