Private Banking & Wealth Management

Contributing editors
Shelby R du Pasquier, Stefan Breitenstein and Fedor Poskriakov

2019

GETTING THE DEAL THROUGH

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Lenz & Staehelin

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Private banking and wealth management

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

The following are the main sources of law and regulation relevant for private banking in Israel:

- the Securities Law 1968; (supervision on portfolio managers);
- the Banking Ordinance 1941; (the Banking Supervision Department and its directives, Banking confidentiality);
- 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; (professional liability, professional negligence);
- 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 Investment Advising Law);
- the Prohibition on Money Laundering Law 2000;
- the Bank of Israel Law 2010;
- the Payment Systems Law 2008;
- the Contracts Law (General Part) 1973;
- the Standard Form Contracts Law 1982;
- the Prohibition of Money Laundering (The Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5775-20142;
- the Law to Minimise the Use of Cash (published in March 2018 and coming into force in January 2019); and
- the Company Law 1999.

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

The main bodies 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; and
- the Registrat of Companies.

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.

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.

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

Under the Banking (Licensing) Law, 5741-1981, the Governor of the Bank of Israel 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
- 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 Law, according to which, for an Israeli bank the minimum paid-up capital is 10 million shekels, and for a foreign bank foreign currency equivalent to 10 million shekels.

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

The requirements of a licence and minimum capital must be fulfilled.

7 What are the most common forms of organisation of a private bank?

A financial corporation must obtain a licence in order to operate as a bank in Israel. Most foreign banks do not obtain such 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.

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.

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

Under the Banking (Licensing) Law, 5741-1981, 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.

10 Is wealth management subject to supervision or licensing?

Further to the answer to question 5, the Investment Advising Law provides as follows:

- 'investment advising' – providing advice to others regarding the advisability of an investment, holding, purchase or sale of securities or financial assets; for this purpose, the word 'advising' shall refer to either direct or indirect advising, including through publications, circulars, opinions, mail, facsimile transmission or by any other means, excluding publication by the state or by a corporation carrying out a statutory function, in the framework of its function; and
- 'investment portfolio management' – executing transactions at the portfolio manager's discretion, for the accounts of others.

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

11 What are the main licensing requirements for wealth management?

Under the Investment Advising Law, 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 etc 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 ISA (Israeli Securities Authority) in the following subjects:
  - securities law 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); and
- must secure professional indemnity insurance for the minimum amount stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management 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 the course of 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 which 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 in the course of 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, provided that 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; and
- investment advising, investment marketing or investment portfolio management, for a qualified client (see question 19).

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 requested 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 objects, assets, settlor, trustee etc.

A 'Public Trustee', which refers to the Administrator General, may be appointed by the court in certain situations.

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

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] page 411-1, Prevention of Money Laundering and Terrorism Financing, and Customer Identification' imposes identification of the client obligations (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 Prevention of 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 entitled '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. 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 properly 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.

In order 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 etc);
- confirmation that the financial assets have been properly declared to the relevant tax authorities;
- the nature of the transactions; and
- identification of all entities and persons involved (specifically, the identification of all beneficial owners).

Tax offences are predicate offences under the Prohibition on Money Laundering Law, 2000 as detailed in question 16.

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 Prohibition of Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5775-2014 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 entitled 'The Prevention of Money Laundering which 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.

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, etc).

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

The Prohibition on Money Laundering Law, 2000 was recently amended to include certain tax offences as predicate offences. The First Addendum of the Law lists the predicate offences. The Addendum also includes that under subsection (17b) an offence in accordance with section 220 of the Income Tax Ordinance is a tax offence if it fulfils 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 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 which originated from the tax offence was in relation to a criminal organisation or a terror organisation as defined in (17a) herein; and
- an offence in accordance with sections 3 or 4 which originated from the tax offence and was committed by someone other than the taxpayer; and
- subsections (17a) and (17c) are similar to subsection (17b) above.

Subsection (17a) relates to offences under the value added tax and subsection (17c) relates to offences under the Taxation of Real Property law. In both cases, the offence is considered as 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. This amendment came into effect in October 2016.

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 Prohibition of 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, where the nature of the business service, the identity of the persons and

entities involved and the source of the funds are detailed. 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 executing the client's wishes.

In order to facilitate the evaluation process of the attorney or accountant, it 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 disclosure requirement, but the records of business service providers may be subject to inspection by the IBA or the Accountants Council, as the case may be. 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 Supervisor of the Designated Non Financial Business and Profession Supervisor (DNFBP) may review these records of attorneys and accountants at the Department of Justice.

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

This is a serious criminal offence. Under the Prohibition of 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.

Client segmentation and protection

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

According to the Investment Advising Law, 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 (QC).

A QC is 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 which 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.

20 What are the consequences of client segmentation?

A provider of financial services is exempt from obtaining a licence if providing services to a QC as mentioned in question 19.

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

There is no legislative protection; however, past 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.

Exchange controls and withdrawals

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

There are no longer any exchange control regulations. These were abolished with respect to individuals in 1998, and with respect to financial institutions in 2003.

A new law to reduce the use of cash was published in March 2018 and will come into force in January 2019. Its purpose is to minimise the use of undeclared funds and funds arising from offences or subject to tax evasion, severe crime, money laundering and terror financing. Cash payments are limited as follows:

- 11,000 shekels if the payer or the payee is a business;
- 50,000 shekels if neither the payer or the payee are businesses;
- 55,000 shekels if one of the parties is a tourist;
- 11,000 shekels for salaries, donations or loans, except loans given by a regulated financial intermediary; and
- 50,000 shekels for gifts.

Lawyers and accountants are subject to the above limitations if these are received in connection with the business services provided as explained in question 17.

There are certain exceptions to the above limitations which do not apply to:

- authorities which are exempt by the Minister of Finance;
- payments between family members which are not salary payments; and
- interest-free loans during a two-year period from the date the new law was published.

The following limitations apply to cheques:

- the endorsement of a cheque or the receipt of an endorsed cheque without the details of the endorser (ie, a blank cheque or partly blank cheque) if the payee is a business. The above applies if the amount of the cheque is more than 50,000 shekels and the payer and payee are not businesses; and
- a bank is not allowed to pay out a cheque if the details of the payee are not written on the cheque, or an endorsed cheque if the amount is more than 10,000 shekels and endorsed more than once (or twice if the second endorser is a regulated financial intermediary) or without the details of the payer and payee unless the ID number of the payer appears.

Sanctions for breach of the law are imposed according to the amount of the payment.

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; however, there are reporting requirements under anti-money laundering legislation. Accordingly, the Prohibition on Money Laundering (Obligations of Identification, Reporting and Keeping Records of Bank Corporations to Prevent Money Laundering and Terrorism Financing) Order, 2001 lists the circumstances under which a banking corporation is obligated to report to the Israel Money Laundering and Terror Financing

Prohibition Authority. Such obligation arises with respect to a deposit, withdrawal or exchange of cash, whether in shekels or in other currency, in an amount equivalent to 50,000 shekels at least.

In addition, 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 define the procedure of submitting such reports.

Certain exemptions apply under the above-mentioned legislation where the transaction is conducted by an exempt entity, such as a public institution, a bank corporation, the Postal Bank or a member of the stock exchange.

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

As mentioned in question 23, there are no restrictions, although anti-money laundering legislation applies, and further to the reporting obligations mentioned in question 23, reporting obligations also apply in the following cases:

- the issuance of a bank draft, whether in shekels or in other currency, in an amount equivalent to 200,000 shekels or higher;
- the purchase or sale of traveller's cheques or bearer bills of a financial institution abroad in an amount equivalent to 200,000 shekels or higher; if the financial institution is located in a territory listed in the Order, the bank corporation is obliged to report such transaction if it is in an amount equivalent to 5,000 shekels or higher. Territories that are included in the Order, as mentioned in question 24, are, inter alia, territories that the FATF has published guidelines with respect thereto concerning their conformity to the FATF's recommendation in the matter of prohibition of money laundering and terror financing; and
- the wiring of funds from Israel to another territory or vice versa in an amount equivalent to 1 million shekels or higher. If the foreign financial institution is located in one of the territories listed in the Order, the bank corporation is obliged to report the transaction if it is in an amount equivalent to 5,000 shekels or higher.

In addition to the said reports, a bank corporation is obliged to file a report on any irregular activity of the service recipient – for example, a transfer of 1 million shekels to a bank account of a student, whose net monthly income is 2,000 shekels.

Cross-border services

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

As mentioned in questions 23 and 24, there may be reporting obligations on the bank corporation with respect to a cross-border transaction.

Furthermore, as mentioned in question 13, 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. As also mentioned in question 13, 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 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.

26 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, as detailed in question 5.

Anti-money laundering legislation also applies, and the requirements detailed in questions 13 and 23 to 25 are to be met.

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

There are no specific regulations for cross-border private services. General anti-money laundering legislation, as mentioned in questions 13, 23 and 24, applies.

28 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 as mentioned in question 5. 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.

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

See question 28.

Tax disclosure and reporting

30 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?

As noted in question 25, Israeli residents are subject to tax and reporting obligations on worldwide income.

The controller of the bank of Israel may require information from the head controllers of the banks in a subsidiary or branches of the banks.

31 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 detailed in questions 13, 23 and 24.

The applicable reporting obligations vary with respect to financial intermediaries, in accordance with the specific financial intermediary. One example is of attorneys and accountants. When such are concerned, a specific procedure applies whereby 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. The procedure is explained in question 17.

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.

32 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 in order to file relevant reports. However, it should be noted that the consent of foreign residents is required by banks in Israel in order to exchange information with the relevant tax authority abroad, as detailed in question 13. 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, in 24 November 2015, but it has not yet ratified it.

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.

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

In October 2014, Israel declared that it would act to implement the Common Reporting Standard (CRS) and allow for exchange of information in accordance therewith by the end of 2018.

Structures

33 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 an Israeli private trust (known under the law as *Hekdesh*). Such a trust is not considered a legal entity, therefore an underlying company is usually established in order to hold the trust's assets. An Israeli trust is created upon the signing of the trust deed by the settlor before a notary. The trust deed is not required to be deposited or registered other than at the private office of the notary; hence it is confidential. Such a trust can be used to limit the requirement for inheritance procedures, which are administratively complex. It may also be used for asset protection purposes or to care for a family member with special needs or for intergenerational wealth transfers. The creation of an Israeli trust with the assistance of an attorney or accountant is subject to the anti-money laundering obligations imposed on attorneys and accountants, which are detailed in question 17.

Although the Trust Law does not provide for the establishment of a foundation, a foundation established under foreign legislation (of Liechtenstein, Panama etc) is nonetheless viewed as a trust for tax purposes under the Israeli Income Tax Ordinance.

34 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?

As mentioned in questions 13 and 15, a bank 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 or controlling persons);
- 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 3.4.18 the Financial Crimes Enforcement Network (FINCEN) 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 20 18 (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.

35 What is the definition of controlling person in your jurisdiction?

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'/

By 2017 the terms 'beneficiary', 'controlling person' and 'means of control' were defined in the Prohibition of Money Laundering Law 5760-2000 (prior to that, 'control' was referred to in the Israeli Securities Law, 1968). A beneficiary is defined as a natural person for whom assets are held or who can influence the company's assets, including a controlling person. A controlling person is a natural person who can influence an entity's operations (directly or indirectly), a shareholder who holds more than 25 per cent of the shares, the CEO of a company etc. Means of control refers to the ability to appoint authorised signatories of the company, to vote in general meetings, appoint directors or the CEO, a right to revenues of the company or a right to the assets of the company after debts have been paid.

36 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.

Contract provisions

37 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 varied 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 Investment Advice, Investment Marketing and Investment Portfolio Management Law the agreement has to be in writing and include certain mandatory provisions as outlined in the law (see question 39).

38 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?

In order 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.

Update and trends

The implementation of various new compliance regulations (AML, FATCA, CRS, LEI) has placed a heavy burden on banks, their officers and compliance departments. Concerned at being targeted by foreign authorities, banks and their officers have turned into the 'long arm' of tax authorities. The opening of a bank account has become a long and exhausting procedure requiring many forms and extensive documentation. It is no longer sufficient to show the origin of the funds, but proof must be provided that taxes in the relevant jurisdictions were paid.

Over the last few years and due to the financial crisis in 2008, banking supervision has been increased to provide for better stability, to implement the insights learned from the crisis, to adjust the business model to upcoming fintech trends and to ensure efficiency and competition. Risk management has been increased to deal with new challenges of cyber crimes, information leaks etc.

It is estimated that by 2025 technology will replace most of the staff in private banking. Already today certain private banking sectors have been replaced by technology (eg, the execution of payments and cheque transfers, portfolio advice and management), allowing those services to be provided to a wider population. This should result in greater efficiency and lower banking fees, improve the turnover and revenues of the bank and change the image of private banking.

39 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 relevant directive as mentioned in question 13. 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 Investment Advice, 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.

40 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.

Confidentiality

41 Describe the private banking confidentiality obligations.

Section 15a of the Banking Ordinance 1941 further 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 (Civil Appeal 174/88 *Hilda Guzlan v Company de Participation* 42(1) PD 963 [1988](Isr.), Permission for Civil Appeal 1917/92 *Jacob Scholar v Nitza Jerby* 47(5) PD 764 [1993](Isr.)) 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 (Permission for Civil Appeal 1917/92 *Jacob Scholar v Nitza Jerby* 47(5) PD 764 [1993](Isr.)) 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 (see questions 15, 23, 24 and 34), and may even refuse a client, unless he or she releases the bank from its confidentiality obligation (see question 13). The recent amendment to the Prohibition on Money Laundering Law, which provides that certain tax offences are considered as predicate offences (see question 16), has further diminished this obligation.

In addition, CRS and FATCA regulation dramatically affect the confidentiality of the banks.

42 What information and documents are within the scope of confidentiality?

As mentioned in question 41, the obligation would generally apply to all the documents and information exchanged between the bank and the client.

43 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, as mentioned in question 13.

44 What is the liability for breach of confidentiality?

A claim 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.

Disputes

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, as mentioned in question 9. Furthermore, the 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 on 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 mentioned in question 46.

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

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 comprised of 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.

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