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MIZRAHI TEFAHOT BANK LTD
No. with the Registrar of Companies: 520000522

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|----|------------------------------------|----|------------------------------------|------------------|---|
| To | <u>Israel Securities Authority</u> | To | <u>Tel Aviv Stock Exchange Ltd</u> | T053 (Public) | Date of transmission: March 31, 2020 |
| | www.isa.gov.il | | www.tase.co.il | | Ref: 2020-01-033702 |

Immediate Report of an Event or Matter which Deviates from the Corporation's Ordinary Course of Business

Regulation 36 of the Securities Regulations (Immediate and Periodic Reports), 5730-1970.

Issue results must be reported under T20 and not under this form.

Bond rating or corporation rating reports must be submitted through Form T125

Report on: A report whose submission was delayed

Nature of the Event: *Adopting the recommendations of the independent committee*

1. _____
Immediate report 31032020 isa isa pdf
2. Date and time at which the corporation first learned of the event:
© March 31, 2020 at 13:30

Report delayed per Regulation 36(b):
3. If the report was delayed, the reason due to which its submission was delayed:
4. On _____ at _____ the report embargo was removed
5. The company is a shell company, as defined in the TASE Rules and Regulations.

Details of the signatories authorized to sign on behalf of the corporation

| | Signatory's Name | Position |
|---|-------------------------------|---|
| 1 | <i>Racheli Friedman, Adv.</i> | <i>Other</i> <i>Chief Legal Advisor</i> |
| 2 | <i>Moshe Lari</i> | <i>Other</i> <i>Head of the Finance division</i> |

Explanation: According to Regulation 5 of the Securities (Periodic and Immediate Reports) Regulations, 5730-1970, a report filed under these regulations shall be signed by those authorized to sign on behalf of the corporation. The position of the senior staff on the matter (in Hebrew) can be found on the ISA's website: [Click here](#)

The reference numbers of previous documents on the subject (reference does not constitute incorporation by reference):

2019-01-027790 **2019-01-021565**

Securities of a Corporation Listed for Trading on the Tel Aviv Stock Exchange Form structure revision date: February 18, 2020

Abbreviated Name: Mizrahi Tefahot

Address: 7 Jabotinsky Street, Ramat Gan, 52520 Tel:03-7559720 Fax:03-7559923

E-mail: mangment@umtb.co.il Company website: https://www.mizrahi-tefahot.co.il

Previous name of the reporting entity: United Mizrahi Bank Ltd

Name of the person reporting electronically: Ofer Horwitz Position: Bank Secretary Name of Employing Company:
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March 31, 2020

To
The Securities Authority

To
Tel-Aviv Stock Exchange Ltd

Dear Sir or Madam,

Re: **The Bank's Board of Directors Adopts the Recommendations of the Independent Litigation Committee for the Review of the Bank Group's Conduct with its US Customers regarding Taxation Matters**

Pursuant to the aforesaid in the immediate report published by Mizrahi Tefahot Bank Ltd (the "Bank") on March 28, 2019 (reference no.: 2019-01-027790) and the aforesaid in sections 11 and 12 of Note 26 to the Bank's annual financial reports of December 31, 2019, as published on February 25, 2020 (reference no.: 2020-01-018930), the Bank respectfully reports the following:

1. On March 27, 2019, *inter alia* in accordance with the requirement of the Supervisor of Banks, the Bank's Board of Directors appointed a special independent committee (the "Committee"), in order to advise and make recommendations on the question of whether legal proceedings should be initiated against former and current Bank officers or directors and against others, pursuant to the engagement of the Bank and its subsidiaries (jointly: the "Bank Group") in a Deferred Prosecution Agreement (DPA) with the US Department of Justice on March 12, 2019, under which the Bank Group paid a total sum of USD 195 million to the US government; and to examine and make recommendations to the Bank's Board of Directors regarding the managerial and control processes that had enabled, between the years 2002 and 2012, certain former employees of the Bank Group (private bankers, customer relationship managers and other employees with similar levels of responsibility) to act against the Bank Group's policy and procedures, which consequently enabled US customers to evade their tax obligations in the United States, with particular reference to aspects of corporate governance and the conduct of senior management and the Board of Directors; and to determine, based on the findings of its examination, conclusions and recommendations, both general and personal, insofar as required, including with regard to the salary benefits given to officers in the relevant years.
2. The Committee members are: **The Hon. Judge Hila Gerstel (Ret.)** – Former president of the Central-Lod District Court and former Ombudsman of the State Representatives in the Courts (Chairperson of the committee); **Mr. Roni Bar-On** – Lawyer, previously served as the Minister of Finance; Minister of National Infrastructure; Minister of Science & Technology; and

Minister of Internal Affairs; **Mr. Avraham Asheri** – Former CEO of Discount Bank and a member of the managing committee of the Jerusalem Institute for Policy Research; and **Mr. Avi Zeldman** – A director at the Bank since 2015, previously the CEO of Leumi Partners and head of Leumi Bank's Banking Division.

The Committee members have confirmed in writing that they do not have a conflict of interest or any dependence on the Bank Group and the entities subject of its work.

3. On March 27, 2020, the Committee submitted to the Bank's Board of Directors its conclusions and recommendations with respect to the question of initiating legal proceedings against officers and other entities, and with respect to the question of whether it is required to draw personal conclusions with regard to the aforesaid events, to the Bank's Board of Directors; the principles of which are as follows:
 - 3.1 The Committee recommended to the Bank's Board of Directors not to initiate legal proceedings against the directors and the officers for breach of fiduciary duty, as it is of the opinion that this is a cause of action with remote prospects under the circumstances.
 - 3.2 The Committee recommended to the Bank's Board of Directors not to initiate legal proceedings against the directors and the officers for breaching the duty of care, as it is of the opinion that this is a cause of action with low prospects under the circumstances.
 - 3.3 The Committee recommended to the Bank's Board of Directors not to initiate legal proceedings against the directors and the other officers (the chances of which are low, as aforesaid) also in the 'wider aspect' view (i.e. considerations which are not strictly legal), having examined the potential significance, benefits, damages, costs and gains involved in conducting a possible civil lawsuit against the directors and the officers.
 - 3.4 The Committee recommended to the Bank's Board of Directors not to demand from the directors and the other officers to return the remunerations they had received during their tenures at the Bank over the relevant period, and not to initiate legal proceedings in this matter.
4. The independent Committee conducted lengthy, exhaustive negotiations with the insurance companies that had issued insurance policies for the Bank's directors and officers, at the end of which it managed to formulate a settlement agreement that includes the insurers' payment to the Bank for all potential grounds and claims against the Bank Group's directors and other officers, in the total and final sum of USD 23 million. It is the Committee's opinion that this sum properly balances all grounds, claims, risks and exposures of every party involved in the matter, and reflects a view of the Bank's benefit and its interests; and *inter alia*, is to prevent costly legal proceedings, upon the expenses and resources that they would require.

5. **The Committee recommended that the Board of Directors engage in a USD 23 million settlement agreement with the insurers, subject to the approval of the Tel Aviv-Jaffa District Court (the Hon. Judge M. Altuvia), under the derivative proceedings according to the Companies Law 5759-1999, which are held at the court against the Bank Group and its officers (as described in section 11(a) of Note 26 to the Bank's annual financial reports of December 31, 2019)¹.**
6. A summary of the Committee's conclusions and recommendations is appended to this immediate report.
7. At its meeting on March 31, 2020, the Bank's Board of Directors resolved² to adopt the Committee's conclusions and its recommendations in the aforesaid matters in their entirety, and instructed the Bank's management and legal advisors to execute and implement the Committee's recommendation under the appropriate arrangements.
8. The effect of the settlement with the insurers, as said above, shall be included in the financial reports for the first quarter of 2020, to be published by the Bank.

Respectfully,

Mizrahi Tefahot Bank Ltd

By:

Racheli Friedman, Chief Legal Advisor

Moshe Lari, Head of the Finance Division

¹ The committee's recommendation was also subject to the conducting of an appropriate review by the Board of Directors and its advisors to ensure that the signing and execution of the agreement with the insurers is not in breach of the DPA, an examination that was completed at the time of this immediate report, in which it was found that this is not in breach of the DPA.

² At the Board of Directors' meeting and in resolving the decision, directors that could have been considered as having personal interest in the decision, did not participate.

Appendix to the immediate report dated March 31, 2020

A Summary of the Conclusions and Recommendations of the Independent Litigation Committee on the question of whether to initiate legal proceedings or personal steps against officers

1. On March 27, 2020, the independent committee submitted to the Bank's Board of Directors its conclusions and recommendations with respect to the question of whether to initiate legal proceedings or personal steps against former and current Bank officers and other entities, pursuant to the engagement of the Bank and its subsidiaries (jointly: the "**Bank Group**") in a Deferred Prosecution Agreement (DPA) with the US Department of Justice and the events described in said DPA's Statement of Facts.
2. The Bank's Board of Directors granted the committee a wide range of authority for the purpose of fulfilling its roles, including: establishing its own work procedures; perusing documents and materials requested thereby; conducting discussions with others outside the bank, insofar as this may be required for the fulfillment of its role; appointing experts and professional consultants to assist it; receiving external, independent legal advice; interviewing and requesting information from any person and interviewing any officer or employee of the Bank Group or his advisors; negotiating, including settlement negotiations, in connection with the subject of the examination, with any entity it deems appropriate; to make all decisions and actions required for the aforesaid execution.
3. The committee operated independently, without any external involvements or interventions, according to an agenda and work plan as set by itself, with the assistance of an external, unaffiliated legal advisor who is independent of the Bank. It collected, examined and analyzed many documents of and in connection with the Bank; it interviewed former and current Bank officers and directors; it heard the arguments of applicants' representatives, in applications submitted to the court for the disclosure of documents and the approval of a derivative action, arguing for the initiation of legal proceedings, and the arguments of the representatives of the directors and the other officers and the representatives of the Bank, arguing against the initiation of legal proceedings; it formulated the legal framework required for the analysis of the factual foundation; established what is the relevant factual foundation laid before it; and based upon all these, formed its findings, conclusions and recommendations, to be detailed below in this report.
4. The committee's work lasted approx. ten months, in effect, during which it held over 30 meetings at the offices of the committee chairperson. The meetings were documented by minutes. Each of the committee members had also worked independently to study the materials, prepare for discussions and independently formulate his own findings, conclusions and recommendations. The committee analyzed many documents it had received from the Bank for perusal.

5. During the committee's work process, it worked to the maximum exhaustion of the examination it was requested to perform, and conducted a comprehensive, wide-reaching procedure. The committee held dozens of meetings and interviewed various relevant persons; the committee examined thousands of documents and dozens of arguments, some of which are not necessarily admissible at a formal legal proceeding, *inter alia* due to the nature of the legal proceeding and potential arguments regarding secrecy and confidentiality; the committee analyzed the various arguments, on the grounds of both the factual foundation laid before it and analysis of the relevant legal framework.
6. The committee examined the Bank's interest in initiating lawsuits against officers both in the 'narrow aspect' and the 'wide aspect'. As part of the examination of the Bank's benefit in the 'narrow aspect', the committee examined the probability of the existence and strength of causes for action against the directors or the other officers due to: breach of fiduciary duty (whether *bona fide* or *mala fide*); and breach of the duty of care (by recklessness or negligence), including whether the duty of care was breached due to supervisory oversight. The committee examined whether there was claimable damage for the Bank and whether according to the factual findings it reached, and their examination under the relevant legal rules, there was a causal connection between actions and omissions that could be attributed to the directors and the other officers and between damages caused to the Bank. As part of the examination of the Bank's benefit in the 'wide aspect', the committee examined the significance, benefits, damages, costs and gains involved in conducting a possible civil lawsuit against the directors and the other officers, with attention to the circumstances of the matter.
7. The committee's findings, conclusions and recommendations were formulated unanimously after a lengthy, intensive process and following analysis, thought, deliberation, and open, practical and fruitful discussions among the committee members.
8. **The summary of the committee's conclusions and the committee's recommendations to the Board of Directors is as follows:**

- 8.1 **The committee recommends to the Bank's Board of Directors not to initiate legal proceedings against the directors and the officers for breach of the fiduciary duty, as it is of the opinion that this is a cause of action with remote prospects under the circumstances.**

The committee did not find evidential foundation that the directors and the other officers had breached the fiduciary duty that had applied to them. The committee was under the impression that the directors and the other officers had the Bank's favor in mind, according to the best of their knowledge and judgment, in real time; acted so that the Bank would fulfill the instructions of the law that apply to it; and did not turn a

blind eye to actions that were to harm the Bank's compliance with the instructions of the law.

The committee examined whether the remunerations of the directors and the other officers during the relevant period were influenced by the Bank's international activities, in a manner raising concern that they may have had improper incentive to cooperate with the events subject of the DPA. The committee found that the remuneration arrangements of the CEO, the chairman of the Board of Directors and members of management during the relevant years comprised a fixed remuneration, variable remuneration and retirement bonuses, and that the Bank's international activities constituted a negligible component out of the Bank's overall operations, and thus it was negligible in its ability to affect the remuneration of said officers. In view of the aforesaid, the committee is of the opinion that no monetary interest was found for the directors and the other officers to have acted unlawfully in connection with its international activities.

8.2 The committee recommends to the Board of Directors not to initiate legal proceedings against the directors and the officers for breach of the duty of care, as it is of the opinion that this is a cause of action with low prospects under the circumstances.

The committee is of the opinion that according to the findings laid before it, the directors and the officers were aware of their duties and had exercised their authority and responsibility.

The committee did not find sufficient evidential foundation that the directors and the officers had acted in disregard of their duties in all that concerns compliance with anti-money laundering laws and compliance with US tax laws.

The committee did not find sufficient evidential foundation that the directors and the officers had not acted as reasonable directors and officers, according to the expected and acceptable standard during the relevant period. The committee did not find sufficient evidential foundation to establish an argument regarding an oversight in supervision of the directors and the officers.

8.3 The committee did not find evidential foundation for the responsibility of the directors and the officers to the actions to which the Bank Group had admitted in the statement of facts appended to the DPA. These actions were done by specific employees, and the bank's admission in connection with these acts was made on the basis of the American "Respondeat Superior" legal principle, whereby, unlike the law in Israel, a corporation may be held responsible for the actions of its employees even if these were done without its knowledge and against the corporation's directives.

- 8.4 The committee is of the opinion that according to the findings laid before it, the directors and the officers had acted in a practical, **reasonable** manner, in order to realize their obligation to establish, implement, operate and control an appropriate compliance system during the relevant period, and in identifying and handling events that may have been seen as 'red flags', requiring the attention of the relevant directors and officers.
- 8.5 The committee found various flaws, faults and defects in the bank's conduct, but it is of the opinion that these do not, in themselves, justify an initiation of action by the bank against the directors and the officers. The committee is of the opinion that these flaws, faults and defects are not unreasonable at a complex organization abundant with activities and regulations such as the bank. The committee noted that the events examined by the committee occurred during a period which began in 2002 and ended in 2012. The law, procedures and rules of conduct were different at the beginning of the relevant period, and had developed over the years and during the period itself. The committee had cautioned itself that it must examine these events as though in real-time, rather than in hindsight.
- 8.6 **The committee is of the opinion that under the circumstances of the matter, there is substantial difficulty in proving the existence of a causal connection** between potential arguments regarding the conduct of directors and officers, and the breaches to which the bank had admitted in the DPA and the payment made accordingly.
- 8.7 Moreover, even if the committee was of the opinion that there are reasonable prospects for action against any of the directors or officers due to a breach of the duty of care (which is not the case), **such action would face a substantial barrier due to the existence of a valid exemption or indemnification undertaking granted to them by the bank.**
- 8.8 **The Committee also recommends to the Bank's Board of Directors not to initiate legal proceedings against the directors and the other officers (the chances of which are low, as aforesaid) in the 'wider aspect' of the Bank's benefit**, having examined the potential significance, benefits, damages, costs and gains involved in conducting a possible civil lawsuit against the directors and the officers
- 8.9 **The Committee recommends to the Bank's Board of Directors not to demand from the directors and the other officers to return the remunerations they had received during their tenures at the Bank over the relevant period, and not to initiate legal proceedings in this matter.**

The committee is of the opinion that it is doubtful whether the remuneration paid to the directors and the officers was influenced (at the very least, it was affected negligibly) by the Bank's international activities. The impact of the revenues produced

by the Bank, insofar as they were produced, from the events subject of the DPA, on the remuneration, if any, was zero.

- 8.10 As a rule, with attention to the acceptable norms during the relevant period, the committee is of the opinion that the Bank had an appropriate system (both structurally and procedurally), and at least a reasonable one, for handling compliance with anti-money laundering laws and US tax laws. The committee was under the impression that generally speaking, the bank had an organizational culture of compliance with the law in general, and particularly with anti-money laundering laws and US tax laws. The directors and the other officers were aware of their duties in the matter of establishing a 'risk appetite', establishing procedures, the need to implement the procedures, audit and control of their fulfillment and enforcement and correction in the event of a deviation therefrom, according to which they had acted, in a manner that was at least reasonable, with attention to what was common and acceptable during the relevant period. According to the findings presented to the committee, the committee was convinced that as a rule, the bank had a system in place for the enforcement of compliance with anti-money laundering laws and US tax laws.
- 8.11 The committee is of the opinion, based on real-time analysis (i.e. such that discounts, insofar as possible, retrospective biases), and with attention to the norms that were acceptable during the relevant period, that in general, the Bank's management had correctly identified events that were 'red flags', and handled them in a manner that was appropriate or at least reasonable for that time. Although there is room for criticism, sometimes even harshly so, over the Bank's quickness of response or the response itself to certain events, it is, however, the opinion of the committee that it is incorrect to view the matters subject of such criticism as deviations from the reasonable standard of conduct by a reasonable officer in real-time and under those circumstances, as required by law. These conclusions are further validated by attention to the fact that the scope of the Bank's international activities was limited during the relevant period, amounting (in 2011) only to approx. 4% of the total activities of the Bank. Clearly, the amount of attention invested in handling the risks associated with such limited activities would be relatively small, as is reasonable and sensible. The committee has found that the Bank handled this risk reasonably, investing more than a few resources in the matter.
- 8.12 The conclusion of the committee that the directors and the other officers did not breach the duty of supervision is based, *inter alia*, also on that, that according to the statement of facts, the admission of the Bank Group in the DPA stresses that the actions were done only by a number of specific employees, while breaking the law and the procedures of the Bank Group, **which is not attributed to the directors and the**

other officers; this was also clarified explicitly in the comments made by the US lawyers that represented the bank against the US DoJ, with respect to the results of their inquiry and the DPA.

8.13 The committee is of the opinion that also in view of the bank's benefit in the "**wide aspect**", i.e. considerations which are not strictly legal, there are no grounds for initiating action against the directors and the other officers, for the following reasons:

8.13.1 **The costs of conducting legal action:** The costs involved in the conduct of a potential lawsuit are expected to be very high. The issues subject of this report involve many persons, some of whom have not worked at the bank for many years. The number of respondents (potential defendants) in the various proceedings initiated by the applicants in our matter is very high. These facts would add to the complexity involved in the conducting of a potential proceeding, and accordingly, to the costs incurred to the Bank. Naturally, and per the impression of the committee from the data brought before it, conducting such a complicated proceeding would require the bank to seek the assistance of a battery of lawyers and consultants and force it to dedicate managerial resources and time to the subject, whereas the chances that such a lawsuit would succeed are, to begin with, low.

8.13.2 **Indirect damages:** Beyond the costs discussed above, a potential legal proceeding might also cause substantial damage to the Bank, including, *inter alia*, a slandering of the bank and a damage to the bank's ongoing operations and its ability to manage and allocate its assets with the utmost efficiency. Additionally,

8.13.3 **Improvement of the Bank's compliance culture and compliance system:** One of the justifications for the conducting of a legal proceeding is connected with the need to correct existing flaws in the Bank's corporate governance. The committee is of the opinion that for the matter at hand, this justification is weak, thanks to measures made by the Bank, whether by its own initiative or in accordance with the instructions of the DPA and audit reports, to improve the Bank's compliance culture and strengthen the systems of control with respect to this area. The important question in this context is whether filing a civil lawsuit would improve the bank's corporate governance; the committee believes that the answer to this is negative.

8.13.4 **The time that has passed since the occurrence of these events:** The period at hand began approx. 18 years ago and ended approx. 8 years ago. Since then and to this day, the bank has undergone audits, reviews and many comprehensive inquiries, by various bodies, and many changes were made

therein. A considerable number of the directors and the other officers who had served during the relevant period no longer serve at the bank. In view of the bank's benefit, there is a significant positive value in leaving this affair and its results behind, while envisioning and focusing on future-oriented actions.

9. **The arrangement with the insurance companies that had issued directors' and officers' insurance for the bank**

- 9.1 In order to remove the risk of litigation for the parties involved, as well as the costs and resources involved therein, the committee opined that it would be right to act towards obtaining an arrangement with the insurance companies that had issued insurance policies for the bank's directors and officers (the "Insurers"), with respect to all potential causes and arguments that may be made against any of the directors and the other officers in the Bank Group, including the argument that no exemption exists for the employees of subsidiaries and former bank employees who were not officers.
- 9.2 After lengthy, exhaustive negotiations, the committee managed to formulate a settlement agreement that includes the insurers' payment to the Bank for all potential causes and arguments against the Bank Group's directors and other officers, **in the total and final sum of USD 23 million**. It is the Committee's opinion that this sum properly balances all grounds, claims, risks and exposures of every party involved in the matter, and reflects, first and foremost, a view of the Bank's benefit and its interests.
- 9.3 **The committee recommends to the Board of Directors to engage in the settlement agreement with the insurers under the aforesaid sum, subject to: (a) The conducting of an appropriate review by the Board of Directors and its advisors to ensure that the signing and execution of the agreement with the Insurers is not in breach of the PDA; and (b) the approval of the Tel Aviv-Jaffa District Court (the Hon. Judge M. Altuvia), under the proceeding currently pending thereat.**