ISRAEL DISCOUNT BANK LTD.

Registration no.: 520007030

FAO: Israel Securities Authority
www.isa.gov.il

FAO: The Tel Aviv Stock Exchange Ltd.
www.tase.co.il

T053 (Public)

Magna transmission date: November 27, 2023
Reference No.: 2023-01-128346

IMMEDIATE REPORT REGARDING EVENT OR MATTER NOT IN THE ORDINARY COURSE OF BUSINESS OF THE CORPORATION

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

Report regarding: ☐ Report whose submissions was delayed

Nature of the event: Recommendations of the Independent Committee

1. ______________________

   See the Committee's report attached below

2. The date and time when the Corporation first learned of the event or matter:
   ⦿ November 26, 2023 at 16:15
   ○ ________________________

Report that was delayed in accordance with Regulation 36(b):

3. If the report was delayed – the reason for its submission having been delayed

   ____

4. On _____________ at _______________, the obstacle preventing submission of the report was removed.

5. The Company *is not* a shell company as defined in the TASE Code.

Details of signatories authorized to sign in the name of the Corporation:

	Name of Signatory	Position
1	*Joseph Beressi*	*Other* *Senior Executive Vice President, Head of Group Accounting Division*
2	*Adv. Nitzan Sandor*	*Other* *Executive Vice President, Head of Legal Counsel Division*

Reference numbers of previous documents relating to this topic (their mention does not constitute their inclusion by way of reference):

The securities of the Corporation are listed for trade on the Tel Aviv Stock Exchange   Date of updating structure of form: 10/10/2023

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Prior names of the reporting entity:

Name of person making electronic report: Tenne, Ayelet   Position: Lawyer, General Secretary   Name of Employing Company:
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Israel Discount Bank's Immediate Reports are published in Hebrew on the website of the Israel Securities Authority and the Tel Aviv Stock Exchange.
The English translation is prepared for convenience purposes only.
In the case of any discrepancy between the English and Hebrew versions, the Hebrew will prevail.

ATTACHMENT

FAO:	FAO:
The Israel Securities Authority	**The Tel Aviv Stock Exchange Ltd.**
www.isa.gov.il	www.tase.co.il

Re. Adoption of Recommendations of Independent Claims Committee Appointed in Connection With Events That Led to the Signing of Compromise Arrangements in the Claims Filed Against the Bank in Australia

Further to that stated in the immediate report issued by Israel Discount Bank Israel Ltd. ("**the Bank**" or "**Discount Bank**") on January 31, 2021, in Note 26.C.11.3 of the Bank's financial statements as of December 31, 2020 (pages. 192-193; pp 230-231 of the English translation) and on pages 276-277 of the Bank's 2022 Annual Report (pages 338 of the English translation), regarding the signing of compromise arrangements in connection with various proceedings that were conducted against the Bank and against Mercantile Discount Bank Ltd. ("**MDB"** and together with the Bank – "**the Banks**") in Australia and regarding the establishment of an independent committee to examine the administrative and control processes that allowed the conduct that led to the proceedings for which the said compromise arrangements were signed, the Bank hereby provides the following update:

1. In January 2021, as required by the Supervisor of Banks, the Banks' boards of directors decided to establish a joint committee the two boards of directors, which will be a special, independent committee ("**the Committee**"). The Committee was ordered to examine the administrative and control processes that allowed the conduct of the Banks, which led to the proceedings for which the compromise arrangements were signed, while addressing – inter alia – corporate governance aspects and the conduct of the board of directors and senior management, including drawing conclusions and making general and personal recommendations with regard to officers and employees, where necessary, including in relation to compensation awards granted to the officers during the relevant period. The Committee was requested to submit its conclusions and recommendations to the Banks' boards of directors.

2. The composition of the Committee was determined by the Banks' boards of directors, as follows: **Her Honor, Judge (Retired), Hila Gerstel, Co-Chair of the Committee** – former President of the Central Region-Lod District Court, and former Commissioner of Prosecutorial Oversight and State Court Attorneys; **His Honor, Judge (Retired) Jacob Sheinman, Co-Chair of the Committee** – former Vice President of the Central Region-Lod District Court, who was appointed as a member of the committee and Co-Chair with effect from August 15, 2021; **Mr. Roni Bar-On** – advocate, former Minister of Finance, Minister of National Infrastructure, Minister of Science and Technology and Minister of the Interior; **Mr. Aharon Abramovich** – advocate., external director of Discount Bank, former Director-General of the Ministry of Foreign Affairs, Director-General of the Ministry of Justice and CEO of The Jewish Agency for Israel. Three members of the Committee have not and do not serve in any capacity at the Bank and/or at MDB; one member of the Committee serves as stated as an external director

of Discount Bank (but did not hold that position during the relevant period.) All members of the committee are independent and objective.

3. The mandate given to the Committee by the Banks consisted of two roles: (a) an independent claims committee, whose role is to recommend to the boards of directors whether it is befitting to take legal proceedings against relevant parties on appropriate lawsuit grounds, where such exist; and (b) an institutional and procedural review committee, whose role is to examine the administrative processes (including procedures and policy documents) and the control processes that were examined by it and that led to the events on which the Committee's work is based.

4. As previously reported, the proceedings conducted against the Banks in Australia and in Israel and in which compromise arrangements were signed relate to accounts held with the two Banks by certain Australian family members and by companies related to them. The essence of said proceedings is civil lawsuits (fiscal) filed in Australia by the liquidators of the related companies, claiming damage caused to these companies due to amended tax assessments issued by the Australian tax authorities. The actions against the family members were terminated in 2010 (MDB) and in 2015 (Discount Bank).

5. In the course of its work, the Committee held more than 70 meetings with regard to the two Banks, put questions to tens of interviewees and located and collected documents and material from the two Banks, covering a period of more than 30 years. The applicant's attorneys in the application for the discovery of documents also appeared and testified before the Committee prior to lodging a petition to certify a derivative action that was filed in connection with the events related to the proceedings in Australia, as stated in Note 26 C. 1 of the Bank's Financial Report for 2022 ("**the Application for the Discovery of Documents**").

6. Based on all the claims, information, documents, and evidence presented to it, the Committee assessed the probability of possible defendants being held liable, according to the various grounds for the claim, and the significance for the Banks of proceedings being conducted. The Committee examined the possibility of resorting to proceedings, while distinguishing between the best interests of the Banks in the narrow sense (the chances of the action) and the best interests of the Banks in the broad sense (other considerations benefiting the corporation).

7. The Committee presented the Banks' boards of directors with separate reports relating to Discount Bank and MDB. These reports were presented to the Banks' boards of directors in the Committee's role as an independent claims committee. The Committee, in its role as an institutional and procedural review committee, will submit another confidential report, as required by the Bank of Israel, in which the administrative and control processes examined by it will be presented to the Bank of Israel.

8. For details of the Committee's main conclusions, see the appendix attached to this report.

9. <u>Presented below is a summary of the recommendations to the Banks' boards of directors (as set forth in detail in the appendix to this report):</u>

    9.1. **Recommendations in relation to directors and officers:** The Committee recommended to the Banks' boards of directors that no legal proceedings be taken against the directors and other officers for breach of fiduciary duty, since it believes that, in the circumstances of the case, the chances of such cause of action are negligible. The Committee recommended that the Banks' boards of directors not take legal action against the directors and other officers for breach of the duty of care, since it believes that, in the circumstances of the case, the chances of such cause of action are very low. Accordingly, the Committee also believes that there is no merit in demanding that the directors and other officers refund the compensation awards they received

within the framework of their service with the Banks during the relevant period, and there is no merit in taking legal action on this matter.

9.2. **Recommendations in relation to employees who are neither directors nor officers with the Banks:** With regard to six employees (including former employees) of the Bank and three former employees of MDB, who are not officers, the Committee determined that there was apparently a breach of the duty of care imposed on them as employees of the Banks. Despite the Committee having determined that several employees were apparently in breach of their duty of care toward the Bank, the Committee came to the conclusion that it would be hard to prove the existence of a legal causal relationship between their conduct and most of the amounts that the Banks have paid under the compromise arrangements. With regard to this, the Committee believes, inter alia, that the Bank's employees did not expect, and could not have been able to expect, that the Australian tax authorities would consider the loans themselves, which the Bank had granted, to be taxable income and that the Bank would be liable for them. The difficulties in proving the existence of the aforementioned legal causal relationship leads, in the Committee's opinion, to restricting the actionable damages to a maximum amount of approximately AUD 21.3 million with regard to Discount Bank and to approximately AUD 3.4 million with regard to MDB, with the actual amount of damages being lower than the aforesaid maximum amount, in the Committee's opinion.

However, after examining the best interests of the Banks in a broad sense, including the benefits, harm, costs and possible financial gains involved in conducting such a claim, the Committee recommended that the Banks' boards of directors not take legal action against these employees.

9.3. **Arrangement with the insurers of the directors and other officers:**

9.3.1. After taking into account all relevant substantive and legal considerations, and to prevent costly legal proceedings that could cause significant damage to the Banks' interests and reputation, and according to the mandate given to it by the Banks' boards of directors, the Committee reached the conclusion that it would be appropriate to negotiate with the insurers of the directors and other officers, with respect to all the possible claims and grounds that the Banks would be able to raise against any of the directors, other officers and employees of the Banks.

9.3.2. In this context, the Committee noted that, unlike other cases for which independent committees have been established in recent years, the events being examined by the Committee dealt with patterns of activity, various events and various banking services provided to one family (when the family used these services for its needs), which were dealt with at the Banks by a small number of bankers, and there were no events that have been identified that would indicate the existence of widespread failures existing at the Banks, or that have involved a large number of customers, or that the failures that occurred in dealing with said family were systemic.

9.3.3. The Committee believes that, after several weeks of exhaustive focused and substantive negotiations, it has succeeded in reaching an agreement that includes a payment to the Banks for all the possible grounds and claims against directors, other officers and employees of both Banks in a total, final and full sum of NIS 18.1 million. Of this sum, an amount of NIS 15.5 million will be paid to the Banks and an amount of NIS 2.6 million will be paid for professional fees, expenses and compensation (with only the VAT component on the last amount being paid by the Banks from the settlement amount). In the opinion of the Committee, this is a proper amount, which correctly balances all the grounds and claims,

risks and exposures of all the parties involved in the matter, and – first and foremost – gives correct weightings to what is best for the Banks and their interests.

9.3.4. The Committee noted that, after meetings were held with the insurers and they were presented with the Committee's findings and recommendations, the amount of this settlement was also accepted by the attorneys for the applicant that filed the Application for the Discovery of Documents.

10. The Committee has recommended that the Banks' boards of directors enter into a settlement agreement with the insurers for the aforementioned amount, which does not include a payment from the directors and other officers, subject to it being ratified by the District Court within the framework of the Application of for the Discovery of Documents.

11. At a number of meetings, the Bank's board of directors and MDB's board of directors discussed the Committee's reports and recommendations and, at their meetings on November 20 (MDB) and November 26 (the Bank), they decided to adopt the findings, conclusions and recommendations of the Committee in full, while directing the Banks' managements and legal advisors to act to formulate and implement the arrangements accordingly.

12. The Banks intend to file a notice in the near future with the court that is hearing the Application for the Discovery of Documents, regarding the adoption of the Committee's recommendations and regarding its intention to reach a detailed settlement with the relevant parties, so that it will be able to file an application for the approval of the aforesaid settlement with the court.

Yours sincerely,

Israel Discount Bank Ltd.

Signed by:

Nitzan Sandor, Executive Vice President, Head of Legal Counsel Division

Joseph Beressi, Senior Executive Vice President, Head of Group Accounting Division

APPENDIX TO THE IMMEDIATE REPORT

BACKGROUND TO, AND MAIN CONCLUSIONS OF, THE INDEPENDENT COMMITTEE'S REPORT

Background

1. As previously reported, various legal proceedings have been conducted in Australia and in Israel against the Bank and against MDB, relating to accounts held with the two Banks by certain Australian family members and by companies related to them. The essence of said proceedings is civil lawsuits (fiscal) filed in Australia by liquidators of the related companies, claiming damages caused to these companies due to amended tax assessments issued by the Australian tax authorities. The claims were based on the allegation (refuted) that the Banks had provided banking services to customers, assisting them in evading the payment of taxes in Australia.
2. On January 31, 2020, the Banks signed a compromise arrangement in relation to one of the aforementioned proceedings, pursuant to which an amount of AUD 6.5 million was paid to a liquidator and the claim against the Banks was settled.
3. On January 31, 2021, the Banks signed compromise arrangements for the settlement of all claims and actions of the plaintiffs (including the Australian tax authorities) against the Discount Group, including in relation to the proceedings, the family members and the related companies, with this being without any admission of liability. According to the aforesaid arrangements, the amount of the settlement totals AUD 138 million, which, as of that date, is the equivalent of NIS 343 million. Of the above amount, NIS 323 million was paid by Discount Bank and the balance was paid by MDB. Concurrently, an arrangement has been drawn up whereby the insurers will pay the Bank an amount of approximately US$ 55 million, for which an amount of approximately US$ 47.5 million was recorded as income.
4. As required by the Supervisor of Banks, the boards of the two Banks have decided to establish a joint committee of the two boards of directors, which will be a special independent committee. The Committee was ordered to examine the administrative and control processes that allowed the conduct of the Banks, which led to the proceedings for which the compromise arrangements were signed, while addressing – inter alia – corporate governance aspects and the conduct of the board of directors and senior management, including drawing conclusions and making general and personal recommendations with regard to officers and employees, where necessary, including in relation to compensation awards granted to the officers during the relevant period. The Committee was requested to submit its conclusions and recommendations to the Banks' boards of directors.
5. The mandate given to the Committee by the Banks consisted of two roles: (a) an independent claims committee, whose role is to recommend to the boards of directors whether it is befitting to take legal proceedings against relevant parties on appropriate lawsuit grounds, where such exist; and (b) an institutional and procedural review committee, whose role is to examine the administrative processes (including procedures and policy documents) and the control processes that were examined by it and that led to the events on which the Committee's work is based.
6. The composition of the Committee was determined by the Banks' boards of directors, as follows: Her Honor, Judge (Retired), Hila Gerstel, Co-Chair of the Committee – former President of the Central Region-Lod District Court, and former Commissioner of Prosecutorial Oversight and State Court Attorneys; His Honor, Judge

(Retired) Jacob Sheinman, Co-Chair of the Committee – former Vice President of the Central Region-Lod District Court; Mr. Roni Bar-On – advocate, former Minister of Finance, Minister of National Infrastructure, Minister of Science and Technology and Minister of the Interior; Mr. Aharon Abramovich – advocate., external director of Discount Bank, former Director-General of the Ministry of Foreign Affairs, Director-General of the Ministry of Justice and CEO of The Jewish Agency for Israel. Three members of the Committee have not and do not serve in any capacity at MDB and at Discount Bank; one member of the Committee serves as stated as an external director of Discount Bank (but did not hold that position during the relevant period.) All members of the committee are independent and objective.

The Committee's work process

7. The Committee located and collected documents and material from the two Banks, covering a period of more than 30 years, with this being from the level of the branches that dealt with the Australian family up to the level of management, the Board of Directors and its committees.

8. After locating, identifying and classifying the relevant documents, the Committee – by itself and with the assistance of external legal counsel that it appointed (Adv. Aharon Michaeli of the Goldfarb Gross Seligman & Co. law offices, and his team) – studied and analyzed all the types of documents that it defined as being relevant to its work, including relevant court documents filed in the legal proceedings conducted in Australia, documents that were attached and mentioned in the legal proceedings conducted in Australia and in Israel, the Banks' internal procedures, minutes of the meetings of the Banks' boards of directors and of their relevant committees (the risk management committee, the audit committee and the credit committee) minutes of meetings of the Banks' managements, audit reports of the Bank of Israel, internal audit reports, documents received from liquidators of the Australian corporations, the opinion given to the Banks in connection with the proceedings, the compromise arrangements that are been signed, insurance and indemnification documents, and all the Banks' documents relating to the activity of the Australian family at the Banks.

9. The Committee, at its sole discretion, called various interviewees, among whom were employees of the relevant branches, divisional heads, members of management, and directors. The Committee also interviewed the chief risk officer and the compliance officer of Discount Bank who were in office at the time of the interview being conducted, and these officers presented it with a description of the latest compliance and enforcement structure and details of the Discount Group's implementation of the lessons learned from the events. In addition, the Committee held talks with the Australian lawyer who was retained by the two Banks to represent them in the Australian proceedings, as well as to assess the chances and risks of the actions and legal proceedings conducted against them and the potential exposure created by these proceedings.

10. Attorneys for the directors, the other officers and employees (Adv. Zvi Agmon of the Agmon with Tulchinsky law offices) and for the two Banks (Adv. David Leshem of the Nir Cohen, Leshem, Ben-Artzi & Co. law offices) also appeared before the Committee. Moreover, attorneys for the applicant in the application for the discovery of documents, prior to lodging a petition to certify a derivative action that was filed in connection with the events related to the proceedings in Australia, also appeared and testified before the Committee ("**the Application for the Discovery of Documents**").

11. Representatives of the EY accounting firm also appeared before the Committee and reviewed the material and data that had been collected at the two Banks, as part of their preparations for the proceedings submitted against them in Australia and Israel, and the lesson learning process implemented by the two Banks subsequent to, and as a result of, the events.

12. In the course of its work, the Committee held more than 70 meetings with regard to the two Banks.
13. Based on all the claims, information, documents, and evidence presented to it, the Committee assessed the probability of possible defendants being held liable, according to the various grounds for the claim, and the significance for the Banks of proceedings being conducted. The Committee examined the possibility of resorting to proceedings, while distinguishing between the best interests of the Banks in the narrow sense (the chances of the action) and the best interests of the Banks in the broad sense (other considerations for the good of the corporation).
14. In its role as an independent claims committee, the Committee presented the Banks' boards of directors with separate reports relating to Discount Bank and MDB, the main points of which are presented below.

The Committee's conclusions in relation to the directors and other officers of the two Banks

15. The Committee examined the possible grounds for the claim against directors and officers at the Banks, both according to relevant judicial decisions given in Israel and also according to criteria developed in judicial decisions in the State of Delaware in the United States and adopted in District Court decisions in Israel.
16. Following an examination of the whole array of documents presented to the Committee and the interviews it conducted, no evidence was found to indicate that the directors and other officers acted other than in the best interests of the Banks or that they were influenced by foreign interests or acted in a manner that caused the Banks to breach the law. In addition, from the entirety of the findings presented to the Committee, and from its immediate impression of the interviewees who appeared before it, no finding was revealed that would substantiate the claim that officers ordered, with a signal or in an act, that the law should not be complied with or that it should be breached, or that they closed their eyes to activities that could harm the Banks' compliance with the provisions of the law.
17. In addition, the Committee reached the conclusion that it was not possible to point to a breach of the duty of care of directors and other officers.
18. The Committee found that the Banks' board of directors and/or its committees were constantly concerned with the integrity of the work and control processes of the business lines (inter alia through discussions on the findings of the audit reports of the Bank's internal audit function), and that the "tone at the top" that the Banks' management transmitted was one of strict and meticulous policy compliance, with zero tolerance for deficiencies in compliance, and with active involvement of the management in the discovery of material deficiencies, in a way that also helped implement the procedures and compliance with the law at the Banks. The Committee also found that in the areas relevant to the activities of the family members and the corporations under its control, procedures were established at the Banks for the purpose of implementing and assimilating the regulatory directives, which were sometimes more stringent than the provisions of the law applicable at that time.
19. The Committee believes that, during the relevant period, proper control and audit systems existed at the Banks, in a manner that meets the "system in place" requirement. The Committee found that the Banks had a institutionalized system of instructions and procedures, as well as for implementation and guidance in relation to the provisions of the law and the Banks' procedures. The Banks maintained and managed the necessary systems and institutions within the framework of the three lines of defense, including the existence of an established system of audit, control, supervision and surveillance (and, over the years, audits and reviews were conducted by the Banks' internal audit function, by the Bank of Israel and by external parties), an established system of

reporting and discussion of their reviews and findings, and the treatment and monitoring of the rectification of these findings (by the Banks' management, by the audit committees, and sometimes by the boards of directors).

20. The Committee noted that it did not close its eyes to the fact that the Banks and their activities received criticism – and sometimes even sharp criticism – in the audits, in which it was noted that there were failures in significant functions at the Banks, including in the areas of compliance and following procedures, prohibition of money laundering, risk management and units that dealt with foreign residents. However, the Committee believes that the occurrence of failures in these systems does not mean that these systems do not exist at all or are insubstantial (and this was also not stated in the audits). Furthermore, the Banks' managements, the audit committees, and the boards of directors did not ignore these audits but held discussions and conducted ongoing monitoring of the implementation of the recommendations contained therein, and therefore acted as required of them in the particular circumstances of the matter or, at the very least, acted reasonably.

21. The Committee referred to the fact that the Banks conducted numerous and complex activities that are carried out by hundreds, if not thousands, of employees spread over scores of branches. It is clear that in this type of activity, which entails many risks, many failures and deficiencies will occur. The Banks are not failure-proof, and probably there is no body that is, so this should not be expected of them. The legal examination required is of the reasonableness of the conduct, and not whether it was perfect. For the report's purposes, the question is whether the Banks maintained established operations to supervise and control these activities, and whether they acted and invested resources to rectify the discovered deficiencies. As stated, in the Committee's opinion, the answer to both these questions is in the affirmative.

22. The Committee also found that directors and other officers had observed a number of "red flags" pointing to the existence of possible harm to the Banks, which had been dealt with by the officers who were exposed to them in in a manner that satisfies the requirements of the duty of supervision imposed on them, and they did not ignore them consciously and in good faith. In particular, appropriate attention had been given to the "red flags" that had been observed in connection with the activities of members of the Australian family, either directly or indirectly.

23. The Committee added that the characteristics of the Australian family members' activity – when looked at cumulatively – represented a "red flag", which should have been passed up the chain of management to the officers, or at least to some of the members of management. It seems that the relevant employees who dealt with the family members were not able to create a full picture of the unusual activity of the family members, and therefore they could not understand that this was a "red flag" that needed to be brought to the attention of those higher in the management chain. However, the Committee did not find that this "red flag" had been brought to the attention of any of the directors and other officers, and therefore they were not able to take action to remove the danger.

24. In conclusion, the Committee believes that, in light of the information presented to it, in particular regarding the steps taken by the Banks in order to deal with the challenges and regulatory requirements that had developed over the years in relation to the banking service provided to members of the Australian family, while paying attention to the need to be careful of "hindsight test bias". There are no grounds to conclude that the directors and other officers of the Banks had deviated from the required standard when exercising the discretion conferred on them when taking steps to deal with the risks that arose from the provision of the banking service of the type provided to members of the Australian family. Therefore, they have no legal liability for breach of obligations imposed on them in this regard.

25. The Committee added that even if it had come to the conclusion that the chances of the claim against any of the directors or other officers for breach of duty of care were better, such a claim would face a significant barrier, due to the existence of valid exemptions for all the directors and officers of the two Banks appointed from at least 2009 and thereafter; in addition, at Discount Bank, for most of the directors and other officers who were serving in 2007, and at MDB, there is a reasonable possibility that the exemption would also apply to directors and other officers who served until 2009 and to actions taken by directors and other officers before the exemption was granted.

The Committee's conclusions regarding the six Discount Bank employees

26. In relation to six Discount Bank employees, most of whom no longer work there, the Committee found a theoretical breach of their duty to act carefully, diligently and skillfully within the framework of their duties in the service of the Bank. This supposed breach occurred with regard to two letters issued by the Bank in March 2009 to the corporations controlled by the Australian family, in which it was noted that the loans granted by the Bank to the corporations were guaranteed by personal guarantees given to secure them, without mentioning the existence of the financial deposits that served as the main collateral for those loans. These letters were considered – according to legal determinations in the interim proceedings in Australia and according to the pleadings and judicial precedent in proceedings to which the Banks were not party – to be misleading letters, constituting the main evidence that the Bank's employees knew that the purpose of the loans given to the Australian family was to help them evade tax from the Australian tax authorities.

27. The Committee determined that the wording of the March 2009 letters, as issued, is misleading, flawed, manifestly improper and does not reflect the Australian family's relationship with the Bank as it was in practice, and that the entire process of preparing the letters was improper, replete with failures, omissions, errors, lack of awareness and lack of attention. The Committee believes that these employees did not act for improper reasons – out of a conflict of interest, for their personal or unlawful benefit – but rather with the intention of pleasing a client who was perceived to be significant and to provide him with service, against the background of a banking and regulatory reality different from that which exists today. However, in the Committee's opinion, this does not detract from the conclusion that they failed to perform their duties in relation to what is expected of them as competent and reasonable employees of the Bank.

28. The Committee also found cause to fault the conduct of employees who were exposed to suspicious signs in the activity of the Australian family and the corporations under its control starting from December 2009, which the Committee believed should have been carried out more carefully and should have included more resolute and earlier measures to restrict the activity. However, the Committee determined that in the circumstances of the case, this defect was insufficient to constitute a failure in the functioning of the employees or a serious deviation from the standard of conduct expected of them, and therefore, the conduct of the said employees does not constitute an unreasonable breach on their part of their obligations toward the Bank.

29. Despite the Committee's determination that a number of Bank employees were apparently in breach of their obligations toward it, the Committee concluded that there are two major difficulties in proving the existence of a legal causal relationship between their conduct and the damage caused to the Bank, and that these are: the difficulty of anticipating the type of damage arising from the inclusion of the principal of the loans as part of the corporations' taxable income; and the difficulty of anticipating the type of damage arising from a claim relating to funds transferred to the Banks on the grounds of creditor fraud. In this regard, the Committee believed that the Bank's employees did not expect, and could not expect, that the Australian tax authorities would consider the

loans themselves, which the Bank had granted, to be taxable income and that the Bank would be liable for them. Also, a reasonable Israeli banker, certainly on those dates, could not have expected that transferring funds from the corporations to repay the principal on the loans and the interest thereon would be considered to be creditor fraud. This is partly due to the fact that the transactions of members of the Australian family members were legitimate and real loans granted by the Bank and that the funds transferred to the Bank constituted the repayment of the principal and interest on those loans. Moreover, although the letters had an effect on the amount of the compromise and the actionable damages, this effect is not at the level of the full amount.

30. In the Committee's opinion, these difficulties lead to the actionable damages being restricted to a maximum amount of approximately AUD 21.3 million, with the actual amount of damages apparently being lower than the aforesaid maximum amount, in the Committee's opinion.

<u>The Committee's conclusions regarding the three MDB employees</u>

31. In relation to the three employees of MDB, all of whom no longer work there, the Committee found an apparent breach of the duties of care imposed on them. This alleged breach occurred in connection with a "statutory statement" made in February 2011, which was signed by the MDB employee at the request of the Australian family to testify to the authenticity of the loans taken by the corporations under its control. This statement did not explicitly refer to the deposits being collateral for the loans and, inter alia, the court in Australia ruled that it was one of the pieces of evidence that established the existence of an alleged cause of action against the Banks.

32. The Committee determined that the statutory statement was missing and represented a misleading representation, as it did not describe the full relationship between the Australian family and MDB as it actually was. In addition, the Committee believes that the statutory statement was issued contrary to the provisions of the procedure on the topic of issuing letters of recommendation to customers and that, although – according to said procedure – it should have been issued by the branch manager, in actual fact, he was not involved at all in its preparation, was not consulted about it, nor was its existence brought to his attention in real time or in retroactively.

33. The Committee found no evidentiary foundation to suggest that the employees involved in issuing the statutory statement acted for improper reasons – out of a conflict of interest, for their personal or unlawful benefit, and even believed that they did not act as aforesaid. However, in the Committee's opinion, this does not forestall the conclusion that these employees failed in the performance of their duties, in relation to what was expected of them as skilled and dedicated employees of MDB. This is especially the case when dealing with a statutory declaration, which – from its character and nature – is intended to be used in legal proceedings in a foreign country, with all the meanings, sensitivities and implications that such a document can have (as it also ultimately did).

34. Despite the Committee's determination that the employees of MDB were apparently in breach of their obligations toward it, the Committee concluded that there were significant difficulties in proving the existence of a legal causal relationship between their conduct and damage caused to the bank, these being the same as those that the Committee had indicated in relation to Discount Bank. In the Committee's opinion, these difficulties lead to the actionable damages being limited to a maximum amount of approximately AUD 3.4 million, with the actual amount of damages apparently being lower than the aforesaid maximum amount, in the Committee's opinion.

<u>Best interests of the Banks in the broad sense</u>

35. After examining the implications, disadvantages, and advantages involved in conducting a possible civil suit against the directors, other officers and employees of the two Banks, the Committee's position is that the many

disadvantages in filing a claim against those employees who are not officers and are not at senior management levels, regarding whom it was determined that there was an apparent breach of their obligations to the Banks, in the specific circumstances of the matter under discussion, would outweigh – in the Committee's opinion – any benefits that would accrue from filing such a claim. This is due to a number of reasons:

- The costs involved in conducting a possible lawsuit in relation to the matter under discussion are extremely high. We are dealing with a period of 25 years at Discount Bank and 15 years at MDB, and with activity involving many parties at the Banks and outside of them, some of whom would not be able to testify to the events. It is also a complicated process, both factually and legally, that would require the Banks to devote enormous resources to conduct it, and, all the while, the chances of winning a claim against the directors and officers remain slim.
- A possible legal proceeding, that would be filed against a number of elderly employees of the Banks, most of whom are former employees of the Banks, who are not officers and who served at an executive level, may send a negative message, damage the reputation of the Banks and cause harm to the relationship between the Banks and their thousands of current employees.
- The Banks' choice not to stand by their employees, regarding whom there is no claim that their actions were for personal enrichment or were of a criminal nature, which they believed were carried out for the benefit of the Banks as they saw it in real time and which can be considered to be actions taken in good faith, without any conflict of interests and in an attempt to learn the facts and get information, even if the results test shows their functioning to have been flawed, this could still create a negative impact on employees' ongoing functioning. This is especially so in view of the fact that the deficiencies found by the Committee in these specific employee practices illustrate significant gaps in the perception of the role of banking, which have been reflected in the major regulatory changes that have been made over the years.
- It is difficult to see how the filing of such a claim would benefit the corporate governance when, in the Committee's opinion, the Banks dealt well with the areas in which the above failures were discovered, whether at the time of their discovery or after the fact. Therefore, there is no need to conduct a long and complicated civil proceeding, which would cost tens of times more than the small marginal benefit that would result in terms of improved corporate governance at the Banks.
- It is doubtful whether the employees found to have apparently been on breach of their obligations toward the Banks are covered by any relevant insurance, so there is considerable doubt regarding the economic advantageousness of bringing the lawsuit against them.
- Additional considerations that also support, in the Committee's opinion, refraining from filing legal proceedings with respect to what happened, are, inter alia, the length of time that has passed since the events and the many changes that been made in the regulations during the intervening period, as well as the fear of "hindsight bias".

<u>The Committee's recommendations</u>

36. The Committee recommended to the Banks' boards of directors that no legal proceedings be taken against the directors and other officers for breach of fiduciary duty, since it believes that, in the circumstances of the case, the chances of such cause of action are negligible.

37. The Committee recommended that the Banks' boards of directors not take legal action against the directors and other officers for breach of the duty of care, since it believes that, in the circumstances of the case, the chances of such cause of action are very low. Accordingly, the Committee also believes that there is no merit in demanding that the directors and other officers refund the compensation awards they received within the framework of their service with the Banks during the relevant period, and there is no merit in taking legal action on this matter.

38. Moreover, the Committee recommended to the Banks' boards of directors that no legal proceedings be taken against the employees that are not officers and are not at the level of senior management, regarding whom it was determined that there was an apparent breach of the duty of care imposed on them as employees of the Banks.

39. The Committee found various faults, flaws and deficiencies in the conduct of the Banks, which do not justify, in themselves, the filing of a claim by the Banks against the directors and officers or against any of the Banks' employees, and also found failures in the functioning of a number of employees (who are not officers), for whom there is a basis to determine that those employees were negligent and apparently breached their obligations toward the Bank.

40. It is the Committee's position, from the aspect of the Bank's best interests in the "broad" sense, that the many disadvantages of filing a claim against those employees (who are not officers and are not at senior management levels), for whom it was determined that there has been an apparent breach of their obligations toward the Bank, outweigh any benefits that would accrue from filing such a claim.

41. After taking into account all relevant substantive and legal considerations, and to prevent costly legal proceedings that could cause significant damage to the Banks' interests and reputation, and according to the mandate given to it by the Banks' boards of directors, the Committee reached the conclusion that it would be appropriate to negotiate with the insurers of the directors and other officers, with respect to all the possible claims and grounds that the Banks would be able to raise against any of the directors, other officers and employees of the Banks.

42. In this context, the Committee noted that, unlike other cases for which independent committees have been established in recent years, regarding arrangements reached by Israeli banks with the U.S. Department of Justice, in our case, the Committee found, from the collection of documents presented to it and from the interviews it conducted, that the events being examined by the Committee, including the legal proceedings filed in Australia and Israel that led the Banks to sign the compromise arrangements, dealt with patterns of activity, various events and banking services provided to one family (when the family used these services for its needs), which were dealt with at the Banks by a small number of bankers, and there were no events that have been identified that would indicate the existence of widespread failures existing at the Banks, or that have involved a large number of customers, or that the failures that occurred in dealing with said family were systemic.

43. The Committee believes that, after several weeks of exhaustive focused and substantive negotiations, it has succeeded in reaching an agreement that includes a payment to the Banks for all the possible grounds and claims against directors, other officers and employees of both Banks in a total, final and full sum of NIS 18.1 million. Of this sum, an amount of NIS 15.5 million will be paid to the Banks and an amount of NIS 2.6 million will be paid for professional fees, expenses and compensation (with only the VAT component on the last amount being paid by the Banks from the settlement amount). In the opinion of the Committee, this is a proper amount, which correctly balances all the grounds and claims, risks and exposures of all the parties involved in the matter, and – first and foremost – gives correct weightings to what is best for the Banks and their interests. The Committee noted that, after meetings were held with the insurers and they were presented with the Committee's findings and

recommendations, the amount of this settlement was also accepted by the attorneys for the applicant that filed the Application for the Discovery of Documents.

44. The Committee has recommended that the Banks' boards of directors enter into a settlement agreement with the insurers for the aforementioned amount, which does not include a payment from the directors and other officers, subject to it being ratified by the District Court within the framework of the Application of for the Discovery of Documents.