

Mandatory Industrial Cooperation Regulations

Umbrella Agreements

Israeli regulations impose international reciprocal purchase obligations on foreign entities that win a government tender in Israel that exceeds \$5 million. Such foreign entities are required to purchase a certain percentage of local goods or services.

More specifically, according to the Mandatory Tenders Regulations (Mandatory Industrial Cooperation), 5767 – 2007 (“**The Regulations**”), the following entities which are obligated to exercise all their goods and services procurement through tender procedure: the State of Israel, government-owned corporations, local corporations, and health funds, are not allowed to engage with a foreign supplier that has won a tender of over \$5 million, unless the foreign supplier has signed a reciprocal purchase obligation with the Industrial Cooperation Authority (“**ICA**”). Under this obligation, the foreign supplier commits to acquiring Israeli goods or services in an amount equal to 20-35% of the awarded contract. The exact amount may vary in accordance with the foreign supplier’s country of origin and the nature of the contract. In addition, the foreign supplier is obligated to purchase Israeli manufactured goods or services which are **directly related** to the tender, in an amount of no less than 20% of the contract value.

In the last few years, the ICA has hardened its stance regarding the enforcement of The Regulations. This strict stance is demonstrated in the number of occasions in which the ICA carried out enforcement procedures on foreign suppliers due to their breach of the Industrial Cooperation obligations.

In light of the above, foreign suppliers who participate in major government tender processes in Israel should consider the option of entering into an “**Umbrella Agreement**” with the ICA. Such an agreement governs all of the foreign supplier's obligations towards the ICA in a comprehensive manner and grants certain advantages to the foreign supplier.

One of the incentives to engage in an Umbrella Agreement is that the ICA views the foreign supplier comprehensively and takes into account all its undertakings and realizations, which are considered as one unit, in such a manner that any surplus from one tender can be used to remedy a shortage in another tender.

Another benefit of considering all undertakings and fulfillments as a single unit is that the foreign supplier may be relieved from having to submit separate fulfillment reports to the ICA for each undertaking.

Furthermore, in certain occasions, instead of satisfying the direct 20% Industrial Cooperation obligation as mentioned above, foreign suppliers may satisfy the requirement through "New Business", meaning the purchase of product or service from an Israeli entity that the foreign supplier has not had previous business activities with, or the purchase of a new product or service from an Israeli entity. This provides the foreign supplier the important flexibility not to acquire Israeli services or goods directly related to the specific tender it has won, but to fulfill this obligation using "New Business".

The ICA has reported that during 2020, it entered into 15 Umbrella Agreements. It is important to note that the decision whether or not to sign an Umbrella Agreement is within the ICA's sole discretion, and is based on the following criteria:

- The scope of previous fulfillments accredited to the foreign supplier;
- The foreign supplier's compliance with its previous obligations with the ICA;
- The benefits to Israeli industry from the Industrial Cooperation;
- The potential for Industrial Cooperation outside the standard ICA Obligations (cooperation on a broader scope than the mandatory percentage of the contract value).

In light of the above, and especially due to the considerable amounts of resources the Israeli government intends to invest in major infrastructure projects in the years to come, we recommend that foreign entities who intend to engage in business with the public sector in Israel should thoroughly consider entering into an Umbrella Agreement with the ICA.

* * *

The content in this Memo is provided for informational purposes only, and does not serve to replace professional legal advice required on a case by case basis. The firm does not undertake to update the information in this Memo, or its recipients, about any normative, legal, or other changes that may impact the subject matter of this Memo.

Should you have any questions or need additional information regarding this matter, please feel free to contact Adv. Rami Sofer, Head of the Corporate, Finance and Infrastructure Department: Rami.Sofer@Goldfarb.com, or Adv. Roy Aga, Partner, Corporate, Finance and Infrastructure Department: Roy.Aga@goldfarb.com.