

Translation



The following document, which took effect in 2019, details the process by which the Israeli government conducts national security reviews of foreign investments.

Title

Establishment of a Process and Mechanism for Examining National Security Aspects of Foreign Investments

קביעת תהליך ומנגנון לבחינת היבטי ביטחון לאומי בהשקעות זרות

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Israeli Government Secretariat (מזכירות הממשלה). This document was passed by the Ministerial Committee on National Security Affairs (ועדת השרים לענייני ביטחון לאומי) of the 34th Israeli government under Prime Minister Benjamin Netanyahu (בנימין נתניהו).

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Resolution No. B/372 by the Ministerial Committee on National Security Affairs
(Political-Security Cabinet) dated October 30, 2019.

372/b Establishment of a Process and Mechanism for Examining National Security
Aspects of Foreign Investments

Decision, following Resolution No. B/331 dated November 28, 2018, of the Ministerial Committee on National Security Affairs (hereafter – the Cabinet), recognizing that the State of Israel has a developed market economy that is open to foreign investment and capital flows, and understanding the importance of foreign investment for the advancement of the Israeli economy and international cooperation, understanding the role of foreign investment in realizing the economic potential of the Israeli economy, while understanding the need to respond to national security aspects that may be relevant to such investments:

Definitions

"Foreign entity" – An entity fulfilling one of the following, whichever relevant:

1. For an individual – A person who is neither an Israeli citizen nor a resident of Israel.
2. For a group of persons – A case in which control is not in the hands of an Israeli citizen or resident of Israel, including a company incorporated outside of Israel which does not have a controlling stake and in which no Israeli citizen or a resident of Israel holds 25% ownership or more. For this purpose, "control" has the same meaning as in the Banking (Licensing) Law, (5741) 1981.

"Regulators" – The parties authorized by law to approve foreign investments, that is, the Bank of Israel, the Securities Authority, the Capital Market Authority, Insurance and Savings Authority, the ministers and parties of the Ministry of Finance, the Ministry of Transportation and Road Safety, the Ministry of Communications, and the Ministry of Energy, including the Israel Water and Sewerage Authority, the Public Utilities Authority (Electricity), and the Israel Natural Gas Authority.

"Approval" – A permit for controlling or holding a franchise or license.

"Foreign investment" – A transaction or activity by a foreign entity whose execution requires the approval of the regulators in accordance with the law.

"Interests related to National Security Aspects" – The interests listed below:

1. Preventing the creation of a position of substantial influence on the object of the foreign investment by a foreign party that might harm the state's security or its foreign relations.

2. Preventing the exposure or disclosure of information, the exposure or disclosure of which to a foreign entity might harm the state's security or its foreign relations, to the extent that these interests affect the national security of the State of Israel.

"Defense, Foreign Affairs, and Cybersecurity Authorities" – the Israeli Security Agency, Israeli Secret Intelligence Service and Special Operations, Ministry of Defense, Ministry of Foreign Affairs, and the National Cyber Directorate.

Advisory Committee Headed by the Ministry of Finance

1. To establish, at the Ministry of Finance, an advisory committee for the purpose of evaluating national security aspects of foreign investments, led by the Chief Economist in the Ministry of Finance or a senior representative on its behalf, with participation of a senior representative from the National Security Council (hereafter – the “The National Security Council”) and a senior representative from the Ministry of Foreign Affairs and a senior representative from the Ministry of Defense (hereinafter – the “Advisory Committee”), whose duties are set forth in Sections 5-2 below .
2. **Contacting the advisory committee regarding foreign investment:**
 - a. Prior to granting approval for a foreign investment, the regulators may, at their discretion, subject to their legal authority and to the extent that they believe that granting such approval may create concerns about negatively affecting interests in national security aspects, to address an annotated query to the advisory committee for the purpose of receiving its opinion.
 - b. In exceptional cases, the advisory committee may, subject to the agreement of its members, actively request the regulators submit a query to the committee in order to receive its opinion regarding an approval of a foreign investment. It is hereby clarified that such a request by the advisory committee does not obligate the regulator to consent to the request, and the matter remains under the regulator's discretion.
3. **The advisory committee's response to the inquiry received:**
 - a. The advisory committee may send the regulator its detailed response to a query regarding interests in national security aspects pertaining to approval of the foreign investment. The response will

be subject to Israel's international commitments, taking into account also relevant economic aspects.

- b. The advisory committee's assessment shall be agreed upon unanimously by all its members. If the members of the advisory committee fail to agree on the assessment, no response will be sent to the regulator.
- c. The advisory committee shall invite the regulator who made the inquiry and the relevant Director General to attend its discussions in order to receive its assessment. In addition, the advisory committee will invite representatives of the Ministry of Foreign Affairs, the National Economic Council; the Ministry of Economy and Industry; and the Ministry of Finance to attend its discussions, and these representatives will serve as observers in the committee's discussions. The advisory committee is also entitled to invite representatives from the Defense, Foreign Affairs, and Cybersecurity Authorities to attend its discussions, as well as additional representatives of relevant government ministries. The committee shall convene at the request of any of its members.
- d. The advisory committee shall send its detailed response to the regulator who made the inquiry within 30 days of the date on which the inquiry was received. The advisory committee may notify the regulator within 10 days of receiving the inquiry that it does not intend to send a response to the regulator's query. For the avoidance of doubt, it is hereby clarified that the submission of a query by the regulator need not delay its approval of the foreign investment.
- e. If the advisory committee does not provide its response in the timeframe detailed in Subsection 3(d), or if the committee informs the regulator that it does not intend to provide a response, as described in Subsection 3(d) hereinabove, it is to be understood that the committee is of the opinion that there are no grounds for preventing the regulator who submitted the query from going ahead with the approval process for the foreign investment.
- f. In accordance with law, the members of the advisory committee and all of the parties to whom the information received from the regulator was exposed in the course of the committee's work shall preserve confidentiality, and shall not use the information obtained except for

purposes of the committee' work, including formulating its assessment to the regulator who made the query.

4. Every regulator is entitled to contact the advisory committee for the purpose of jointly delineating areas and matters in which the regulator may submit a query to the committee as set forth in Section 2 hereinabove. Among other things, note will be taken of additional existing mechanisms concerning foreign investments. The regulator and the advisory committee are entitled, at any time, to jointly change the delineated areas and matters. To the extent that the areas and matters were jointly delineated, the regulator can submit a query to the advisory committee under Section 2 concerning a foreign investment, only in the delineated areas and matters, unless the regulator requests the committee, for special reasons that are recorded, discuss a foreign investment in an area or a matter that was not jointly delineated. To the extent that the areas and matters were not jointly delineated, or to the extent that the process of delineating the areas and matters has not yet been completed, the regulator can ask the advisory committee for an assessment, as set forth in Section 2, without any restriction on the area or matter of the foreign investment.
5. The advisory committee will regularly review the implementation of this decision, taking into account all of its aspects, and will report to the cabinet in writing once every six months, and at any time at which the cabinet may request, about the results of its review, including recommendations for revising the decision, if any, and about the committee's activity.
6. The Department of the Chief Economist will compile, to the greatest possible extent, the figures on the investments of foreign parties in Israel, and every six months, subject to any law, will deliver a survey of the foreign investments made in Israel in the preceding six months to the advisory committee.
7. For the avoidance of doubt, it is hereby emphasized that nothing in this section authorizes the regulator to weigh national security considerations when he has not been granted the legal authority to do so. Furthermore, nothing in this decision shall derogate from the legal authority of the regulator who submitted a query to the advisory committee, including its authority to make the final decision about approval of a foreign investment, including when its final decision conflicts with the committee's assessment.

8. The National Security Council and the Defense, Foreign Affairs, and Cybersecurity Authorities shall send to the regulators their assessments of the interests in national security aspects of a foreign investment solely through the advisory committee, in accordance with the provisions of this decision, including the timetables established, unless the Prime Minister decides otherwise on a specific matter. Following the advisory committee's assessment, and subject to any law, the Defense, Foreign Affairs, and Cybersecurity Authorities may communicate with the regulator regarding the conditions for implementing the provisions of the assessment. It is hereby clarified that to the extent that the regulator and the advisory committee have jointly agreed on areas and matters, as set forth in Section 4 hereinabove, this Section 8 shall apply only to the jointly agreed-on areas and matters.
9. Nothing in this decision shall derogate from the legal areas of responsibility of the Ministry of Finance concerning foreign investments in Israel; the legal authority given to the Defense, Foreign Affairs, and Cybersecurity Authorities and the National Security Council under any law, the legal authority of the regulators, or the provisions of Resolution MH\6 of the Ministerial Privatization Committee, dated June 1, 2014, concerning "A Procedure for Cooperation between Defense Agencies and the Government Companies Authority in the Privatization Process for a Government Company."

Regulating the National Security Council's Consultation Procedure with the Defense, Foreign Affairs and Cybersecurity Authorities

10. The National Security Council (NSC) shall consult the Defense, Foreign Affairs, and Cybersecurity Authorities in order to formulate a response to a query submitted to the advisory committee in accordance with Section 2 hereinabove. This consultation procedure shall be conducted as follows:
 - a. Subject to any law, the NSC shall communicate the inquiry submitted to the Advisory Committee and to the Defense, Foreign Affairs, and Cybersecurity Authorities.
 - b. The Defense, Foreign Affairs, and Cybersecurity Authorities will deliver a written assessment of the national security aspects related to the inquiry within a period of time set by the NSC when delivering the inquiry.

- c. If necessary, the NSC may hold discussions with the Defense, Foreign Affairs, and Cybersecurity Authorities before sending its evaluation to the advisory committee.
- d. The NSC shall deliver its written and annotated assessments to the advisory committee, and when requested by committee members, input from the Israel Security Agency, the Institute for Intelligence and Special Operations (Mossad), and the Ministry of Foreign Affairs and the National Cyber Directorate, in accordance with the security and information classification rules.
- e. A written copy of the NSC's assessment for the advisory committee shall be sent to the Defense, Foreign Affairs, and Cybersecurity Authorities.
- f. Each of the Defense, Foreign Affairs, and Cybersecurity Authorities shall select a permanent contact person on its behalf who will be responsible for the procedure for consultation with the NSC, and will also establish internal compartmentalization procedures for this.
- g. It is hereby clarified that the time required for consultation under this paragraph (Section 10) does not extend the periods of time allocated under Section 3 for delivering the advisory committee's assessment to the regulator who made the query to the committee.

Continuation of Staff Work

- 11. To instruct the advisory committee to draw up within 45 days a procedure for handling a query to the advisory committee about a foreign investment, subject to any law; work arrangements for the advisory committee; the details to be included in a query; the method for immediate delivery of the query by the head of the advisory committee as soon as it is received to the other committee members, and if a discussion is held, also to the parties summoned to the committee, and at its discretion, to additional parties; information security, confidentiality, and compartmentalization arrangements; and timelines for convening the advisory committee.
- 12. To instruct the advisory committee, in cooperation with the Ministry of Justice, the Ministry of Economy and Industry, the Ministry of Foreign Affairs, the Ministry of Energy, the Ministry of Finance's Budget Department, and the government ministries and the regulators relevant to implementation, within 120 days, will conduct staff work aimed at

recommending arrangements, if necessary, subject to Israel's international commitments, for the regulators to be authorized to weigh national security considerations in granting approval for foreign investments, including through legislative amendments.

13. Section 2 of this decision will come into effect on January 1, 2020.