## II. Operating a Business in Israel

### *A. In General*

Israel's attractive investment climate is attributable to a combination of factors. Its labor force is comprised of highly skilled employees who are thoroughly familiar with the latest American, Russian and Western European technologies, as well as a readily available reservoir of trained manual workers. At the same time, Israeli workers earn approximately half the wages of their counterparts in the United States.

Israel provides ample opportunity for the conduct of research and development (R&D) in such internationally renowned institutes as the Weizmann Institute, the Technion, the Hebrew University, the Beer Sheeba University, Bar Ilan University, and the University of Tel Aviv. It has a modern infrastructure and offers a wide range of technical and industrial support services. Israel is conveniently located at the crossroads of three continents and offers direct access to both the Mediterranean Sea and the Indian Ocean. Its cities are modern, and English is a true second language. Moreover, as Israel is a society of immigrants, one can readily find people with affiliations to almost any country in the world and with remarkable linguistic abilities.

#### *1. Trade Agreements*

On May 11, 1975, Israel and the European Union (EU) entered into a free trade agreement.[9] A new agreement was signed in 1995, which entered into force on June 1, 2000.[10] The new agreement is aimed at reinforcing the free trade area between the EU and Israel.

Regarding industrial products, the agreement provides that customs duties on imports and exports, including those of a fiscal nature, and any charges having equivalent effect, are prohibited.[11] The Agreement provides further that a greater liberalization of trade in agricultural products will be established progressively.[12]

Quantitative restrictions on imports or exports and all measures having equivalent effect are prohibited.[13] Products originating in Israel and exported to the EU will not be accorded more favorable treatment than that which the Member States of the EU apply among themselves.[14] The parties are to refrain from direct or indirect fiscal discrimination between products and like products of one party originating in the other party.[15] Also, exported products may not benefit from repayment of indirect internal taxation in excess of the amount of indirect taxation imposed on them directly or indirectly.[16] Products deemed to originate in one party are: products entirely produced in that party; and products produced in that party which contain materials not entirely produced there, provided that the said materials have undergone sufficient working and processing in that party.[17]

The agreement does not void import or export restrictions that can be justified in light of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; and the protection of intellectual, industrial or commercial property or any rules regarding gold and silver, provided such restrictions are not used as a means of arbitrary discrimination or disguised restrictions on trade between the parties.[18]

The agreement defines various activities as inconsistent with it, insofar as they are likely to hinder trade between the parties.[19] Among these are:

(i) The exploitation of a dominant position in the entire area of a party or in an important part thereof by one or several enterprises;

(ii) Any public support that distorts or is likely to distort competition by favoring certain enterprises or products; and

(iii) Any agreements or coordinated practices between enterprises aimed at distorting, restricting or preventing competition with respect to the production or barter of goods.

The agreement addresses the difficulties which may arise as a result of its implementation and also sets out the measures that can be taken to deal with them. The difficulties are as follows:[20] (a) dumping; (b) importation of a particular product in significant quantities that seriously harms or is likely to harm domestic producers or a sector of the economy, or importation that could bring about serious deterioration in the economic situation of a region; and (c) exportation that causes re-export towards a third country against which the exporting party maintains restrictions on exports, such as quantitative restrictions or export duties, or leads to a serious shortage, or threat thereof, of a product essential to the exporting party. In those cases, before taking any measures, the party in question is obliged to supply the Association Committee with all relevant information to find an agreed solution.[21]

On April 22, 1985, Israel and the United States entered into a bilateral Free Trade Zone Agreement, which came into force on September 1, 1985.[22] The agreement calls for the bilat-

---

[9] *Accord Entre L'Ei`tat d'Israel et La Communautei`e Ei`conomique Europei`ene*, 1975.

[10] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995.

[11] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 8.

[12] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 11.

[13] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, ss. 16–17.

[14] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 18.

[15] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 19(a).

[16] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 19(b).

[17] Protocol 4 to the Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, Art. 2.

[18] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 27.

[19] Euro-Mediterranean Agreement between the EU and the State of Israel, s. 36.

[20] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, ss. 22, 23 and 24.

[21] Euro-Mediterranean Agreement between the EU and the State of Israel, 1995, s. 25.

[22] Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, 1985.



ISBN 978-1-63359-061-8

eral progressive abolition of all customs, levies and duties on products that "originate" in one country and are exported to the other. In accordance with the 1985 agreement, Israel allows the duty free import of all U.S. products exported to it, as of January 1, 1995.[23] Neither party may impose licensing requirements on items exported by the other party, unless licenses issued under such requirements are: automatically approved; necessary to administer a quantitative ceiling on exports justified under the agreement; or necessary to administer restrictions in conformity with the agreement.[24] Neither party may impose, as a condition of the establishment, expansion or maintenance of investments by nationals or companies of the other party, requirements to export any amount of production resulting from such investments or to purchase locally produced goods and services. Moreover, neither party may impose requirements on investors to purchase locally produced goods and services as a condition for receiving any type of governmental incentives.[25] These conditions do not prohibit "buy-back" clauses in government procurement contracts. An important feature of the agreement was Israel's undertaking therein to abolish export incentives and subsidies then granted by it within a six-year period (see 2., below).

The agreement applies to any article if: (i) that article is wholly the growth, product, or manufacture of a party or is a new or different article that has been grown, produced or manufactured by a party; (ii) that article is exported directly from one party to the other party; or (iii) the sum of the cost or value of the materials produced by the exporting party, together with the direct costs of processing operations, is not less than 35% of the appraised value of the article at the time it enters the other party.[26]

Israel has entered into other Free Trade Agreements with: EFTA (Iceland, Liechtenstein, Norway, and Switzerland) (1992); Canada (1996); Turkey (1997); Mexico (2000); Mercosur (Argentina, Brazil, Paraguay, Uruguay) (2005); Colombia (2013), Panama (2018), Ukraine (2019), United Kingdom (2019), United Arab Emirates (2022), all of which lay down rules of origin, provide for a 0% customs rate on most products, and incorporate most of the principles of the 1994 General Agreement on Tariffs and Trade (GATT), to which Israel is a party. Also, Israel has entered into a Trade Agreement with Jordan in 1995, which was upgraded in 2004, and Qualified Industrial Zone Agreements (QIZ) were signed with Jordan (1997) and Egypt (2004).

The removal of customs duties exposes the parties to the risk of dumping. In Israel, the power to prevent or reduce this risk was given to certain ministers in their respective responsibilities — in most cases to the Minister of Industry and Commerce (now part of the Ministry of Economy) together with another Minister responsible for the matter under consideration (for example, agriculture). (See C.1.a.(2), below, regarding dumping and unfair competition.)

The trade agreements with the United States, Canada, the EU, Mexico and Mercosur make Israel a unique natural commercial bridge between North America, South America and Europe for the Israeli manufacturing of products made with North American know-how and their marketing in the EU. Creative and careful planning can achieve significant indirect tax savings. The trade agreement with Mexico allows 80% of Israel's exports to enter Mexico tax-free and, thus, compete with goods originating from the United States and entering Mexico tax-free.

Israel has a wide network of double taxation agreements that, inter alia, limit the rates of taxes on income derived from Israel and the relevant treaty partner country. For a complete list of Israel's tax treaties and other tax-related agreements, including the texts and information on signature, entry into force and effective dates, see *Bloomberg Tax International Tax Treaties* and the website of the Ministry of Finance.[27]

### *2. Government Incentives*

#### *a. In General*

Israel has devised an elaborate system of incentives, whose aim is to attract both local and foreign investment.

For these purposes, the country is divided into different zones (as further discussed in II.A.2.b., below),[28] with the most rewarding financial incentives being made available to entrepreneurs locating their enterprises in the least developed of these zones.[29] The incentives are designed to encourage investments in manufacturing[30] facilities, tourism, housing projects, industrial rental buildings, rental dwelling units and agriculture, and to attract foreign specialists. Based on various criteria, these incentives include for instance:

(i) cash grants (for investments in fixed assets);

(ii) accelerated depreciation;

(iii) subsidies towards the cost of essential infrastructure;

(iv) government cost-sharing for approved R&D projects;

(v) subsidized rental facilities for industrial premises in development zones;

[23] Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, 1985, Annex 1.

[24] Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, 1985, Art. 12.

[25] Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, 1985, Art. 13.

[26] Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America, 1985, Annex 3.

[27] https://mof.gov.il/en/InternationalAffairs/InternationalTaxation/Pages/AvoidanceDoubleTaxationTreaties.aspx.

[28] Law for the Encouragement of Capital Investments, 1959, s. 40D. As detailed below, the Law for the Encouragement of Capital Investment was revised in 2011 (Amendment 68). Under the revised law, the country is divided into "Zone A" and "Zone B" and is no longer divided into three zones. However, as detailed in II.A.2.c., below, the previous version of the Law may still be applicable under certain circumstances.

[29] Law for the Encouragement of Capital Investments, 1959, Ch. 6.

[30] The term "manufacturing" is not defined in the Law for the Encouragement of Capital Investments. However, Law for the Encouragement of Capital Investments, sec. 51 provides that "manufacturing activity" includes the manufacturing of software and the development of products. Industrial Research and Development for foreign residents will be approved as a "manufacturing activity" if it is approved by the Office of the Chief Scientist in the Ministry of Industry, Trade and Labor.



ISBN 978-1-63359-061-8

(vi) grants for the purchase of such premises;

(vii) tax concessions;

(viii) the right to repatriate profits and principal in foreign currency;

(ix) government subsidies for training courses;

(x) insurance for foreign trade risks;

(xi) exemption from customs duties and purchase tax on goods imported for export; and

(xii) a zero rate of value added tax (VAT) on goods and services exported from the country.

The tax concessions and tax-related benefits are dealt with in XIV. below. This chapter is an overview of different types of incentives given by the force of legislation.

*b. Incentive Zones*

The Encouragement Laws determine the scope of incentives depending on the type or size of investment as well as its location in Israel. According to governmental policies and decisions, higher priority zones will enjoy greater benefits and reliefs. For instance, Development Zone A offers the greatest incentives, while Development Zone B offers somewhat lower incentives.[31] Zone A includes low socio-economic municipalities with an unemployment rate of more than 10%. It also includes the city of Jerusalem (regarding high tech companies), spatial industrial zones in the north, in the south and in the city of Jerusalem, minorities' settlements and settlements near the Gaza strip. Development Zone B includes municipalities with a higher socio-economic level than Zone A and with an unemployment rate of more than 8%.

*c. Law for the Encouragement of Capital Investment, 1959*

The Law is aimed at encouraging capital investment and economic entrepreneurship, while giving priority to technological innovation as well as to business activity in national priority zones, to achieve the following aims: (i) increase the manufacturing capacity of the Israeli economy; (ii) enhance the competitiveness of the Israeli business sector in global markets; and (iii) create an infrastructure for new and lasting employment.

The incentives under the law are provided mainly to industry, high tech, renewable energy, tourism, R&D services for foreign residents, foreign investments, and residential rentals.

The Law specifically denies its benefits to companies engaged in mining natural resources and to government corporations. The rationale denying the benefits to mining companies is that they cannot in any case relocate their operations outside Israel. The rationale lying behind the denial of the benefits to government corporations apparently lies in the fact that they cannot relocate their activities abroad without government authorization and therefore do not require encouragement.

The incentives the Law provides may be divided into two main programs:

(i) Tax Benefits Program — administered by the Israel Tax Authority. In general, under this program prior approval is not required from any authority. Accordingly, a company complying with the criteria stipulated in the Law can claim the tax benefits in its tax returns. However, to obtain greater certainty, a company may apply to the Israeli Tax Authorities for an advance (or pre) ruling to verify and ascertain that it meets the criteria necessary for the tax benefits.

(ii) Grants Program — administered by the Authority for Investments and Development of the Industry and Economy as well as the Administration of Tourism Investments. The enterprise concerned must be approved by the relevant government authority as an Approved Enterprise to be entitled to the grant. Under the program, a grant-in-aid is accorded only to an enterprise located in Israel's priority zones.

The main difference between the two programs is that in the Tax Benefits Program, the State provides "enhanced" concessions applying to income generated from the establishment or expansion of the enterprise, while in the Grants program, the State shares the risk involved in executing the investment by offering the enterprise an actual grant in the process of its establishment or expansion. Moreover, the Tax Benefits Program does not require annual budget approval, while the Grants Program is limited to the annually approved sum in the Budget Law.

In general, the Grants Program is available side by side with the Tax Benefits Program, except for a company that operates in the tourism sector.

For further information regarding the Law for the Encouragement of Capital Investment, see XVII.A., below.

*d. Law for Encouragement of Knowledge-Intensive Industry (Temporary Provision), 2023*

The Law for Encouragement of Knowledge-Intensive Industry aims to keep Israel an attractive country for investment, especially in technology, and replace benefits previously granted to R&D companies. This Law, which applies until the end of 2026, prescribes tax benefits for investors in high-tech companies incorporated in Israel, where they also maintain their center of activity. Companies which meet the criteria of initial technological income and investments will be entitled to tax benefits in several different tracks. For further discussion, see XVII.B., below.

*e. Law for the Encouragement of Capital Investment in Agriculture, 1980*

The purpose of this Law is to promote and develop the domestic agricultural industry, the export of agricultural products and technology and to maintain agriculture as a viable and valuable sector in the Israeli economy. According to the Law, agricultural factories are entitled to tax-free grants, accelerated depreciation, enhanced deductions and other tax benefits. For further information, see XVII.A.5, below.

[31] The Law for the Encouragement of Capital Investments, 1959, appendix II. In the past, the Law divided the country into three zones. The previous division may still apply with respect to certain companies.



ISBN 978-1-63359-061-8

*f. Law for the Encouragement of Construction of Housing for Rent, 2007*

The combination of a high demand for housing and a low supply of housing solutions in Israel in recent years compelled the government to offer the construction and housing sector various constructors reliefs and benefits, provided that builders allocate new buildings for rent. Among the benefits offered by this Law are certain tax exemptions and accelerated depreciation. For further discussion, see XVII., below.

*g. Law for the Encouragement of Investment in Renewable Energy (Tax Benefits for Production of Electricity), 2016*

This Law exclusively encourages small and private manufacturers to produce electricity not for commercial purposes but for residential use. In order to persuade taxpayers, the Law offers several benefits, such as exemptions from certain bureaucratic procedures, tax credits, lower tax rates, or enhanced deductions.

*h. Law for the Encouragement of Investment (Capital-Intensive Companies), 1990*

As a means to support local entrepreneurship and the domestic capital market from abroad, the Law offers major benefits to foreign investors whose capital investment exceeds a certain threshold. According to the Law, to avail of the tax benefits and special status, a company must invest most of its profits in specified fields and infrastructure related activities.

*i. Israel Innovation Authority*

*(1) General*

The Israel Innovation Authority was established by the Law for the Encouragement of Research Development and innovative Technology in Industry, 2015, which replaced a former version of this law from 1984. The Law aims to encourage collaboration between industry and academic institutions. Its main purpose is to create an advanced and innovative environment in order to enhance the use of human capital in industrial projects and develop the competitiveness of Israeli industry in the global market. The authority encourages, promotes, supports and assists various technological innovation initiatives by, inter alia, providing financial support to entrepreneurs.[32] The Authority includes the following divisions: Startup Division, Growth Division, Technological Infrastructure Division, Advanced Manufacturing Division, International Collaboration Division and Societal Challenges Division.

The incentives accorded as part of the programs detailed below are subject to the approval of the Israel Innovation Authority.

Most of the programs require a payment of royalties from the income derived from the sale of a product, developed as part of or derived from the approved project, including related services,[33] as of the sale of the first product.[34] The royalties are also to be paid when the product is one component of the final product.[35] The royalties are paid to the State of Israel (via the Israel Innovation Authority) for its financial support. The total amount of the royalties is capped at the sum of the incentive provided by the Authority, together with annual interest.[36] In case the Israel Innovation Authority approves the transfer of production rights from Israel abroad, a higher royalty ceiling applies, ranging from 120% to 300%, depending on the rate of the transferred rights.[37]

The rates of the royalties — which are based on several factors, such as the turnover of the company, its area of activity, and the location of the manufacturing — are as follows:

(i) For a small-scale company: 3%, i.e., a company whose turnover during the 12 months preceding the date of application did not exceed USD 70 million;[38]

(ii) For a large-scale company: 5%, i.e., a company whose turnover during the 12 months preceding the date of application exceeded USD 70 million;[39]

(iii) For a company in a sector of traditional industry whose manufacturing activities are carried out in Israel: 1.3%;[40]

(iv) If the product was manufactured as part of an approved R&D project, including prototypes, additional royalties are to be paid, equal to the ratio of the received grant to the total R&D expenses;[41] and

(v) An additional 1% is paid when the revenues are derived from manufacturing carried out abroad.[42]

Furthermore, royalties are to be paid from the proceeds received from the sale of equipment used for the approved project.[43]

*(2) Incentives for Startup Companies and Entrepreneurs*

*(a) Tnufa Incentive Program*

The Tnufa incentive program is aimed at supporting startup companies and entrepreneurs with a proven concept and with a business feasibility of a technological project, to protect their intellectual property, and to advance the project to a stage

[32] Law for the Encouragement of Research, Development and Technological Innovation in Industry, 1984, s. 5A. For further information on the incentive programs see the Israel Innovation Authority website: www.matimop.org.il/.

[33] Law for the Encouragement of Research, Development and Technological Innovation in Industry, 1984, s. 21.

[34] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 2(b).

[35] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 5.

[36] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 2(a).

[37] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 10.

[38] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 3(a)(1).

[39] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 3(a)(2).

[40] Appendix D of the Benefit Program No. 1: The R&D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 3(a)(3).

[41] Appendix D of the Benefit Program No. 1: The R & D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 6.

[42] Appendix D of the Benefit Program No. 1: The R & D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 3(b).

[43] Appendix D of the Benefit Program No. 1: The R & D Fund, "Provisions Regarding the Rate of Royalties and Rules for Their Payment," S. 7.



ISBN 978-1-63359-061-8

where it will be able to raise substantial funding for continued development and commercialization.

As part of the Tnufa Incentive Program, a grant of up to NIS 200,000 is provided for a period of two years and calculated as a percentage of the approved budget — up to the rate of 85%. The grant is subject to approval by the Israel Innovation Authority.[44]

The following are eligible to apply for the grant:

(i) An individual entrepreneur who is at least 18 years of age and an Israeli resident that permanently lives in Israel; and

(ii) A company incorporated in Israel for the purpose of executing the project, held directly and solely by individuals who are Israeli residents. Moreover, the company may not have had turnover since its incorporation and the funding it raised may not have exceeded NIS 400,000.

*(b) Incubators Incentive Program*

Eighteen technological incubators and one bio-technological incubator, owned by private investors selected through a tender, operate in Israel (as of 2022). The incubator provides the entrepreneurs with comprehensive assistance, including infrastructure, administrative services, technological and business guidance, and legal advice.

The goal of the Incubators Incentive Program is to support entrepreneurs with an applied innovative technological concept for establishing startup companies, raising capital from private investors and commercializing their concept into a commercial product.

As part of the Incubators Incentive Program, and with respect to projects in technological incubators, a grant of up to NIS 3.5 million is provided to the entrepreneur for a period of two years. The amount of the grant depends on the field of the project (technology, biotechnology, clean-tech, cyber, medical equipment or the pharmaceutical industry) and the geographical location of the incubator (area lacking priority or national priority area), and is calculated as a percentage of the approved budget — up to the rate of 85%. The grant is subject to the approval of the Israel Innovation Authority. The supplementary funding is given by the technological incubator.

An additional grant for the third year of up to NIS 1.25 million is accorded to the entrepreneur where certain conditions are met. The amount of the additional grant also depends on the field of the project and the geographical location of the incubator.[45]

Projects in bio-technological incubators may be eligible for a higher grant — up to NIS 6.9 million for a period of three years.[46]

*(c) Early-Stage Companies Incentive Program*

The Early-Stage Companies Incentive Program is designed for startup companies and intended to provide an incentive to private investors for product development and initial market penetration. The program includes three sub-programs: standard program, minorities program and ultra-orthodox program.[47]

Companies that meet all the following conditions are eligible for the grant accorded under the standard program:

(i) It is incorporated in Israel during the four years prior to the submission of the application;

(ii) Its business activity is conducted solely for operating and commercializing the project;

(iii) The turnover of the company during the 12 months preceding the date of application did not exceed NIS 750,000, and the total turnover as of incorporation did not exceed NIS 1 million;

(iv) The funds raised by the company during the 12 months preceding the date of application did not exceed NIS 3 million (in the case of a biotechnology company, NIS 4.5 million), and the total funding did not exceed NIS 6 million (in the case of a biotechnology company, NIS 9 million); and

(v) It is not in a state of receivership or liquidation, its bank account is not limited, and it does not owe money to the Israel Tax Authority or to the Israel Innovation Authority.

Within the framework of the standard program, a grant may be accorded for a maximum period of two years. The amount of the grant is capped at 5 million NIS or at a rate of 50% of the expenses for R&D, marketing, commercialization and other activities (for companies operating in a national priority area or in the area surrounding the Gaza Strip — 60% or 75%, respectively), whichever is lower.

Applications for preferred incentives under the minorities and ultra-orthodox programs can be made in the first two years:

(i) 1st year: total budget is up to NIS 2.5 million and the conditional grant is 75% of the approved budget.

(ii) 2nd year: total budget is up to NIS 4.5 million and the conditional grant is 70% of the approved budget.

Once the approval is received, the company is obliged to raise the supplementary capital for the project, within six months of the date of approval.

*(d) Clean-Tech — Renewable Energy Technology Center*

The Renewable Energy Technology Center, located in the Eilat region in the southern part of Israel, is aimed at supporting technological and R&D projects in the renewable energy and energy efficiency fields. The center is operated by a licensee

[44] Israel Innovation Authority, Procedures for Incentive Program No. 9: Tnufa — Providing Assistance to Start-Up Technological Entrepreneurs (last updated: August 19, 2019).

[45] Israel Innovation Authority, Incentive Program No. 3: Technological Incubators.

[46] Israel Innovation Authority, Incentive Program No. 22: Bio-Technological Incubators.

[47] Israel Innovation Authority, Incentive Program No. 23: Early-Stage Companies.



ISBN 978-1-63359-061-8

from the private sector,[48] comprised of strategic investors and a research institute.

The financial support is provided to projects which are carried out in the Center via the following three programs:[49]

**(i) Primary Stage Program:** The financial support provided by the program is aimed at assisting projects, which involve collaboration between the Center and a research institute, to reach the initial feasibility stage. A grant of up to 66% of the approved budget is accorded, for a maximum period of two years, coupled with an exemption from the payment of royalties to the Authority.

The maximum budget allocated to *all* the projects participating in the Primary Stage Program (for a maximum period of two years each) is NIS 2 million.

**(ii) Advanced Stage Program:** The financial support provided is designed for companies in the pre-seed and seed stages, which carry out their project in the Center. A grant at the rate of 60% or 85% of the approved budget (subject to a maximum of NIS 2.125 million) for a maximum period of two years. The supplementary funding is provided by the Center.

**(iii) Testing Areas Program:** A grant at the rate of 50% of the approved budget, for a maximum period of three years, is provided for the establishment of areas and required infrastructures designated for conducting experiments and demonstrating the technological feasibility of the products. The grantee is exempted from payment of royalties.

The maximum budget allocated to *all* the projects participating in the Testing Areas Program is NIS 4 million.

*(3) Incentives for Mature and Growth Companies*

*(a) R&D Fund Incentive Program*

The R&D Fund incentive program is aimed at strengthening and promoting the Israeli economy by supporting and encouraging technological innovation. This is the main incentive program in which financial support is provided to commercial companies in all areas of activity, for the development of new products or for the upgrade of existing technology.

As part of the program, a grant at the rate of 20%, 30%, 40% or 50% of the R&D expenditures is provided.[50] The aforementioned rate is significantly based on the extent of the original production carried out in Israel.[51] Companies operating in a national priority area or in the area surrounding the Gaza Strip, may be eligible for an additional grant at the rate of 10% or 25%, respectively.[52] At the request of the applicant, a loan may be given in lieu of a grant.[53]

*(b) Generic R&D Incentive Program*

The program is aimed at supporting and strengthening long-term and generic R&D activity carried out by large Israeli companies, to create new knowledge and a technological infrastructure, for use in the design, development or production of many innovative products. The program is also designed for supporting and encouraging the development of an initial ethical R&D activity in the pharmaceutical industry.

As part of the program, a grant is accorded at a rate of up to 50% of the R&D expenditures, however not more than NIS 65 million, coupled with an exemption from the payment of royalties.[54]

Eligible for the grant are large companies: (i) with a turnover of USD 100 million derived from their production activities in Israel; and (ii) with total R&D expenditures that exceed USD 20 million, or alternatively, that employ at least 200 employees for their R&D activity in Israel.[55] The grant is provided for plans that involve long-term R&D activity or collaboration between a large company and another Israeli company carried out through technical and business integration.[56]

*(c) Business R&D for Agriculture*

The program is aimed at supporting projects for the development of agricultural products intended for sale and export, such as end products from flora and fauna and agricultural inputs. As part of the program, a grant at the rate of 20%, 30%, 40% or 50% of the R&D expenditures is made.[57] Companies operating in a national priority area or in the area surrounding the Gaza Strip, may be eligible for an additional grant at the rate of 10% or 25%, respectively.[58] At the request of the applicant, a loan may be given in lieu of a grant.[59]

*(d) Greenhouse Gas Emissions Reduction*

As part of the inventive program, a grant is accorded to entrepreneurs for projects in the realms of energy efficiency and reduction of greenhouse gas emissions.[60]

The grant is at the rate of 20% of the project expenses. However, the total amount of the grant for all the applications of a single entrepreneur, in one calendar year, is capped at NIS 3 million.[61]

An additional grant is provided for a first commercial installation of a product which is based on technology of an Is-

[48] For information on the licensee see: capitalnature.com.

[49] Israel Innovation Authority, Incentive Program No. 14: The Technological Center for Renewable Energy in the Negev and Arava.

[50] Israel Innovation Authority, Incentive Program No. 1: R&D Fund, S. 25(a).

[51] Israel Innovation Authority, Incentive Program No. 1: R&D Fund, S. 25(b).

[52] Israel Innovation Authority, Incentive Program No. 1: R&D Fund, S. 25(c).

[53] Israel Innovation Authority, Incentive Program No. 1: R&D Fund, S. 30.

[54] The Ministry of Economy and Industry, the General Director, Support for Long Term R&D Activity of Large R&D Companies, S. 5–6.

[55] The Ministry of Economy and Industry, the General Director, Support for Long Term R&D Activity of Large R&D Companies, S. 2.1.

[56] The Ministry of Economy and Industry, the General Director, Support for Long Term R&D Activity of Large R&D Companies, S. 4.2.

[57] Israel Innovation Authority, Incentive Program No. 32: Business R&D in Agriculture, S. 3(a).

[58] Israel Innovation Authority, Incentive Program No. 32: Business R&D in Agriculture, S. 3(a).

[59] Israel Innovation Authority, Incentive Program No. 32: Business R&D in Agriculture, S. 3(a).

[60] The Ministry of Economy and Industry, the General Director, Support for Investments in Projects of Energy Efficiency and Reduction of Greenhouse Gas Emissions, s. 4.1.

[61] The Ministry of Economy and Industry, the General Director, Support for Investments in Projects of Energy Efficiency and Reduction of Greenhouse Gas Emissions, s. 4.3.



ISBN 978-1-63359-061-8

raeli company provided that the product and the technology are wholly owned by the Israeli company and are expected to reduce greenhouse gas emissions.[62]

The additional grant is at the rate of 20% of the project expenses. However, the total amount of the additional grant for all the applications of a single entrepreneur, in one calendar year, is capped at NIS 3 million.[63]

The entrepreneur is obliged, inter alia, to invest in the project an amount ranging from NIS 800,000 to NIS 2 million.[64]

*(e) Petroleum Substitutes for Transportation*

The program is aimed at expanding the sources of funding for Israeli companies operating in the field of petroleum substitutes for transportation, while leveraging government investment through cooperation with Israeli and international private investors.[65]

Petroleum substitutes for transportation are technologies that are designed to reduce the global consumption of petroleum for transportation.[66]

As part of the program, a loan is accorded to the company, subject to a parallel investment of a private investor, made in cash and in consideration of the issuance of the company's shares.[67] The investment must be made along with the submission of the application for the loan.[68]

The loan is at a rate of 50% of the investment. However, the minimum amount of the loan is NIS 750,000 (subject to a parallel investment in the amount of NIS 1.5 million) and the maximum amount is NIS 12 million (subject to a parallel investment in the amount of NIS 24 million).[69] The cumulative maximum amount of loans accorded to a single company is NIS 30 million (subject to parallel investments in the amount of NIS 60 million).[70]

The repayment of the loan can be made in two ways:[71]

(i) directly by the company by payment of royalties from its income; (ii) by the investor — instead of the company — in consideration for an issuance of additional shares of the company.

A company that meets all of the following conditions is eligible for the loan accorded under the program:[72]

(i) Incorporated in Israel;

(ii) Its business activity is conducted in Israel and its main activity is industrial R&D and the implementation of innovative technologies in the field of petroleum substitutes for transportation;

(iii) The funds raised by the company prior to the date of the application did not exceed US$ 50 million;

(iv) A private investor (Israeli or foreign) invested or intends to invest in the company's capital as part of the incentive program;

(v) Following the issuance of the shares to the private investor made under the incentive program, the investor holds, directly or indirectly, less than 50% of the issued share capital of the company;

(vi) The company presented a detailed and applicable R&D program in the field of petroleum substitutes for transportation;

(vii) The company employs a team of employees with the necessary education or experience required for industrial R&D and implementation of innovative technologies in the field of petroleum substitutes for transportation;

(viii) The investor and the company are not in a state of receivership or liquidation,; their bank account is not limited,; and they do not owe money to the Israel Innovation Authority.

*(f) R&D for Space Technology*

The program is aimed at encouraging R&D in the field of space technology, inter alia, for the development of Israeli startup companies and technological solutions in the space technology field, and for strengthening knowledge and technological development capacity of Israeli space industry by providing financial support to R&D space products projects such as satellites and space launch products.[73]

A company that meets all of the following conditions is eligible for the grant accorded under the program:[74]

(i) Registered in Israel;

(ii) Is not considered as a public utility company or as a foreign company;

(iii) Has not been granted any financial support by the government or by the Israel Innovation Authority for the

[62] The Ministry of Economy and Industry, the General Director, Support for Investments in Projects of Energy Efficiency and Reduction of Greenhouse Gas Emissions, s. 3.9.

[63] The Ministry of Economy and Industry, the General Director, Support for Investments in Projects of Energy Efficiency and Reduction of Greenhouse Gas Emissions, s. 4.4.

[64] The Ministry of Economy and Industry, the General Director, Support for Investments in Projects of Energy Efficiency and Reduction of Greenhouse Gas Emissions, s. 5.9.

[65] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 1.3.

[66] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 2.10.

[67] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 6.1.

[68] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 6.2.

[69] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 6.7.

[70] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 6.8.

[71] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, ss. 6.3–6.5.

[72] Israel Innovation Authority, Incentive Program No. 21: Encouragement of Investments in Backed Venture Capital Companies in the Field of Petroleum Substitutes for Transportation, s. 4.

[73] Israel Innovation Authority, Incentive Program No. 24: Encouragement of R&D for Space Technology.

[74] Israel Innovation Authority, Incentive Program No. 24: Encouragement of R&D for Space Technology. s.4.



ISBN 978-1-63359-061-8

development of any component included in the application;

(iv) Is not in a state of receivership or liquidation, its bank account is not limited, and it does not owe money to the Israel Innovation Authority.

The rate of the grant is calculated as a percentage of the approved budget, as follows:[75]

(i) For an approved project of a big-scale company, i.e., a company whose turnover during the calendar year preceding the date of the application was equal or exceeded US$ 100 million, the rate of the grant is 50% of the approved budget. (ii) For an approved project of a small-scale company, i.e., a company whose turnover during the calendar year preceding the date of the application was less than US$ 100 million, the rate of the grant is 85% of the approved budget for products designed for operation in space, and 60% for other products.

The applicant is required to raise the supplementary capital for the project from another investor who is not the Israeli government or the Israel Innovation Authority.[76]

At the request of the applicant, a loan may be given in lieu of a grant.[77]

*(4) Incentives for Technological Infrastructure Companies*

*(a) MAGNET Consortia*

The MAGNET Program supports the industrial R&D of generic pre-competitive technologies. The term "generic pre-competitive technologies" refers to a broad spectrum of common technologies, components, materials, design and manufacturing methods that have wide-ranging industrial application. The program is based on collaboration between industrial companies, including foreign companies, and between them and Israeli academic institutions.[78]

The program offers a grant of up to 66% of the approved budget for an industrial company.[79] A research institution is eligible for a grant of up to 80% of the approved budget, while the supplementary funding is provided by the consortium of the industrial companies.[80] The grantee is exempted from the payment of royalties.[81]

*(b) MAGNETON*

The Incentive program encourages the transfer of technological knowledge from research institutions to corporations for the development of industrial products. The program is based on a collaboration between an Israeli industrial company and a research institution. The program offers a grant of up to 66% of the approved budget for an industrial company, capped at NIS 3.4 million.[82]

The grantee is exempted from the payment of royalties.[83]

*(c) NOFAR*

The Incentive program focuses on increasing the using of academic research for commercial industrial purposes which do not meet the conditions of the MAGNETON incentive program.

The program offers a research institution a grant of up to 90% of the approved budget, during a period of one year, for conducting research intended for industrial use. The grant is capped at NIS 550,000 or at NIS 700,000 if the research is conducted in collaboration with two academic institutions or more.[84] The supplementary funding is provided by an industrial-business entity as well as professional support and guidance.[85]

The grantee is exempted from the payment of royalties.[86]

*(5) Incentives for Advanced Manufacturing — Encouraging Innovation in the Low-Technology Industry*

The incentive program is aimed at encouraging R&D and innovation in low-tech companies to maintain the competitiveness of the Israeli industry in the global market.[87]

The program is designed for Israeli companies in the manufacturing industry that meet one of the following two conditions:[88]

(i) More than 50% of the company's turnover during the year preceding the date of application was derived from the industrial production of products in low-technology or medium-low technology industries.

(ii) Moreover, on the date of application:

(1) The percentage of production employees is at least 30% of the total number of employees, but not less than three employees; and

(2) The rate of R&D employees is at most 10% of all employees, but not more than 25 employees.

[75] Israel Innovation Authority, Incentive Program No. 24: Encouragement of R&D for Space Technology. s.6.1.

[76] Israel Innovation Authority, Incentive Program No. 24: Encouragement of R&D for Space Technology. s. 6.2.

[77] Israel Innovation Authority, Incentive Program No. 24: Encouragement of R&D for Space Technology. s. 7.

[78] Israel Innovation Authority, Incentive Program No. 5: Encouragement of the Development and implementation of Generic Technologies — MAGNET, s. 1.

[79] Israel Innovation Authority, Incentive Program No. 5: Encouragement of the Development and implementation of Generic Technologies — MAGNET, s. 5.

[80] Israel Innovation Authority, Incentive Program No. 5: Encouragement of the Development and implementation of Generic Technologies — MAGNET, s. 5.

[81] Israel Innovation Authority, Incentive Program No. 5: Encouragement of the Development and implementation of Generic Technologies — MAGNET, s. 7.

[82] Israel Innovation Authority, Incentive Program No. 6: Encouragement of the Transfer of Technologies from Academy to Industry — MAGNETON, s. 5.

[83] Israel Innovation Authority, Incentive Program No. 6: Encouragement of the Transfer of Technologies from Academy to Industry — MAGNETON, s. 9.

[84] Israel Innovation Authority, Incentive Program No. 7: NOFAR — Application of Academic Research for Industry, s. 5.

[85] Israel Innovation Authority, Incentive Program No. 7: NOFAR — Application of Academic Research for Industry, s. 4.

[86] Israel Innovation Authority, Incentive Program No. 7: NOFAR — Application of Academic Research for Industry, s. 7.

[87] Israel Innovation Authority, Incentive Program No. 36: Encouraging technological innovation in the manufacturing industry, S. 1.

[88] Israel Innovation Authority, Incentive Program No. 36: Encouraging technological innovation in the manufacturing industry, S. 2.1.



ISBN 978-1-63359-061-8

The program includes two sub-programs:

(i) R&D for Manufacturing Industry Program: This program is aimed at encouraging companies to promote and implement technological innovation or R&D processes by developing innovative products as well as improving and developing existing products or production processes. Under this sub-program, a grant at the rate of 30% to 50% of the R&D expenditures is provided. An additional grant of 10% is made if the program is implemented in a national priority area or if 20% of the approved budget is carried out by an industrial research institute.[89] At the request of the applicant, a loan may be given in lieu of a grant.[90]

(ii) Preparatory Program: This program is aimed at assisting the company in preparing for the implementation of an R&D program and to characterize additional fields in which the company can improve its products and production processes. The budget for this program is capped at NIS 75,000 and the grant is at the rate of 66% of the total budget, and support for 75% of the approved request's budget which is capped at NIS 100,000.[91] The grantee is exempted from payment of royalties.[92]

*j. Prerequisites for Incentives*

*(1) The Tax Benefits Program*

To be entitled to the tax incentives under the tax benefits program, an enterprise must be owned by a company registered in Israel, the business of which is controlled and managed in Israel, and must not be a "family company," a "transparent company" or a kibbutz. The company must keep admissible books and records and file all reports required under Israeli law. The company and its functionaries must not have been convicted of tax felonies during the 10-year period prior to the period of benefits.

The 2011 law specifically denies its benefits to companies engaged in mining natural resources and government corporations. The rationale denying the benefits to mining companies is that they cannot move their operations outside Israel. The rationale behind the denial of the benefits to government corporations apparently lies in the fact that they cannot transfer their activities abroad without government authorization and, therefore, do not require encouragement.

A Beneficial Enterprise must meet the following conditions to be eligible for the tax benefits: (i) the enterprise must be a tourist facility; (ii) the enterprise must be competitive and contribute to the gross domestic product; however, if it fails to do so in certain years, the enterprise will be deprived of the tax benefits only during those years in which it did not meet the criterion and not the entire period of benefits; (iii) 25% of its guests in the tax year or in the tax year and in the last two tax years, on average, are foreign residents; and (iv) a minimum capital investment — the size of such an investment is derived from the value of the productive assets of the enterprise at the end of the year preceding the one in which capital was first invested. The minimum amount to be invested is NIS 300,000 in case of a new enterprise. In case of an expansion of an existing enterprise, the minimum amount is NIS 300,000 or a percentage of the value of productive assets, as follows: up to NIS 140 M — 12%; above NIS 140 M and up to NIS 500 M — 7%; above NIS 500 M — 5% of value of productive assets, based on original cost, less depreciation according to the Depreciation Regulations, 1941, and linked to the cost of living.

The tax benefits are calculated by the "turnover growth" method in accordance with which the beneficial income is fixed by the ratio of the current turnover to the "basis turnover," reflecting the average turnover during the three or two years, prior to the beginning of the "year of election" (depending on the period of investment). The "year of election" is the year with respect to which the company informed the tax authorities that it chose to make use of the tax benefits program.

The exemption from company tax is for a period of: 10 years from the beginning of the period of benefits for an enterprises located in Zone A; six years for enterprises located in Zone B; and two years for enterprises located in Zone C. Notwithstanding these provisions, if a company distributes dividends out of income earned during the exemption period, it will be liable for company tax on the distributed amount at the same beneficial rate (usually 25%) that would have applied to its income had it not opted for the alternative benefits. The company tax is levied at the company level before applying the 20% or lower treaty rate tax on dividends, as opposed to the ordinary 30%/25% tax levied on dividends distributed out of profits derived from enterprises that are not Approved or Beneficial Enterprises.

A Preferred Company is entitled to greater benefits in the benefit period. A Preferred Company is defined similarly to a Beneficial Company and must have a Preferred Enterprise which is an industrial enterprise which meets the criteria of competitiveness laid down by the Law and which contributes to the domestic national product or is a competitive enterprise in the field of renewable energy. Preferred income of a Preferred Company is subject to a 9% or 16% company tax in 2014 (depending on the zone in which the Preferred Enterprise is located). Dividends paid from the Preferred Income are subject to a 20% withholding tax. Income of a Special Preferred Enterprise is subject to a 5% or 8% company tax.

*(2) Prerequisites for Incentives — The Grants Program*

To be entitled to a grant-in-aid and the additional tax incentives under the grant-in-aid program, an enterprise must be owned by an Israeli company, a cooperative, a foreign corporation registered in Israel or a limited partnership, whether Israeli or foreign (excluding an Israeli partnership of individuals and except for government companies and partnerships whose partners are government companies), or by anyone approved by the Investment Center (the statutory body charged with the admin-

[89] Israel Innovation Authority, Guidelines and Procedures for Incentive Program No. 36A, S. 7.

[90] Israel Innovation Authority, Appendix A to the Incentive Program No. 36: Encouraging technological innovation in the manufacturing industry, S. 9.

[91] Israel Innovation Authority, Guidelines and Procedures for Incentive Program No. 36B, S. 7.

[92] Israel Innovation Authority, Guidelines and Procedures for Incentive Program No. 36B, S. 11.



ISBN 978-1-63359-061-8

istration of the Law for the Encouragement of Capital Investments, 1959).[93]

As noted above, the project undertaken by the enterprise must receive the approval of the appropriate government authorities[94] and must be economically beneficial to both the investor and the Israeli economy. Until 1984, only products and processes that were specified in a list compiled by the Investment Authority were eligible for "approved" enterprise status.[95] As of 1984, this list is no longer binding and each application for approved enterprise status is considered on its own merits.

*k. Approved Enterprises Grants-In-Aid*

Once approved, an enterprise is entitled to an investment grant, which is a percentage of the investment in the fixed assets that varies according to the zone. In Zone A, the percentage is 20% (in some cases) and in Zone B, 10% (in most cases). With effect from 1986, an approved enterprise situated in Zone C is no longer entitled to any grant.

The following table provides further details of the grants as a percentage of investment in fixed assets.

| | **Priority Region** | | |
|---|---|---|---|
| | A | B | C |
| **Industrial Project** | 20 | 10 | — |
| **Tourist Lodging Facility** | 20 | 10 | — |

A grant is not taxable, but it is deducted from the basis of the assets in calculating the depreciation allowed for income tax purposes.[96]

In addition to its entitlement to a grant-in-aid, a preferred enterprise is subject to a preferential rate of company tax. In general, a company can enjoy the grant-in-aid program side by side with the tax benefit program, except for a company operating a tourist enterprise.[97]

Since 1985, enterprises are no longer accorded loans bearing subsidized rates of interest.

Section 40C of the Law for the Encouragement of Capital Investments, 1959 determines the special rate of the grant accorded to an approved enterprise located in the Negev (the South). The rate of the grant for investments in fixed assets for enterprises established in the Negev is significantly higher (up to 30%).[98]

*l. Employment Grant Program*

To enhance the benefits under the revised Law for the Encouragement of Capital Investments, the government established an additional program designed to increase employment in the outlying areas of Israel as well as specific centers suffering from a high rate of unemployment.

Support will be granted for the establishment or expansion of industrial plants, telephone call centers, computer service support centers, and logistic centers. To be eligible for this program, enterprises must employ a minimum number of workers at a minimum wage, as detailed below. To receive the support offered to employees, employers will have to compete with each other. Twice a year, employers will be invited to bid for the support. The maximum amount of support that will be granted will be 15% of the cost of the average monthly wage of the additional employees in all areas of the country, including minority and ultra-orthodox communities, but no more than NIS 120,000 per employee for the entire period. In minority and ultra-orthodox communities, employers paying wages below NIS 6,750 will be entitled to support of no more than 60,000 NIS; the total average support per employee in each allotment round may not exceed 100,000 NIS. The eligible areas comprise Priority Development Zones "A" and "B" and designated towns with minority populations (Arab, Druze, Circassian) and the Ultra-Orthodox Jewish population. The enterprise must pay its employees the following minimal wages: (i) in the minorities and ultra-orthodox towns, the minimum statutory wage; (ii) in all other eligible areas, average monthly wages of 6,750 NIS. The enterprise must employ a minimum number of workers, depending on the zone and the program (i.e., whether a new plant or an expansion).

*m. Placing of High-Tech Employees in Traditional Industries*

The Ministry of Industry, Trade and Employment initiated program to encourage the modernization and implementation of the industrial R&D abilities of traditional industries. The program is designed to encourage traditional industrial companies to hire High-Tech managers for one year, to help implement innovation and launch R&D. The Office of the Chief Scientist (the "Chief Scientist") will finance up to 66% of the wages of an approved worker (i.e., a worker approved for purposes of this program) for 12 continuous months, subject to a limit approved by the Chief Scientist. There is an option to obtain financing of up to 33% of the wages of a second approved worker.

To participate in the program, a candidate must have a B.A. in engineering, electronics, software, or exact or natural sciences, and professional experience of five years as one of the following: (i) a CEO of a company that engaged in industrial R&D to the extent of 10% of its income (or at least $300,000 per year); or (ii) a product development manager of at least five workers in the High-Tech industry.

To participate in the program, a company must meet the following criteria:

(i) It must have been incorporated in Israel and must derive income from traditional industry or from both industry and other fields;

(ii) Its R&D expenses must have been less than 7% of its sales and fewer than 20% of its workers must have been R&D workers in the year preceding the request;

[93] Law for the Encouragement of Capital Investments, 1959, s. 22.

[94] Law for the Encouragement of Capital Investments, 1959, s. 2.

[95] The list was quite detailed and comprised products and processes in the following categories: food; textiles and leather; chemicals and minerals; metals; electricity and electronics; and light industries.

[96] Law for the Encouragement of Capital Investments, 1959, s. 43A; Income Tax Ordinance, 1961, s. 21(b).

[97] Law for the Encouragement of Capital Investments, 1959, s. 40K.

[98] At the same time an amendment to the Income Tax Ordinance was enacted, to encourage internal immigration to the Negev, which granted inhabitants of the Negev a tax credit ranging from 5% to 25%.



ISBN 978-1-63359-061-8

(iii) Its sales in the year prior to the request must have been between NIS 10 million and 100 million NIS;

(iv) It must have at least 20 workers (in full-time employment);

(v) It must not have received a grant from the Chief Scientist during the five years preceding the request; and

(vi) It must not be a subsidiary company of a multinational corporation.

*n. Industrial Facilities*

Industrial buildings used for manufacturing facilities are available in industrial parks, research institutes and development towns. Partial reimbursement of infrastructure expenses is available for new industrial facilities erected in development zones, according to a table published annually by the Ministry of Industry and Commerce.

*o. Research and Development — The Bi-National Industrial R&D Foundation and Similar Foundations*

The Bi-National Industrial Research and Development Foundation (BIRD-F)[99] established by Israel and the United States[100] and equally funded by each of them, supports R&D projects submitted jointly by a U.S. and an Israeli firm (a U.S. company and its Israeli subsidiary may be eligible). The fund allocates grants. If the project is successful, the grant is converted into a loan to be paid back in the form of royalties; the royalties (at rates of 2.5%–5%) are limited to a maximum of 150% of the grant. If the project is unsuccessful, the grantee need not repay the amounts received. There are three types of grants. The first type, which is limited to US$ 30,000, is awarded for executing preliminary technical or marketing studies. The support of the Foundation is contingent on the signing of an agreement by the parties covering the entire period of project implementation.

The second and third types of grants are subdivided into two basic groups:

(i) Full scale projects (i.e., projects with a budget of US$1 million–US$2 million over a period of two to three years) qualify for a 50% grant; and

(ii) Mini projects (i.e., projects with a budget of up to US$ 200,000 for a maximum of one year) qualify for a grant of up to US$ 100,000 or 50% of their outlay, whichever is less. R&D expenses eligible for coverage by a grant are salaries, materials, professional consultations, subcontractors, marketing promotion costs, trips abroad and specific equipment for the project's use.

The Canada-Israel Industrial Research and Development Foundation (CIIRD-F) is similar to the BIRD-F. It was established in 1995, and is designed to develop Canadian-Israeli cooperation in the domain of industrial R&D.

In addition, bi-national agreements and similar agreements designed to enhance mutual industrial R&D projects have been entered into between Israel and Belgium, Canada, China (PRC and Hong Kong), Finland, France, Germany, India, Ireland, Italy, Korea (ROK), the Netherlands, Portugal, Singapore, Spain, Sweden, and the United Kingdom. According to these agreements, each government is required to fund up to 50% of expenses incurred by its local company engaged in such a project. Israel is also a full participant in the European Commission's Fifth Framework Program for Research and Technological Development and takes part in the European EUREKA initiative.

*p. Export Marketing Assistance and Export Insurance*

The Ministry of Industry and Commerce provides Israeli exporters with a special incentive regarding marketing activities abroad. Exporters of several categories of products (for example, industrial goods, professional services, software and films) are entitled to the support of the "Export Marketing Encouragement Fund," which reimburses up to 50% of the expenses incurred by these exporters on the collection of market information, the preparation of certain advertising material, participating in international exhibits and conventions, product promotion,[101] the registration of patents, brand names and trademarks abroad,[102] and many other types of expenses — all pertaining to the marketing of the exported products abroad. The Fund also reimburses expenses incurred on the hiring of marketing experts and in search of strategic alliances abroad. The assistance of the Fund is subject to the approval of a detailed marketing plan submitted by the exporter, and is limited to two years. Furthermore, the Fund may curtail or withhold its support should the exporter fail to execute the approved marketing plan.

*q. Program for Establishment of R&D Centers for International Finance*

In August 2010, the Ministry of Commerce, Industry and Employment announced a program to create and develop a new growth engine in the finance sector by encouraging international financial institutions to create Israeli R&D centers that will serve the international financial industry.

The program will apply to a multinational corporation that meets the following criteria:

(i) Its business center is outside Israel and it does not perform R&D in Israel;

(ii) Its annual income in the year prior to the application is US$ 10 billion; and

(iii) It operates in the financial field.

The multinational corporation must apply for approval of a perennial operational framework, which has to include, among others:

(i) Perennial operating plan to finance R&D for five years, which includes the expected budget and employees;

(ii) An undertaking to employ at least 25 Israeli R&D employees until the end of the first year, 50 employees until

[99] www.birdf.com. For more details regarding similar foundations, see www.matimop.org.il.

[100] Bi-National Industrial Research and Development Foundation Law, 1978.

[101] For more details, see www.tamas.gov.il; www.export.gov.il.

[102] For more details, see http://index.justice.gov.il/En/Units/ILPO/Pages/default.aspx.



ISBN 978-1-63359-061-8

the end of the second year and 80 employees as of the end of the third year;

(iii) Details regarding the management of the financial R&D center;

(iv) Details regarding the expected projects, the investments and the place at which the project will take place; and

(v) Commitment that the corporation and its controlling shareholders will safeguard the rights of the employees.

A committee has been set up to examine the applications.

The operations will be undertaken by financial R&D centers for a period that will not exceed the approved period. In any case, the approved period will not exceed five years. At least 90% of the financial R&D center's employees have to be Israeli citizens. The company may subcontract the projects, in which case 90% of the subcontractor's employees must be Israeli citizens.

The governmental support for the projects will be 40% of the total budget that will be approved by the committee in the first and second years, 30% in the third and fourth year and 25% in the fifth year. Projects in rural areas will be entitled to governmental support of 50%, 40% and 35%, respectively. There will not be any requirement for a royalty refund of the governmental support.

The program will not finance: (i) operations that receive support from funds or other governmental support; or (ii) a multinational corporation or financial R&D center in receivership or in bankruptcy.

*r. Program to Encourage Traditional Industry*

This program, which ended on December 31, 2012, was intended to encourage traditional industry to integrate new technologies. A Traditional Industry Company is a company active in the field of traditional industry according to the Israeli Central Bureau of Statistics. Such a company was required to comply with two criteria to be entitled to the new benefits. It was required to: (i) operate in a field defined by the Central Bureau of Statistic; and (ii) invest in R&D a sum equal to up to 7% of its income in the year prior to the application (excluding companies with income exceeding NIS 10 million). A company in this program was exempt from royalties repayment as of September 1, 2009, until December 31, 2012.

Other benefits were:

(i) Companies in the traditional industry field were able to present R&D projects throughout the year;

(ii) A grant of at least 50% of the direct R&D expenses of the project;

(iii) R&D projects for production processes and R&D for products manufactured for the local markets were approved under certain conditions;

(iv) Expenses for the innovation of one prototype were eligible for the grant even if part of the future production process;

(v) A budget of up to NIS 500,000 for development of molds that were part of the production line were eligible for the grant;

(vi) Expenditure of up to NIS 250,000 for the purchase of know-how that is an integral part of the R&D plan was eligible for the grant on condition that the purchase was made in the approved R&D year and was not from an interested party;

(vii) Expenses for hiring of academic or high-tech employees, employed for spotting ideas or submitting R&D projects, for companies that apply for the first time were retroactively eligible for the grant for up to six months;

(viii) Exception from the wage ceiling applied to returning academicians employed as senior R&D employees was allowed;

(ix) Expenses for wages of up to three employees if they do not reach 10% of the rate of workforce were eligible for the grant; and

(x) Companies applying for the first time were exempt from some digitized reporting duties.

The projects were subject to the financing procedures of the R&D fund.

*s. BIRD Fund for R&D Plans*

The Binational Industrial Research and Development Fund ("BIRD Fund") is a binational program for promoting industrial R&D between the United States and Israel. The BIRD fund will support U.S. and Israeli companies' joint R&D activities by participating in up to 50% of their development budget until commercialization is reached. The program principles are:

(i) Technological innovation in a wide spectrum of technologies, e.g., life sciences, electronics, electro-optics, software, renewable energy, internal security, etc.

(ii) There are two kinds of projects:

(a) Complete project — for a project whose development budget exceeds US$ 400,000 the BIRD fund will finance up to 50% of the project's costs but no more than US$ one million; and

(b) Mini project — for a project whose development budget does not exceed US$ 400,000 the BIRD fund will finance up to 50% of the project's costs but no more than US$ 200,000.

(iii) The contribution of each participating company will not be less than 30% of the total budget of the project.

(iv) The grants will be repaid to the BIRD fund as royalties on future sales of the developed product at the following rates: (a) 5% from the sales of the product; (b) 30% of the income from rights of use; or (c) 50% of the income from the sale of the intellectual property. The maximum return will be 100%–150% according to the following criteria:



ISBN 978-1-63359-061-8

| Years since end of project | Return |
|---|---|
| 1 | 100% |
| 2 | 113% |
| 3 | 125% |
| 4 | 138% |
| 5 and more | 150% |

Should no sales be achieved due to technological or marketing failure, the grant will not be refunded.

Every company registered in the United States or in Israel is entitled to participate. The two companies have to have the ability to characterize, develop, produce and sell the product, and at least one of the companies must have the technology or the developed product's intellectual property.

*t. "One Hundred Million" Program*

To increase the trade volume with India and China, the Industry, Commerce and Employment Ministry initiated a fund to aid Israeli companies in establishing a market in those countries, as follows:

(i) The fund will fund up to 50% of the logistical costs for operating an office up to 200,000 NIS per year, for three years.

(ii) The fund will fund up to 50% of the costs of a local advisor up to 300,000 NIS per year, for three years.

(iii) The fund will fund up to 50% of costs for posting a company's employee up to 500,000 NIS per year, for three years.

(iv) The fund will provide a one-time grant in the amount of up to 50% of the expenses for proving the local implementation of the technology and for a refinancing account in India or China, up to NIS 400,000.

The fund's committee may approve one or more grants.

The grants are conditioned on: (i) annual turnover of NIS 15-200 million in the year before the year in which the application was submitted; (ii) total annual exports amount to at least 10% of sales; (iii) annual exports to China and India do not exceed NIS 20 million per year; (iv) the company does not receive additional support from the government; and (v) the company did not employ in the period of six months prior to the application more than five employees in the target market.

The fund's committee will consider the following criteria in making the grant: (i) financial stability; (ii) technological and marketing abilities; (iii) management quality; (iv) three-year commitment; (v) product suitability for target markets; (vi) increase of sale potential in target markets; and (vii) contribution to the Israeli economy.

A company that will receive the grant will have to pay royalties at the rate of 3% on added Chinese and Indian income.

*u. Life Technologies Agreement*

Certain grants are available under an agreement signed between the Chief Scientist and the American multinational corporation Life Technologies. The agreement is designed to encourage joint R&D projects between Israeli companies and Life Technologies.

According to the agreement, the Chief Scientist will provide a grant of up to 50% of the approved budget of the R&D project. In addition, companies located in Zone A are eligible for an additional grant of 13%.

Additional assistance is offered by Life Technologies by way of professional advice, laboratory equipment, etc.

*v. R&D Start-Ups*

The Office of the Chief Scientist has established an additional program in order to support start-up companies engaged in research and development activities. According to the program, such companies may apply to the Chief Scientist to receive a grant of up to 50% of the approved R&D costs to the extent that the following conditions are met:

- The company's turnover is less than NIS 500,000;
- The company has not yet received any financial support from the Office of the Chief Scientist;
- The company was incorporated not more than three years prior to the submission of the application;
- The company did not raise more than NIS 2 million;
- The company did not raise more than NIS 1 million during the year prior to the submission of the application; and
- The company's expenditures meet certain requirements provided by the Office of the Chief Scientist.

*3. Restrictions on Foreign Investment*

There are no restrictions on the investment of foreign capital in Israel. The Ministry of Defense, however, does sometimes limit the participation of foreign investors in military industrial enterprises to 49% of the invested capital and voting rights. Furthermore, the Bank of Israel's consent is required for the acquisition of 5% or more of the voting rights of an Israeli bank. The acquiring of real property leasehold rights by a nonresident corporation where the owner is the Land Administration Authority requires the latter's approval. A prior permit is required for the acquisition of control in certain companies (for example, Bezeq, the Israeli Communications Company, and El Al Israeli Airways). It should also be noted that a tourist may not work in Israel without a work permit, which is issued by the Ministry of the Interior on the basis of an application explaining the special circumstances for which the permit is required.[103] The granting of work permits to foreigners is unusual except in the cases of "approved specialists," discussed at XVII.B.3., below, and foreign workers engaged in agricultural or nursing institutions.

[103] Entry to Israel Regulations, 1954, s. 13.



ISBN 978-1-63359-061-8

### *B. Currency and Exchange Controls*

#### *1. In General*

In the past, Israel enforced severe foreign exchange controls designed to direct the flow of foreign currency and maintain its reserves. In October 1977, these provisions were greatly relaxed and a gradual liberalization policy has been implemented since then. There is no longer an official rate of exchange and the exchange rate of the Israeli currency is determined by market fluctuations. Prior to the introduction of free foreign currency trading, massive demand for foreign currency often exhausted the foreign exchange reserves, which inevitably led to a devaluation of the local currency and resulted in the purchasers achieving speculative gains. This is no longer the case since the currency adjusts to the market with only slight intervention from the Bank of Israel.

The Currency Control Law, 1978, which was abolished in the Bank of Israel Law, 2010, governed all foreign currency transactions, as well as all transactions between residents and nonresidents. The Law prohibited a resident from entering into any transaction with a nonresident or from engaging in any transaction involving foreign currency.[104] In addition, the Law prohibited the export of assets from Israel,[105] the import of Israeli currency into Israel[106] and the holding of foreign currency and foreign securities by local residents.[107] With respect to real estate located in Israel, a resident could not enter into a transaction with a nonresident and a local resident was prohibited from entering into a transaction with respect to real estate located outside Israel.[108]

At first sight, the Law seemed to prohibit almost every transaction involving a foreign currency or to which a foreign resident is a party. However, the Law authorized such transactions if they were entered into in accordance with a permit issued by the Bank of Israel.[109] In an effort to liberalize the foreign exchange controls, a general permit was issued in 1978, and had since been amended numerous times. In May 1998, a general permit was issued in lieu of the much-amended 1978 permit.[110] Under section 2 of the 1998 general permit, any transaction that required approval under sections 2 through 6 of the Currency Control Law, 1978 (the holding of foreign exchange, transactions in real estate with a nonresident, the importation of Israeli currency, the alienation of assets from Israel and any transaction in foreign currency or with a nonresident) was permitted under the terms and conditions of the general permit. The 1998 general permit applied to all residents and nonresidents. However, the 1998 general permit was terminated due to the enactment of the Bank of Israel Law, 2010.

The 1998 general permit permitted all transactions in foreign currency, foreign securities and foreign real estate and transactions with foreign residents including transactions with foreign residents in Israel, with a few exceptions regarding institutional investors and foreign residents engaged in futures transactions. Accordingly, Israeli residents could freely transact in foreign currency, inside or outside Israel, and from a practical point of view were not subject to any restrictions. Foreign residents could enter into transactions regarding assets located in Israel in foreign as well as local currency, subject to minor exceptions. The repatriation of capital or income did not require any special permit.

Subsequent to the issuance of the 1998 general permit, and to manage and monitor monetary policy effectively, the Currency Control Law, 1978, was amended accordingly. The permit required wide compulsory reporting to the Controller on certain transactions and on the holding of foreign currency abroad. Simultaneously, the Law mandates secrecy obligations on the Controller's employees.

Despite the far-reaching reform of the foreign exchange controls regime of May 1998, some restrictions were still in force, as follows:

(i) An Israeli bank was required to distinguish between resident and nonresident accounts. When a nonresident account is opened, the holder must declare his/her citizenship (as was defined in the Currency Control Law, 1978) in addition to all other information required by law.

(ii) The Regulations concerning the management of bank accounts of residents applied to both local and foreign currency accounts but, as a bank policy, some banks choose to differentiate between the two types of accounts.

(iii) Foreign residents held nonresident accounts, foreign currency accounts and nonresident local currency accounts.

According to definitions in the Currency Control Regulations (Definition of a Foreign Resident), 1998, residents of areas under the control of the Palestinian Authority were considered nonresidents. Due to the significant volume of transactions between the Palestinian Authority and Israel, banks were required to record such transactions and classify them as transactions with nonresidents.

Due to the legislation of the Bank of Israel Law, 2010, the Currency Control Law, 1978 and the Currency Control Permit, 1998 were abolished and their provisions were replaced by the Bank of Israel Law, 2010. However, according to the Bank of Israel Decree (Information Regarding the Development of Foreign Currency in Israel), 2010, Israeli financial institutions must report to the Bank of Israel, inter alia, with respect to the following:

(i) Any transaction between an Israeli resident and a foreign resident;

(ii) Any transaction performed by an Israeli resident in a foreign currency;

(iii) Any transaction performed by a foreign resident in ILS; and

(iv) Any Israeli securities held on behalf of a foreign resident or foreign securities held on behalf of an Israeli resident if the value of such securities is more than US$100,000.

[104] Currency Control Law, 1978, s. 2.
[105] Currency Control Law, 1978, s. 3.
[106] Currency Control Law, 1978, s. 4.
[107] Currency Control Law, 1978, s. 6.
[108] Currency Control Law, 1978, s. 5.
[109] Currency Control Law, 1978, s. 9.
[110] Currency Control Permit, 1998, s. 9(a).



ISBN 978-1-63359-061-8

*2. Prohibition of Money Laundering Law*

In accordance with the resolutions of the Organization for Economic Co-Operation and Development (OECD) of July 2000 and to avoid the imposition of sanctions by the OECD members, the Israeli parliament enacted the Prohibition of Money Laundering Law, 2000.

The Law defines "Money Laundering" as the execution of a transaction involving an asset originating directly or indirectly from an offense, used to commit an offense, or enabling the commission of an offense, with the object of concealing or disguising its source, the identity of the owners of the rights therein, its location, or its movements, or the performance of a transaction with respect to such asset.

Under the Law, money laundering is a criminal offense that carries with it a sanction of imprisonment for up to 10 years. Pursuant to the Law, the Governor of the Bank of Israel issued the Prohibition of Money Laundering Decree (Duties of Identifying, Reporting and Managing of Bank Records), 2001.

The decree prohibits the opening of unidentified bank accounts and orders banks to report to the authorities:

(i) Any withdrawal or deposit of any amount exceeding NIS 50,000;

(ii) Any transaction involving the account and exceeding NIS 50,000, including the transfer of cash abroad;

(iii) Any currency exchange in excess of NIS 50,000;

(iv) Any issue of a cashier's check in excess of NIS 200,000, excluding a cashier's check of up to NIS one million given as a loan for housing;

(v) Any purchase of travelers checks in an amount that exceeds NIS 50,000;

(vi) Any deposit of checks in foreign currency in excess of NIS one million; and

(vii) Any transfer of currency in excess of NIS one million.[111]

In addition to the above, the Prohibition of Money Laundering Decree (Duties of Identifying, Reporting and Managing of Bank Records), 2001 stipulates, inter alia, that banks are required to report any extraordinary transaction[112] and:

(i) Any transaction that appears designed to bypass the restrictions set forth above;

(ii) The frequent use of the bank's safe by a large group of people with no obvious cause;

(iii) Any case in which it seems that the owner of the account is managing the account for another person without giving notice thereof; and

(iv) Any transaction that:

- was conducted by a proxy, not being an approved account signatory;
- involves the withdrawal of cash close to its deposit,
- is not in the normal course of business;
- involves the transfer of cash from or to an unidentified source;
- is an atypical transaction;
- is of an extraordinary scope;
- constitutes repeated unexplained transactions with an identical source; or
- involves a large number of deposits by a party other than the owner of the account.

Banks are exempt from reporting these transactions if the executor of the transaction concerned is one of the following:

(i) Public institution;

(ii) Bank or a credit card company;

(iii) Israeli Post Office Bank;

(iv) Insurance company, as defined in section 1 of the Supervision of the Insurance Business Law, 1981;

(v) Member of the stock exchange;

(vi) Provident fund; or

(vii) Mutual fund.

The Law requires a person entering or leaving Israel to report the amount of money carried by the person if it exceeds NIS 100,000, or NIS 1,250,000 if the person entered Israel with an immigrant's visa under the Law of Return.

The Israel Money Laundering Prohibition Authority, which is the Israeli Financial Intelligence Unit (FIU) in the Ministry of Justice and was renamed the Israel Money Laundering and Terror Financing Prohibition Authority by the Prohibition on Financing Terrorism Law in 2005, has as its main purpose assisting in the investigation and prevention of money laundering and terror financing related crimes.

*3. Secrecy*

All returns and reports filed with the Controller are confidential and may not be used in any proceedings except criminal proceedings, and then only pursuant to the instructions of the Governor of the Bank of Israel.

### *C. Trade and Commerce Regulations*

*1. Imports and Exports*

*a. Imports*

*(1) Permits*

The Imports and Exports Ordinance, 1979 grants the Minister of Industry and Commerce wide powers with respect to the import and export of goods. Section 2 of the Ordinance provides that the Minister may, by order, make such provision as the Minister thinks expedient for prohibiting or regulating the importation of goods into Israel, their export, their transport along the coast or their loading on ships, in general or in relation to any specified classes of cases and subject to such exceptions, if any, as may be made by or under the order. The

[111] Prohibition of Money Laundering Decree (Duties of Identifying, Reporting and Managing of Bank Records), 2001, s. 8.

[112] Prohibition of Money Laundering Decree (Duties of Identifying, Reporting and Managing of Bank Records), 2001, s. 9(b).



ISBN 978-1-63359-061-8

Minister is also entitled to prescribe by order that a person importing or wishing to import goods into Israel make a deposit in favor of the Treasury in such place, in such amount, at such rate, at such time, for such period, on such conditions and in such manner as prescribed by the order, and the Minister may prohibit clearance of any goods from customs unless a deposit was made with respect thereto. Indeed, until January 1988, when the deposit rate was set at 0%, a one-year deposit was required.[113] The rationale for the deposit was to increase the price of imports by the rate of the denied interest and the devaluation of the deposit. By a special Order, the Minister has prescribed that no goods may be imported into Israel without an import license.[114]

At first sight, the Ordinance and the Order issued pursuant to it seem to prohibit the importation of any goods into Israel without a specific license. However, the statutory framework was not as strict as it seems, for the Minister of Industry and Commerce has, by another special Order, allowed the importation of numerous goods into the country without a special import license having to be obtained (except for certain goods as provided in the schedules attached to the Order).[115] Most articles imported into Israel do not require the special permission of the Minister.[116]

Imports from countries that bar or curtail the import of Israeli goods require a permit.[117] A list of such countries is published by the Minister of Economy and includes, among others, most Arab countries and a number of the former Soviet Union states (CIS). It does not include any country from Western Europe, or North, Central or South America.

*(2) Dumping and Unfair Competition*

A special law was enacted in 1991 to prevent dumping. The Levies on Commerce Law,[118] was formulated so as to keep its provisions within the boundaries set by the international treaties (including the GATT International Subsidies Agreement) to which Israel is a party.

The Law, which is based on similar legislation in other industrialized states, empowers a Minister to impose a levy, by way of an order, on the import or export of goods to and from Israel, on the possession of goods and on the rendering of services, if in his/her opinion the levy is necessary to achieve certain prescribed objectives, such as:

- The prevention of an adverse change in the balance of payments or in the state's foreign currency reserves;
- An adjustment of the production of demand for and consumption of agricultural goods, including the prevention of a surplus or the price-discounting of such goods;
- The protection of local production against competing imports;
- The prevention of the exhaustion of natural resources; and
- The taking of economic measures against a state breaching an agreement or arrangement with Israel.

The Law's underlying principle is that, where the prices of goods or services are influenced by an intervening state granting benefits to its exporters or producers, the importing state is entitled to protect its own industry by way of imposing a dumping or an equalizing levy that will offset the benefits' influence. A dumping levy is imposed with respect to a "certain type of goods imported from the State where the goods were produced or from other states to be determined in an order, or that were manufactured by producers or supplied by suppliers mentioned in an order."[119]

An equalizing levy is imposed on "goods the origin of which is the manufacturing state where the price of goods is supported."[120]

An order imposing a levy is in effect for three years, or for a shorter period if so provided,[121] and an importer that is required to pay the levy is entitled to submit to the officer in charge a request for the reconsideration of the order.[122]

*b. Exports*

*(1) Permits*

The same Ordinance that authorizes the Minister of Industry and Commerce to impose a general prohibition or restrictions on the import of goods into Israel, the Import and Export Ordinance, 1979, permits the Minister to regulate the export of goods from Israel.[123] Under section 2 of a special Order of the Minister of Industry and Commerce,[124] any commercial export of goods from Israel is permitted, except the export of goods listed in the schedules attached to the Order which require certain permits or approvals.

The exporter is required to file a number of documents. Foremost among these is the export entry known as Number 9. In this entry, the exporter lists the type of the exported articles, his/her name and number, the agent dealing with the matter, general information regarding the purchaser, the export license (where required), the consideration and the manner of its payment, the packaging, weight and quantity of the goods, the category of the articles in the customs tariff and other pertinent data. Other documents include the port authority documents, shipping documents, the certificate of origin customarily issued by one of the chambers of commerce, the insurance certificate, and the bill of lading. In some instances, a certificate of quality is required to ensure that the exported goods meet the standards set by the government authorities responsible for encouraging exports.

[113] Import and Export Ordinance (New Version), 1979, s. 3; Import of Goods (Deposits) Order, 1986, s. 2.
[114] Import Licenses Order, 1978, s. 2.
[115] Free Import Order, 2014, s. 2.
[116] As set forth in s. 2 of the Free Import Order, 2014.
[117] *See* Office of Economy Guidance No. 2.4 dated Dec. 30, 2013.
[118] Replacing the Prevention of Dumping Law, 1977.
[119] Levies on Commerce Law, 1991, s. 24.
[120] Levies on Commerce Law, 1991, s. 25.
[121] Levies on Commerce Law, 1991, s. 27(a).
[122] Levies on Commerce Law, 1991, s. 29.
[123] Import and Export Ordinance (New Version), 1979, s. 2.
[124] Free Export Order, 2006. *See also* Import and Export Order (Inspection of Exporting of Two-Useful Goods, Services and Technology), 2006.



ISBN 978-1-63359-061-8

*(2) Military*

Of special importance is a specific Law regulating the export of military equipment and military know-how.[125] The Law prohibits the export of any military equipment, services involving military know-how, and the rendering of advice or engagement in brokerage activities with respect to the above. A person may engage in the export of military equipment or services involving military know-how, or in an advisory or brokerage capacity once the person has received the applicable permit as provided under the Law. However, it should be noted that an exemption from the aforementioned permit is available under the Control of Defense Export Regulations (Exemption from Defense Exporting Permit), 2008 which apply mostly with respect to initial marketing activities and not with respect to actual exporting.

*2. General Regulation of Business*

*a. Regulation of Competition*

The Restrictive Trade Practices Law, 1988, also known as the Antitrust Law, which replaced the former law of 1959, governs the main aspects of state regulation of market competition. The former law was rarely enforced, especially with regard to cartels. However, in recent years, the Restrictive Practices Controller, who operates under the Law, has been remarkably active and is involved in all of the large-scale transactions conducted in Israel. In the past few years, the number of criminal charges as well as the severity of penalties under the Law has increased dramatically. The decisions of the Controller and the judgments of the Court of Restrictive Practices (in effect, the District Court of Jerusalem), published periodically as of 1994, form the Israeli precedent-based competition law, applying and interpreting the provisions of the Law. The Law has civil, administrative, and criminal aspects.

*(1) Monopolies*

A "monopolist" is defined in the Economic Competition Law, 1988, as "A person whose share of the total supply of assets or the total purchase thereof, or the total provision of services or the total purchase thereof, exceeds half; or a person who holds significant market power with regard to the supply of assets or purchase thereof or with regard to the total provision of services or purchase thereof."[126] For purposes of this definition, the following are regarded as one person: (i) a company and its subsidiaries; (ii) the subsidiaries of one company; and (iii) a company and the person controlling it.[127] A monopoly can relate to the whole country or a particular region[128]

Like the European approach to monopolies, and unlike the US approach, the Israeli regulation of monopolies concentrates on the prevention of such monopolies' abuse of their dominant market position. The regulation has a two-tiered structure: first, the Director-General declares that a company is a monopoly in the Official Gazette and on the website;[129] thereafter, certain supervisory means are used to regulate the company's activities.[130] A monopoly may not unreasonably deny any person the supply of the goods or services with respect to which the monopoly exists.[131] In 1996, section 29A was added to the Law, prohibiting monopolies, among other things, from abusing their market position by manipulating prices, supply and contracting terms.

If the Director-General sees that as a result of a monopoly business competition is being harmed or the public is being harmed, he may give the monopolist instructions to prevent the harm.[132] The following factors can all give rise to harm to business competition or harm to the public: the price of an asset or a service; the quality of an asset or a service; the quantity of assets or the scope of a service; the supply of, the regularity of or the terms with respect to an asset or a service; and barriers to access to a sector or to movement within a sector.[133]

The Court may direct the holder of a monopoly to prevent such deleterious effects. Where prevention by means of appropriate controls proves impossible, the Court may order the division of the monopoly into two separate companies, either by the transfer of part of the shares to a separate entity, in accordance with the monopoly's choice, or by the incorporation of a new company to which a part of the monopoly's assets is transferred.[134]

*(2) Mergers*

Section 314 of the Companies Law, 1999 provides that mergers between companies require the sanction of the shareholders' meeting and the approval of the board of directors of each merging company. The Economic Competition Law, 1988 also applies to mergers if any one of the following conditions is fulfilled:

(i) As a result of the merger, the merging companies will control 50% or more of the relevant market or the companies will hold significant market power;

(ii) The combined sales turnover of the merging companies in the year preceding the merger exceeded NIS 360 million;[135] or

(iii) One of the merging companies is a "monopoly."[136]

[125] The Law for the Control of Defense Export, 2007.

[126] Economic Competition Law, 1988, s. 26.

[127] Economic Competition Law, 1988, s. 26(f).

[128] Economic Competition Law, 1988s. 26(b).

[129] Economic Competition Law, 1988, s. 26(a1).

[130] Restrictive Trade Practices Controller's Declaration of a Monopoly: "Yediot Aharonot," Apr. 1995. In this decision the Controller ruled that a daily newspaper with a circulation of more than 50% of the market, although narrowly defined to include only daily newspapers in Hebrew, is a monopoly in that market. In other cases, the Controller refused to declare the Tel-Aviv Stock Exchange to be a monopoly, in spite of it being the only permitted stock exchange in Israel, in light of the restrictions and regulations imposed by the special securities legislation on it (see II.C.2.d.), which renders the regulation under the Restrictive Trade Practices Law, 1988, unnecessary. *See also* T.R.C. 1/93 *The Restrictive Trade Practices Controller v. Dubek*, Restrictive Trade Practices 2 (1996), p. 194; D.C.R. 21953/02 *Pelephone Communications v. Megurim Yezum*, Taggidim F-1, 666 (2009).

[131] Economic Competition Law, 1988, s. 29.

[132] Economic Competition Law, 1988, s. 30(a).

[133] Economic Competition Law, 1988, s. 30(c).

[134] Economic Competition Law, 1988, s. 31.

[135] According to the Restrictive Trade Practices Regulations (Registration, Publication and reporting of transactions), 2004, s. 9(2) provides that, in addition, the turnover of at least two of the companies participating in the merger should be more than NIS 10 million (per company).

[136] Economic Competition Law, 1988, s. 17(a).



ISBN 978-1-63359-061-8

In the event that one of the merging companies conducts business both in Israel and abroad, these provisions apply only with respect to its sales turnover in Israel, or its portion of production, selling, marketing or purchasing of the article in Israel, or its portion in rendering or receiving the service in Israel.[137]

The Law provides that no merger to which it applies is allowed unless notice thereof was given to the Controller of Restrictive Practices and his/her approval, whether conditional or not, was granted thereto.[138] The Controller will object to the merger or lay down conditions with respect to its implementation if there is reason to believe that the merger might substantially affect competition or be detrimental to the public at large by increasing the prices of goods or services, by decreasing the quality of goods or services or by affecting the marketing of the goods or services in the relevant business field.[139] Once the Controller's approval is granted, any individual, corporation or consumers' organization that may be affected by the merger, has the right to petition the Court of Restrictive Trade Practices, which may, upon petition, approve, modify or overturn the Controller's decision.[140] The Law further provides that the Controller's approval of a merger is not to be granted without consultation with a committee specially appointed for this purpose.[141] Notwithstanding the above, a merger between a company and its subsidiary does not require the consent of the Controller, even in cases that allegedly contravene the Economic Competition Law, 1988.

Except as provided for in the Companies Law, 1999,[142] and the Economic Competition Law, 1988, mergers are not supervised by any other authority. Until the end of 1993, tax-free mergers required the sanction of a special committee created under the Law for Encouragement of Industry (Taxes), 1969. Thereafter new merger relief provisions came into force, as part of Chapter E2 of the Income Tax Ordinance, which deals with reorganizations (see the relevant discussion in IV., below).

A draft bill to amend the Income Tax Ordinance was published in November 2024. Among other things, the draft would reduce the required holding rate in a share-for-share merger under Section 103 from 80% to 70%. In addition, to ease the conditions regarding size ratios in mergers, a merger would be allowed when the size ratio between the two merging companies does not exceed 19:1 (instead of 9:1) and the rights held by shareholders of the smaller company are at least 5% (instead of 10%) of the merged company's rights, provided prior approval is obtained.

*(3) Restrictive Trade Practices*

The Economic Competition Law, 1988, prohibits persons that carry on a business from entering any arrangement expressly or implicitly designed to restrict any one of the parties thereto in a way that may distort business competition between or among such parties or between such party or parties and an individual that is not a party to the arrangement. Within the meaning of the Law, an arrangement may be written or oral, expressed or implied, and with or without legal effect. More specifically, a practice is regarded as restrictive when the restraint relates to one of the following matters:[143]

(i) The price to be offered, paid or demanded;

(ii) The profit to be derived;

(iii) The division of the market, whether in its entirety or a part thereof, according to the place of business or to the people or class of people with whom business will be conducted; or

(iv) The quantity, quality or type of assets or services.

A corporation's determination of a policy for its members or for a particular class thereof that may prevent or reduce business competition between them, whether or not binding on them, is deemed to be a cartel, and the corporation and every member thereof is deemed to be a party to the cartel.[144] An individual who knowingly conducts business in the framework of a cartel is deemed to be a party thereto.[145]

Regulations in effect as of 2006 decree that any related person (i.e., a person that controls a party to a restrictive agreement) will be deemed a party bound by any restrictions imposed on the first-mentioned party.[146]

The Law excludes a number of arrangements that would otherwise be "restraints" from becoming cartels.[147] Foremost among these are:

(i) An arrangement imposing restraints all of which are prescribed by law;

(ii) An arrangement imposing restraints relating to the use of any patent, design, trademark, copyright, performers' right or cultivators' right, if the parties thereto are the owner of the asset (i.e., the right) and the licensee, and provided that if the right must by law be registered, it was indeed so registered;

(iii) An arrangement between someone granting a right with respect to immovable property and someone purchasing the right;

(iv) An arrangement imposing restraints, all of which relate to the local growing or marketing of fruits, vegetables, field crops, milk, eggs, honey, cattle, poultry or fish, not including industrial products thereof, where all the parties thereto are producers or wholesale distributors of the commodities;

(v) An arrangement the parties to which are a company and its subsidiary;

(vi) An arrangement imposing restraints with respect to international transportation, whether via air or sea, if all the parties thereto are air or marine carriers or international aviation or shipping corporations approved for this pur-

[137] Economic Competition Law, 1988, s. 18.

[138] Economic Competition Law, 1988, s. 19. Accordingly, Companies Law, 1999, s. 322 provides that no merger will take place unless the Controller of Restrictive Practices removes his opposition to the merger.

[139] Economic Competition Law, 1988, s. 21(a).

[140] Economic Competition Law, 1988, s. 22(b).

[141] Economic Competition Law, 1988, s. 24(a).

[142] And also in the Companies Regulations (Mergers), 2000.

[143] Economic Competition Law, 1988, s. 2.

[144] Economic Competition Law, 1988, s. 5.

[145] Economic Competition Law, 1988, s. 6.

[146] Rules of Restrictive Trade Practices (Directives General Definitions), 2006. s. 2.

[147] Economic Competition Law, 1988, s. 3.



ISBN 978-1-63359-061-8

pose by the Minister of Transportation. Nevertheless, a 2007 Amendment substantially narrowed the wide statutory exemption enjoyed by international air carriers by addressing arrangements entered by them. Several types of arrangements, including code-sharing arrangements, require the prior approval of the Controller or of the Court of Restrictive Trade Practices, unless they are exempted by a Published Block Exemption. Under the amendment, in any one of the following cases, the specific approval of the Controller will be required: an arrangement in which both parties are Israeli air carriers; an arrangement between air carriers, of which at least one is Israeli and at least one is foreign; and an arrangement between air carriers none of which are Israeli, but at least one of which has activity or representation in Israel, provided that one of the major issues of the arrangement is air transport to or from Israel, and the restrictions in the arrangement concern the activity, or abstaining from activity, in Israel, of any of the parties. The Restrictive Practices Controller's approval will not be required in the latter two cases: if the arrangement was approved by the Ministers of Foreign affairs and Transportation for purpose of preventing harm to Israel's international relations; or to assure the continuance of flight rights between Israel and other countries;

(vii) An arrangement by virtue of which the seller of an entire business is obligated to the purchaser thereof to refrain from conducting the same type of business, if such an obligation is not contrary to reasonable or accepted standards; and

(viii) An arrangement to which a trade union or an employee's union is a party and that imposes restraints, all of which relate to the employment and conditions of employment of employees.

Before a cartel is established or joined, the approval of the Court of Restrictive Practices must be obtained.[148] Every person, corporation or organization that considers itself aggrieved by a cartel may lodge with the Court its opposition to the approval. The Court may approve a cartel, in whole or in part, and on such conditions and for such a period of time as it may deem fit, provided the existence of the cartel is not contrary to the public interest. In considering the public interest, the Court examines, among other factors, whether there exists a reasonable need for the cartel with respect to the following matters:

(i) The efficiency of the production and marketing of the goods and services, their quality and the consumer price;

(ii) The ensuring of an adequate supply of the goods and services to the public;

(iii) The prevention of unfair competition that is likely to restrain competition in the supply of the goods or services by a person that is not a party to the arrangement;

(iv) The enabling of the parties to the cartel to obtain a supply of the goods or services under fair conditions from a person that controls a significant percentage of the supply, or to supply an article or service to a person as aforesaid under reasonable conditions;

(v) The protection of the existence of an entire economic branch considered advantageous to the Israeli economy;

(vi) The ensuring of the continuance of enterprises as a source of employment in areas where substantial unemployment may occur as a result of the closing down of enterprises or the reduction of their capacity; and

(vii) The improving of the balance of payments by the reduction of the cost of imports or by the increasing of exports.[149]

Under section 15A of the Restrictive Trade Practices Law, 1988, which entered into force in 2000, the Controller may issue "rules" that exempt parties to a restrictive agreement from the need to obtain the court's approval for the restrictive agreement. Exemptions have been issued for: (i) distribution agreements;[150] (ii) franchise agreements;[151] (iii) exclusive purchase agreements;[152] (iv) R&D agreements;[153] (v) agreements that have a negligible effect on commercial competition;[154] (vi) joint loan arrangements;[155] and (vii) joint ventures between non-competitive parties.[156] Most of the aforementioned rules contain conditions as to the enjoyment of the exemptions by competitive parties and other specific conditions.

In reinstating the rationale for classifying an arrangement as a restrictive trade practice, the Supreme Court has held that the public welfare should be given utmost consideration in this matter.[157]

In the *Extel*[158] case, it was held that the mere fact that an arrangement was declared restrictive does not nullify the arbitration clause contained therein. In the *Land Assessors*[159] case, the Court held that the fixing of a maximum price in a tender offer does not constitute a restrictive arrangement. Similarly, in the *A. M. Chanuyot (Yerushalayim)*[160] case, it was held that the grantor of a concession may fix a maximum price for the service granted thereunder and such a restriction does not constitute a restrictive arrangement. Under regulations promulgated in 2004, the Controller administers a register in which all restrictive arrangements, mergers, and monopolies are registered. The Controller has also issued a circular that sets forth the ad-

[148] Economic Competition Law, 1988, ss. 4 and 7(a).

[149] Economic Competition Law, 1988, s. 10; T.R.C. 445 *I.C.P. v. The Restrictive Trade Practices Controller*, Restrictive Trade Practices 1 (1995), p. 298.

[150] Rules of Restrictive Trade Practices (Exemption for Exclusive Distribution Agreements), 2001.

[151] Rules of Restrictive Trade Practices (Exemption for Franchise Agreements), 2001.

[152] Rules of Restrictive Trade Practices (Exemption for Exclusive Purchase Agreements), 2001.

[153] Rules of Restrictive Trade Practices (Exemption for R&D Agreements), 2001.

[154] Rules of Restrictive Trade Practices (Exemption for Agreements Which Have Negligible Effect on Commercial Competition), 2006.

[155] Rules of Restrictive Trade Practice (Exemption for Joint Loan Arrangements, 2018.

[156] Rules of Restrictive Trade Practices (Exemption for Joint Ventures), 2001.

[157] F.H. 4465/98 *Tivol v. Shef Hayam*, P.D. 56(1) 56.

[158] C.A. 6233/02 *Extel Ltd. v. Kalma Way Aluminum and Glass Marketing*, P.D. 58(2)635.

[159] M.A.A. 6464/03 *Land Assessors Ass'n v. The Ministry of Justice*, Takdin Elion 2004(1), 1191.

[160] C.A. 3700/98 *A.M. (Chanuyot) Yerushalayim v. Municipality of Jerusalem*, P.D. 57(2), 590.



ISBN 978-1-63359-061-8

ministrative procedure regarding requests for pre-rulings and the way they will be dealt with.

In a civil torts action launched by three foreign aviation companies against Aviation Services Ltd.[161] and its three shareholders that, during the relevant period, were the major fuel distributors in Israel (Aviation Services was the result of a horizontal cooperation between the fuel distributors and was at the time the sole supplier of jet fuel and refueling services to airlines), the Court ruled in favor of the plaintiffs, determining that the corporation was an illegal restrictive arrangement, and that the horizontal cooperation strengthened Aviation Services' market power and enabled it to charge the plaintiffs non-competitive prices, while discriminating against the national airline. The Court ordered payment of damages of more than US$ three million.

*(4) Enforcement Measures*

A person that becomes a party to a cartel that did not receive Court approval or was not accorded a temporary permit or an exemption from the duty to obtain the Court's approval is liable to penalties.

Penalties are also imposed on persons that violate any other provision of the Law.[162] Such penalties may reach up to NIS 100 million with respect to certain corporations.[163]

A special remedy is available to people that sustain damages as a result of a contravention of the provisions of the Law or of any direction or order issued or made under it. Such persons may claim damages in tort.[164] As of 1996, any person thus aggrieved may file a class action in the name of the group of persons that sustained damages therefrom.

As of 2006, class action suits are governed by the Class Action Law. Pursuant to this Law, a class action suit in antitrust matters may be submitted not only by a person (individual or corporation) having an interest in the lawsuit, or a consumers' association, but also by a public authority that acts in that field on behalf of a group of people for whom such lawsuit raises substantial questions of fact or law that are common to all the members of the group.

The Restrictive Practices Authority implemented an immunity leniency program under which any person or entity will be granted full immunity from criminal prosecution by being the first to come forward and provide all known information with respect to the restrictive arrangement to which the person was a party.

*(5) The Pre-Ruling*

As of August 2004, pursuant to authority granted under section 43A of the Economic Competition Law, 1988, the Restrictive Practices Controller established detailed procedures to be followed in the four cases in which a pre-ruling will be granted: (i) with respect to the approval of a merger or an exemption from a restrictive agreement; (ii) with respect to the legality of a future transaction or activity that the Law has not addressed; (iii) with respect to the Restrictive Practices Controller's position on complex economic issues (such as market definition); and (iv) with respect to his/her interpretation of the Law.

*(6) Reliance Protection in Criminal Proceedings*

Section 34(s) of the Penal Law, prescribes that a defendant in a criminal procedure is immune from criminal liability in the case of a mistake in the interpretation of the law, provided his/her mistake was reasonably unavoidable. In *Tagar*,[165] the Supreme Court dealt with the extent of immunity in the case of an advocate's or counselor's advice regarding the interpretation of a criminal provision in the Economic Competition Law. The Supreme Court held in *Tnuva*[166] that, for a person to be entitled to rely on counselor's advice: (i) the advice must be based on a complete set of facts; (ii) the counselor must be a professional in the field of his/her specific advice; (iii) except in rare cases, the advice must have been given in writing; (iv) where there was a possibility of obtain a pre-ruling from the competent authority, and the defendant nevertheless chose to rely on counselor's advice, it must be more likely than not, that the mistake was reasonably unavoidable; and (v) the reliance must have been made in good faith. However, in *Tagar*, the Supreme Court held that, if a pre-ruling from the competent authority was available, the reliance protection should not be automatically denied and each case should be examined on its merits.

It should be noted that the Supreme Court decisions are not limited to the Economic Competition Law and therefore they may be relevant in other legal areas.

*b. Restrictive Covenants — Employee-Employer*

Restrictive covenants with respect to employees terminating their employment have been upheld by the courts when the covenants have been found to be reasonable in their restrictions. Unreasonable restrictions have been disregarded and held to void the entire covenant. The reasonableness of a restriction depends, among other factors, on its geographical scope, its term of duration, the scope of activities bound by it and the consideration received therefor.[167] Since the introduction of the Basic Law: Freedom of Occupation in 1992, such restrictions have been subject to enhanced scrutiny by the courts. These precedents try to achieve a balance between the employee's freedom of occupation and the former employer's legitimate rights.[168] A guiding decision of the Labor Court of Appeal held that restrictive covenants should be upheld by the courts only: if they are needed to protect the employer's confidential information; where the employer invested in the employee's special training; where consideration was given for the employee's agreeing to the restriction; or in severe cases of a breach of obligations.[169] This decision renders it difficult for employers to enforce restrictive covenants, though restrictive covenants are still common practice in employment agreements.

[161] C.S 1114/99 *Tower Air v. Aviation Services Ltd.*, PDA 37-7, 469 (2007).

[162] Economic Competition Law, 1988, s. 47.

[163] Economic Competition Law, 1988, s. 50D.

[164] Economic Competition Law, 1988, s. 50.

[165] C.A. 5679/05 *The State of Israel v. Tagar*, Taagidim D-4,627 (2007).

[166] C.A. 845/02 *The State of Israel v. Tnuva*, Taagidim D-4, 585 (2007).

[167] C.A. 396/74 *Tromasbest v. Zachai*, 30(1) P.D. 793; C.A. 566/77 *Dicker v. Moch*, 32(2) P.D. 141; C.A. 310/79 *Varshavski v. Ilan*, 34(2) P.D. 743; H.C.J. 1683/93 *Yavinplast Ltd. v. The State Labor Court*, 47(4) P.D. 702; C.A. 2600/90 *Elite v. Sarenga*, P.D. 49(5) 796.

[168] C.L.A. 3-110/94 *Sherut Machlaka Rishona Ltd. v. Koskas*, L.J. 26, 451.

[169] E.A. 164/99 *Frumer v. Redguard Ltd.*, Takdin Artzi, 99(2), 115.



ISBN 978-1-63359-061-8

In addition, the Israeli Supreme Court ruled that an agreement under which an employee is not entitled to any compensation or royalties with respect to his/her participation in the development of intellectual property (IP) should not necessarily be interpreted as a waiver of his/her legal rights with respect to the IP.[170]

*c. Price Controls*

Under the Control of Prices of Commodities and Services Law, 1996 (which superseded most of the Control of Prices of Commodities and Services Law, 1957), a number of important restrictions are imposed on the conduct of a business. Pursuant to the Law, price controls may be set, as indeed they have been, for a number of articles.

The prices of these articles may not be increased except with the special permission of the Minister of Industry and Commerce or another designated Minister.[171]

The Control of Prices of Commodities and Services Law, 1996 sets out the circumstances in which a commodity or a service will come under price control (for example, if its producer is a monopoly in terms of the Restrictive Trade Practices Law, 1988; if its production enjoys state subsidies; if the product or service is vital and public welfare requires such control; or if price controls are needed to ensure the achievement of national economic goals).[172] Normally, price controls are maintained with respect to basic foods and certain other basic commodities (for example, bread, dairy products, meat, coffee, tea, eggs and public transportation fares).

The 1996 Law also prohibits entities from deriving excessive profits from the provision of commodities or services, whether or not a maximum price or profit was set under the Law.[173] The display of prices (including on foodstuffs marked for scanners), which must include the VAT and any other compulsory payment levied on the sale, is mandatory.[174] A seller is not entitled to refuse unreasonably the sale of a "controlled commodity."[175] The acquisition of "controlled commodities" for purposes of storing them or delaying their sale is illegal.[176] A seller may not condition the sale of a "controlled commodity" on the purchaser's agreement to buy another commodity from the seller.[177] Both the 1957 and 1996 laws carry with them heavy criminal sanctions for violation of their most pertinent provisions.[178]

*d. The Law for the Promotion of Competition and Reduction of Concentration, 2013*

In December 2013, the Israeli legislature promulgated the Law for the Promotion of Competition and Reduction of Concentration, 2013. The purpose of the law is to promote competition and reduce concentration in the Israeli economy. The Law for the Promotion of Competition and Reduction of Concentration, 2013 includes, inter alia, the following provisions:

1) Provisions that determine situations that will require regulators to take into account considerations with respect to market concentration and industry competition;

2) Rules that restrict the establishment of pyramid structures (through holding companies) and the dissolution of current pyramids within a limited period of time; and

3) Provisions with respect to separation of major financial and non-financial institutions.

*e. Securities Regulation*

Transactions in securities are regulated by the Securities Law, 1968. For purposes of the Law, the term "securities" means certificates issued in a series by a company, a cooperative society or any other corporate body that confer the right of membership or participation in it or a claim against it. It includes certificates of participation in joint investments, mutual funds, and certificates conferring a right to acquire securities whether bearer or registered, but does not include securities issued by the government that: (i) do not grant a participation or membership right in a corporation and are not convertible into securities according such rights; and (ii) are issued under a special law.[179] For purposes of the Law, a "company" includes a foreign company.[180] The Law established the Securities Authority,[181] which consists of 13 members appointed by the Minister of Finance, partly from the public and partly from state employees, including one employee of the Bank of Israel.[182] See further under III.B., below.

*(1) Public Offering of Securities*

Under the Law, a person may not offer securities to the public other than under a prospectus, the publication of which has been permitted by the Authority.[183]

Section 15B of the Law exempts the following offerings from the requirement of an offering prospectus: (i) an offering of securities to the employees of a corporation as a remunerative incentive; (ii) the offering of traded securities in the course of trading; and (iii) the offering of securities by a nonreporting corporation, as provided in the regulations enacted with respect thereto.

The prospectus is very similar to that required in the United States by the Securities and Exchange Commission (SEC), under the Securities Act, 1933. Any item of information that is likely to be of importance to a reasonable investor and any particular information specified by the Minister of Finance must be included in the prospectus. The prospectus may not contain any misleading information.[184] A permit for the publication of the prospectus by the Authority does not constitute a verification of the information contained in the prospectus, or a cer-

[170] P.C.A 3564/12 *Dr. Nimrod Bayer v. Plurality Ltd. (in liquidation)* (Aug. 1, 2012).

[171] Control Commodities and Services Law, 1957, s. 5; Control of Prices of Commodities and Services Law, 1996, s. 12.

[172] Control of Prices of Commodities and Services Law, 1996, s. 6.

[173] Control of Prices of Commodities and Services Law, 1996, chapter 7.

[174] The Consumer Protection Law, 1981, s. 17A.

[175] Control of Commodities and Services Law, 1957, s. 22.

[176] Control of Commodities and Services Law, 1957, s. 22A.

[177] Control of Commodities and Services Law, 1957, s. 23.

[178] Control of Commodities and Services Law, 1957, s. 39, and Control of Commodities and Services Law, 1996, s. 34.

[179] Securities Law, 1968, s. 1.

[180] Securities Law, 1968, s. 1(2).

[181] Securities Law, 1968, s. 2.

[182] Securities Law, 1968, s. 3.

[183] Securities Law, 1968, s. 15.

[184] Securities Law, 1968, s. 16(b); C.A. 2103/07 *Avihu Horovitz v. The State of Israel*, Taagidim F-1, 545 (2009).



ISBN 978-1-63359-061-8

tificate of the reliability or completeness of that information, or an expression of opinion as to the quality of the securities offered.[185] A person signing a prospectus (i.e., the issuer and each of its directors, and the underwriter or offeror) is liable to a person that acquires securities from the offeror and to a person that sells or acquires securities on the Stock Exchange or elsewhere in accordance with the prospectus, for damages caused to that person where the prospectus contained misleading information.[186] Similar liability is imposed on a person rendering an opinion, report or certificate included or referred to in the prospectus with that person's prior consent. The liability of that person is limited to damages caused by misleading information in the opinion, report, certificate or approval rendered by that person (as opposed to other information given in the prospectus).[187] A person who acquired securities from the offeror in accordance with the prospectus and did so in reliance on misleading information included in it may cancel the acquisition and demand the refund of the money paid, provided the person does so within a reasonable time after becoming aware of the fact that the information was misleading or after the publication of an immediate report by the company that issued the securities, and by not later than two years after the acquisition.[188]

In 2005, certain provisions of the Israeli Securities Law were substantially revised to allow a company that is traded for a period of at least one year from the initial public offering (IPO) to file a "shelf" registration under which the company will be able to offer securities generally to the public within a period of 24 months from the date on which the prospectus (a "Shelf Prospectus") was filed.

By utilizing a Shelf Prospectus, a company may make available to the public a variety of securities (such as debentures, convertible debentures, shares and options to either one of the foregoing) suitable to meet the ever-changing market trends and effectuate the actual registration of any of them and raise the necessary funds from the public at any particular moment during the 24-month period at its discretion.

The initial process involving the filing of a Shelf Prospectus is similar to that for a regular prospectus,[189] except that a company is not required to include in a Shelf Prospectus all the conclusive information regarding the offering and the terms of the various securities to be offered,[190] and such information may be decided on and made public at the actual time the company decides to offer a particular number of securities from the total made available under the Shelf Prospectus.

Following the publication of the Shelf Prospectus, the conclusive information with respect to each particular offering is to be filed separately in an immediate report that includes all the relevant information with respect to the offering, inter alia:

(i) The type of securities offered, the number to be offered, and the percentage they constitute of the share capital of the company (on an outstanding and on a fully diluted basis);

(ii) The rate of interest and other relevant terms of the debentures (if applicable);

(iii) The exercise price of the options and the exercise period with respect thereto;

(iv) The terms of the underwriting arrangement (if any) determined with the underwriter with respect to that particular offering; and

(v) Any material information concerning the company as of the filing date of the Shelf Prospectus.

Once such a report is published and filed it is deemed for all purposes to be part of the Shelf Prospectus, and the company may raise the funds from the various investors within hours after its publication (whereas a minimum of five trading days must lapse after the publication of a regular prospectus before the company may raise any funds under the prospectus).

The process may be repeated until all securities allocated by the company have been offered to the public or until 24 months have elapsed from the date on which the Shelf Prospectus was filed. To be eligible to issue a Shelf Prospectus, the issuer must: (i) be a reporting entity that has duly reported to the Stock Exchange for a period of at least 12 months; and (ii) not be delinquent in that it or any of its officers have been convicted of any offense relating to reporting requirements.

A 2008 amendment allows dual listed companies to publish a Shelf Prospectus with regard to commercial notes, which will be valid for a period of 12 months. Prior to the amendment, dual listed companies were not permitted to offer securities in Israel by means of a Shelf Prospectus.

The requirement to issue a prospectus does not apply to the allotment of bonus shares, where the persons entitled to the bonus shares have no choice as to whether to accept them, as these are not offered to the "public." Bonus shares are defined as shares allotted for no consideration to all the shareholders of a company, on a pro rata basis.

An offer of securities to the public requires the approval of the Minister of Finance or of the person appointed by the Minister of Finance for that purpose. However, the Minister of Finance may not refuse to grant such approval unless it appears that the offer, its terms or its timing is or are contrary to the economic policy of the government. The Authority will not grant a permit for the publication of a prospectus until the offer has been approved by the Minister of Finance,[191] but a blanket authority was granted in 1987.

The Law further provides that a person may not offer debentures to the public unless a trustee for the holders of the debentures is appointed by the issuer of the debentures.[192] The trustee must be a company registered in Israel, the main objective of which is the carrying out of trust activities.[193] The trustee represents the holders of the bonds in any matter arising from

[185] Securities Law, 1968, s. 21.

[186] Securities Law, 1968, s. 31(a).

[187] Securities Law, 1968, s. 32.

[188] Securities Law, 1968, s. 35(a).

[189] That is to say, all the requirements in connection with the inclusion of financial statements that are not older than five months (measured from the date of the prospectus), legal opinions, comfort letters, etc.

[190] That is to say, there will be no need to finalize and determine the number of securities to be offered, the exercise price, the rate of interest or the commission to be paid to the underwriters.

[191] Securities Law, 1968, s. 39.

[192] Securities Law, 1968, s. 35B.

[193] Securities Law, 1968, s. 35C.



ISBN 978-1-63359-061-8

the obligations undertaken towards them.[194] The issuer must present the trustee with copies of all reports that, as an issuer, it must submit to the Authority and copies of any documents forwarded to the shareholders or debenture holders, and must respond to the trustee's reasonable requests for any other information.[195] The trustee is prohibited from purchasing debentures of the series it is holding as a trustee for itself.[196]

A corporation that offered securities to the public under a prospectus and the securities of which are traded on the Stock Exchange must submit to the Authority, the Registrar of Companies and the Stock Exchange periodic reports as long as any of its securities are in the hands of the public. In certain circumstances, the submission of an immediate report relating to significant events may also be required. The same rule applies to holders of substantial interests in such companies.[197] The Authority may direct the Stock Exchange to cease trading in the securities of a company that failed to submit reports, or failed to submit them in the required manner, until a proper report is submitted.

In March 2001, the "Barnea Committee" published its recommendations regarding the reform of the reporting duties. The implementation of the Committee's recommendations started with the reports for 2004. The detailed information contained in the periodical reports is similar to that contained in a prospectus. The reports include: forecasts; information on the basic activities of the corporation in different geographical areas; aspects of the corporation's business, not included in the financial reports (for example, the names of customers who contribute more than 10% of the income); and information concerning the intangible assets of the corporation.

Among its other recommendations, the Committee recommended:

(i) That no synopsis be included in a prospectus;

(ii) That the civil liability of the corporation and of its advisors with respect to information contained in the prospectus apply to information in periodical reports;

(iii) That the legal opinion in the prospectus focus on the corporation's authority to offer the securities; and

(iv) That the exemptions from rendering information be curtailed.

All these recommendations were implemented.[198]

An amendment to the Securities Regulations (Details, Structure and Form of Prospectus), prescribes that a reporting company may be exempted from providing the description of its business in a prospectus if it had already done so in its annual report in the previous year and in its quarterly reports published since the annual report, provided that all material changes are described in the prospectus. Previously, a company was required to describe its business fully in a prospectus. This exemption does not apply to IPOs of companies. Similarly, the amendment also permits a reporting company to use its previously filed financial reports for purposes of a prospectus rather than having to prepare a special financial report for the prospectus.

A draft bill published in November 2024 suggests that Section 16A of the Income Tax Ordinance should be amended to include a provision authorizing the Minister of Finance to establish regulations granting a tax exemption or reduction to foreign residents with respect to certain income derived from investments in securities or other financial assets that satisfy specified criteria, or from the management of such investments.

*(2) Regulation of Stock Exchange Operations and Trade in Securities*

The Securities Law regulates stock exchanges by prohibiting a company from operating a stock exchange except under a license granted by the Minister of Finance after consultation with the Authority and with the approval of the Knesset Finance Committee.[199] A license is granted only where:

(i) The company concerned and any company of which it is the controlling shareholder engage solely in occupations permitted to a stock exchange under section 45C of the Securities Law;

(ii) The company's articles of association do not include provisions that may prejudice its proper and fair management;

(iii) The company has articles of association in accordance with section 46 and the articles have been approved by the Ministry and Minister of Finance;

(iv) The company has the technical skills to operate in the securities trading system in a way that will ensure its stability;

(v) The company has paid the fees required by section 55A; and

(vi) The company meets the requirements regarding equity, deposit insurance and guarantees, as determined by the Minister of Finance in accordance with the guidance of the authority or in consultation and with the approval of the Knesset Finance Committee. The Minister is authorized to give different instructions to different companies applying for a license.

A 1990 Amendment[200] vested in the stock exchange the power to set rules for the registration of securities. The amendment was made in response to a district court decision holding that the stock exchange overstepped its authority by providing that a certain minimum capital must be held by owners of "founders' shares" entitling them to 50% of the voting rights in the company.[201]

According to the Amendment[202] the rules may refer, inter alia, to:

[194] Securities Law, 1968, s. 35I.

[195] Securities Law, 1968, s. 35J.

[196] Securities Law, 1968, s. 35K.

[197] Securities Law, 1968, ss. 36, 37. The legislation regarding reporting obligations has evolved substantially in volume and includes, among other legislation, Securities Regulations (Periodical and Immediate Reports), 1970; Securities Regulations (Financial Annual Reports), 2010; Securities Regulations (Periodical and Immediate Reports of Foreign Corporations), 2000.

[198] By means of special regulations.

[199] Securities Law, 1968, s. 45A.

[200] Securities Law (Amendment No. 11) 1990.

[201] D.A. 272/89 *Nimrodi Land Development Ltd. v. The Tel-Aviv Stock Exchange Ltd.*, 1989/90 (2) P.M., 89.

[202] Securities Law, 1968, s. 46.



ISBN 978-1-63359-061-8

(i) The type of company that will have shares eligible to be registered for trade (with respect to its activity, duration, financial results and turnover and the value of its assets and obligations);

(ii) The type of the shares eligible for registration for trade (with respect to their characteristics and minimum total value on registration, and the minimum amount of shares to be held after registration for trade);

(iii) The ratio of the price of securities issued to the price of the company's securities on the stock exchange;

(iv) The registration for trade of securities allotted in a private offering; and

(v) The barring of any transaction by a certain holder or by a certain class of holders — for a prescribed period.

Furthermore, the stock exchange will not register securities for trade unless certain conditions with respect to equal voting rights are met[203] and it may provide in its articles that the board of directors may refuse to register securities for trade if in its opinion there exists a substantial conflict of interest between the company and a controlling shareholder, or between the company and a company under the control of a person controlling the former company, provided such a decision is adopted by the majority of the board with at least 66% of the directors present and the company having been given an opportunity to state its case before the board.[204]

A contravention of the Law entails heavy fines and may bring a five-year term of imprisonment.[205] A special amendment to the Law prohibits the use of inside information in dealing in securities. The Law broadly defines the terms "insider" and "inside information." An insider is presumed to have used inside information unless the insider proves that the inside information was not available to the insider at the time of the transaction.[206]

The Companies Law used to provide that a holder of securities could bring a class action if his/her cause of action derived from the owning, possession, purchase or sale of the securities.[207] As of 2006, the class action provisions in the Companies Law and other laws were abolished and integrated into the Class Action Law, which lays down uniform rules regarding class actions.

### *3. Licensing and Franchising*

#### *a. Patents*

Under the Patents Law, 1967, the owner of a patentable invention is entitled to apply for the grant of a patent with respect to the invention.[208] The Law provides that "an invention, whether a product or a process, in any technological field[209] that is new, useful and susceptible of industrial application and that involves an inventive step is a patentable invention."[210] An invention is deemed new if it has not been published in Israel or abroad prior to the application date by written, visible, audible or means of any other description, in such a manner that a man of the art can perform it in accordance with the details thus made known.[211] Certain publications do not affect the grant of the patent, namely: a publication without the consent of the inventor, followed by an application for the patent within a reasonable time after the publication became known to the applicant; or a display in an industrial or agricultural exposition in Israel, or in a recognized exhibition in one of the "member countries,"[212] official notice of which was given to the Registrar of Patents before the opening.[213] Patentability will not be affected by the publication of a description of the invention at the time of an exhibition nor by use of the invention for the purposes of an exhibition at the place of the exhibition, provided an application was filed within six months after the opening of the exhibition. Publication by way of a lecture by the inventor before a scientific society or by way of the publication of such a lecture in the official transactions of the society does not affect patentability, provided that the Registrar was given notice of the lecture before it was delivered and that the patent application was filed within six months after the publication.[214]

No patents are granted for a method of therapeutic treatment of the human body or for new varieties of plants or animals, except microbiological organisms not derived from nature.[215] If a patent application is filed in Israel for an invention, where the owner or his/her predecessor in title has already filed an application in Israel or in one of the member countries of the Union for the Protection of Industrial Property under the Paris Convention for the Protection of Industrial Property, the owner of the invention has the right to request that the date of the preceding application be deemed the date of the application filed in Israel. The following conditions, however, must exist:

(i) The application in Israel must be filed within 12 months after the filing of the preceding application and, if more than one preceding application was filed, the application must be filed within one year after the date of the earliest application;

(ii) The claim for the priority right must be made not later than two months after the filing of the application in Israel; and

---

[203] Securities Law, 1968, s. 46B.

[204] Securities Law, 1968, s. 46(b).

[205] Securities Law, 1968, ss. 53, 54. *See also* C.A. 6020/12 *The State of Israel v. Eyal Eden* (Apr. 29, 2013) and C.S. 8256-05-11 *The State of Israel v. Efraym Kadatz* (July 5, 2012).

[206] Securities Law 1968, ch. 8A(1).

[207] Companies Law, 1999, s. 207.

[208] Patents Law, 1967, s. 2.

[209] The phrase "in any technological field" was added in 1999, in accordance with the international Agreement on Trade Related Aspects of Intellectual Property Rights Including Trade in Counterfeit Goods (also known as the TRIPS Agreement).

[210] Patents Law, 1967, s. 3. The discovery of a new possible use for an existing production is deemed to be an inventive step for purposes of the Patents Law, 1967, s. 3; C.A. 244/72 *Plantex Ltd. v. The Welcome Foundation Ltd.*, 27(2) P.D. 19; and C.A. 804/89 *Landau v. Luach Laizer Masach Rav Tachlity Ltd.*, 46(2) P.D. 295. Furthermore, a new combination of known ideas is also considered an inventive step — C.A. 314/75 *Lipski Ltd. v. Manor*, 32(1) P.D. 205. For a thorough analysis, see C.A. 345/87 *Hughes Aircraft Co. v. Kaiser Aerospace & Electronics Co.*, 44(4) P.D. 45.

[211] Patents Law, 1967, s. 4.

[212] Countries that the Foreign Affairs Minister has officially declared to be members of the Union for the Protection of Industrial Property by virtue of the Paris Convention for the Protection of Industrial Property, 1883, as amended in Stockholm in 1967.

[213] Patents Law, 1967, s. 6.

[214] Patents Law, 1967, s. 6(b)(3).

[215] Patents Law, 1967, s. 7.



ISBN 978-1-63359-061-8

(iii) A copy of the specifications filed with the preceding application and of the drawings accompanying such specifications must be filed with the Registrar and it must appear to the Registrar that the invention described in the preceding application and the invention for which a patent is sought in Israel are *prima facie* identical in substance.[216]

A patent application is filed with the office of the Registrar of Patents in a prescribed manner and must be accompanied by the prescribed fee.[217] The specifications should contain a title by which it is possible to identify the invention, a description of the invention, with such drawings as may be necessary, and a description of the manner of performing the invention so that a person skilled in the art will be able to perform it accordingly.[218] After the application is filed, it is published by the Registrar at the expense of the applicant, along with information regarding any preceding application filed for that patent.[219] The Registrar examines the application and grants the patent, provided it meets all the requirements of the Law.[220] The grant of the patent is entered in a special register and a certificate to that effect is given to the owner.[221] However, the examination of the application for the grant of the patent does not constitute a guarantee that the patent is valid, and the State or its employees bear no responsibility due to the mere grant.[222]

A patentee owning an invention that is an improvement on or a modification of the invention for which the patent was granted may request that the patent for the second invention be granted to him as a patent of addition.[223]

A patentee is entitled to prevent any other person from unlawfully exploiting the invention for which the patent was granted, whether in the manner defined in the claims or in a similar manner and involving the main features, as defined in the claims of the invention that is the subject matter of the patent.[224] This preventive right was the issue of several precedents concerning the pharmaceutical industry: the generic pharmaceuticals' producers attempt to initiate a pre-commercial production "test production," aimed at facilitating the exploitation of patented products once the patent term is over, was held to be an unlawful exploitation of the patent.[225] In 1998, the Law was amended[226] to allow for "experimental production" in noncommercial quantities of a patented product. As a counterbalance to the above, the amendment allows for an extension of the original patent term to be granted by the Registrar of Patents for medical products, until such time as all authorization procedures are completed for production and marketing of the product or for a longer period of up to five years. The patentee must apply for the extended period no later than 60 days after the product was registered under the Pharmacists' Regulations.[227]

The term of a patent is 20 years from the date of application.[228] A patentee may apply for an amendment of the patent specifications for purposes of clarifying or eliminating a mistake made in the specifications or the registration of the claims.[229] The Registrar may revoke a patent on the application of the patentee,[230] or on the application of any other person, on any ground on which the grant of a patent may be opposed.[231]

A patentee, or the owner of an invention who has applied for its patent, may grant in writing an exclusive or nonexclusive license to exploit the invention.[232] An exclusive license under a patent confers on the holder an exclusive right to act as if the holder were the owner of the invention and prohibits the patentee from exploiting it in Israel.[233] A nonexclusive license under a patent confers the right to exploit the invention only to the extent and subject to the conditions prescribed in the license.[234] A license under a patent is not effective with respect to any person other than the party who is licensed unless it has been registered in accordance with the Law.[235]

Many foreign companies register their patents in Israel and Israel has become the scene of intense patent litigation.

### *b. Trademarks and Trade Names*

The Trade Marks Ordinance (New Version), 1972 governs the protection of registered trademarks. A "trademark" is defined as "a mark used, or intended to be used, by a person in relation to goods that the person manufactures or deals in." The "mark" itself may be of letters, numerals, words, devices or other signs, or combinations of these, whether two dimensional or three dimensional. The Ordinance also recognizes a "certification mark," which is defined as "a mark intended to be used by a person other than a person carrying on a business, to certify the origin, components, mode of manufacture, quality or any other characteristics of goods in which the person is interested, or to certify the nature, quality or type of service in which the person is interested." The Ordinance likewise recognizes a "service mark," which is a mark used, or intended to be used, by a person in relation to a service rendered by him.[236] In 1999, following Israel's accession to the Agreement on Trade Related Aspects of Intellectual Property Rights Including Trade in Counterfeit Goods (the TRIPS Agreement), a definition was added: "a well-known trade mark" — a mark that is well-known in Israel, owned by a citizen of a member country, a permanent resident of a member country or an owner

[216] Patents Law, 1967, s. 10.
[217] Patents Law, 1967, s. 11.
[218] Patents Law, 1967, s. 12.
[219] Patents Law, 1967, s. 16(a).
[220] Patents Law, 1967, s. 17(a).
[221] Patents Law, 1967, s. 36.
[222] Patents Law, 1967, s. 37.
[223] Patents Law, 1967, s. 44.
[224] Patents Law, 1967, s. 49. *See* C.A. 804/89 *Landau v. Luach Laizer Masach Rav Tachlity Ltd.*, 46(2) P.D. 295; C.A. 47/87 *Hasam Maarachot Hagana Aminot Ltd. v. Bachri*, 45(3) P.D. 194; and C.A. 407/89 *Tzuk-Or Ltd. vs. Car Security Ltd.*, P.D. 48(5) 661; C.A. 7614/96 *Zchori Ubanav Taasiyot v. Regba*, 53(3) P.D. 721.
[225] C.P. 1512/93 *The Wellcome Foundation Ltd. v. Teva Taasiyot Pharmatsabetiot Ltd.*, Takdin Mehozi 94(2), 197; P.C.A. 886/93 *Eli Lilly and Co. v. Teva Taasiyot Pharmatsabetiot Ltd.*, P.D. 47(2) 105.
[226] The Patents Law (3rd amendment), 1998.
[227] C.A.R. 2826/04 *Registrar of Patents v. Recordati Ireland Ltd.*, TK-EL 2004(4), 635.
[228] Patents Law, 1967, s. 52.
[229] Patents Law, 1967, s. 65.
[230] Patents Law, 1967, s. 73(a).
[231] Patents Law, 1967, s. 73B.
[232] Patents Law, 1967, s. 84.
[233] Patents Law, 1967, s. 85.
[234] Patents Law, 1967, s. 86.
[235] Patents Law, 1967, s. 87.
[236] Trade Marks Ordinance (New Version), 1972, s. 1; *see also* C.C. 48511/07 *Dr. Dov Klein v. Proportsya P.M.C. Ltd.* (Sept. 18, 2011).



ISBN 978-1-63359-061-8

of an active industrial plant in a member country (even if the mark is not registered or used in Israel).

To enjoy the exclusive right to use a mark as a trademark, a person must apply for registration of the mark under the provisions of the Ordinance.[237] No mark is eligible for registration as a trademark unless it is adapted to distinguish the goods of the proprietor of the mark from those of other persons (unless it has a "distinctive character").[238] A trademark may be limited in whole or in part to one or more specified colors[239] and must be registered with respect to particular goods or a particular class of goods.[240] The Ordinance contains a long list of marks ineligible for registration, which include:[241]

(i) Marks referring to some connection with the president of the State or his/her household or to presidential patronage or marks from which any such connection or patronage might be inferred; flags and emblems of foreign states or international organizations and any mark resembling any of these; public armorial bearings; official signs or seals used by any state to indicate control or warranty and any sign resembling any of these; and any sign from which it might be inferred that a proprietor enjoys the patronage of or supplies goods or renders services to a head of state or government, unless it is proved to the Registrar that the proprietor of the mark is entitled to use it;

(ii) Marks displaying the words "patent," "patented," "by royal letters patent," "registered," "registered design," "copyright," "to counterfeit this is a forgery" or words used to like effect;

(iii) Marks that are or may be injurious to public policy or morality;

(iv) Marks likely to deceive the public;

(v) Marks containing false indications of origin, or marks containing any representation that may insinuate such origin;

(vi) Marks that encourage unfair trade competition;

(vii) Marks identical or similar to emblems of exclusively religious significance;

(viii) Marks on which the representation of a person appears, unless the consent of that person has been obtained;

(ix) Marks identical to another mark belonging to a different proprietor that is already on the register with respect to the same goods or description of goods, or so nearly resembling such a mark as to be calculated to deceive;[242]

(x) Marks consisting of numerals, letters or words that are in common use in trade to distinguish or describe goods or classes of goods or marks that bear direct reference to the character and quality of goods, unless the marks have distinctive character;

(xi) Marks the ordinary signification of which is geographical or surnames, unless represented in a special manner or unless having a distinctive character;

(xii) Marks identifying wines or other alcoholic beverages that include a false geographical indication;

(xiii) Marks similar or identical to another well-known trademark (whether registered or unregistered) that may lead to their association with other goods; and

(xiv) Marks similar or identical to another well-known registered trademark (including a trademark in relation to different goods) that insinuate a connection to that trademark and/or those goods and as a result of the use of which the owner of the registered trademark may be harmed.[243]

The Registrar may refuse to register a mark identical to or resembling the name or business name of another person or containing a name identical to or resembling it if the mark is likely to deceive the public or to cause unfair competition.[244] The Registrar may not refuse to register a trademark registered as a trademark in its country of origin, unless one of the following conditions exists:

(i) Registration of the mark in Israel will infringe on rights acquired in Israel by another person;

(ii) The mark lacks distinctiveness;

(iii) The mark consists exclusively of signs or indications that may serve in trade to designate the kind, quality, quantity, place of origin, intended purpose, time of production or value of goods;

(iv) The mark is customary in current language or is established in Israeli *bona fide* trade practices;

(v) The mark is contrary to public order or morality; or

(vi) The mark is likely to deceive the public.[245]

An application for registration must be filed with the Registrar, who may refuse to accept it if it fails to meet the requirements of the Ordinance.[246] The Registrar's refusal is subject to appeal to the District Court.[247] When an application has been accepted, whether absolutely or subject to conditions or limitations, the Registrar, as soon as possible after such acceptance and at the expense of the applicant, publishes the application as accepted, specifying every condition and limitation subject to which it has been accepted.[248] Any person may, within three months, or within such other time as may be pre-

[237] Trade Marks Ordinance (New Version), 1972, s. 7.
[238] Trade Marks Ordinance (New Version), 1972, s. 8.
[239] Trade Marks Ordinance (New Version), 1972, s. 9.
[240] Trade Marks Ordinance (New Version), 1972, s. 10.
[241] Trade Marks Ordinance (New Version), 1972, s. 11.
[242] A trademark is considered to be deceitful if it is likely to mislead the ordinary public so that it is unable to distinguish the products of the parties. In the event that the trademark is so considered, the fact that the other proprietor hardly uses his trademark is of no significance, and the new trademark will not be eligible for registration. Furthermore, a proprietor of a trademark may oppose the registration of an identical or similar trademark even though his trademark is not registered in Israel. H.C.J. 476/82 *Orlogad Ltd. v. The Patents, Designs and Trademarks Registrar*, 39(2) P.D. 148, and F.H. 376/90 *Anheuser-Bush Inc. v. Budejovicky Budvar, Narodni Podnikceske Budejovice*, P.D. 46(4) 843; C.A. 6181/96 *Yigal Cardi v. Bacardi & Co.*, P.D. 52(3) 276; C.A. 11487/03 *August Storck KG v. Alpha Intuit Food Products Ltd.*, P.D. 62(4) 1; C.A. 563/11 *Adidas Salomon v. Galal Yasin* (Aug. 27, 2012).
[243] Trademarks Ordinance (New Version), 1972, s. 11.
[244] Trademarks Ordinance (New Version), 1972, s. 12.
[245] Trademarks Ordinance (New Version), 1972, s. 16(a).
[246] Trademarks Ordinance (New Version), 1972, s. 18.
[247] Trademarks Ordinance (New Version), 1972, s. 19.
[248] Trademarks Ordinance (New Version), 1972, s. 23.



ISBN 978-1-63359-061-8

scribed, from the date of publication, file with the Registrar a note of opposition to the registration of the mark. If the applicant sends a counter statement, the Registrar furnishes a copy of it to the person noting his/her opposition and may, after hearing the parties, if so required and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.[249] The Registrar's decision may be appealed to the Supreme Court.[250]

The registration of a trademark is valid for 10 years from the date of the filing of the application[251] and may thereafter be extended for a period of 10 years from the expiration date of the original registration or its renewal.[252]

The registration of a person as the proprietor of a trademark accords that person the exclusive right to the use of the trademark in every manner relating to the goods for which it is registered.[253] A registered trademark may be assigned by its proprietor or passed by operation of law, either with or without the goodwill of the business concerned in the goods for which it has been registered.[254] A transfer of a trademark requires registration[255] and the Registrar may refuse to register the assignment if the use of the trademark by the assignee might mislead the public or be contrary to the public interest. The same applies to the grant of a license to use the trademark.[256] Case law provides that the lack of registration denies the license any effectiveness until registered. If the parties did not intend to register the license, the agreement is deemed illegal. Further, the license does not confer any proprietary rights.[257] In the event of a breach of a trademark, the assignee of a registered license does not have a right to sue the infringer, since this right pertains solely to the owner of the trademark.[258]

Where Israel is a party to an agreement with a foreign state for the mutual protection of trademarks, any person who applied for protection of a trademark in that state, or his/her legal representative or assignee, is entitled to the registration of his/her trademark under the Ordinance prior to other applicants, provided the person files his/her application within six months from the date on which the person applied for protection in the foreign state.[259] A person who filed an application for the registration of a trademark in a "Union State,"[260] or his/her legal successor, may apply for the registration of the mark in Israel and enjoys priority over an application for registration filed after the date of filing of the application abroad.[261] The application must be filed within six months of the date of filing of the first application for registration of the mark.[262] Applications for the registration of foreign trademarks are made in the same manner as ordinary applications under the Ordinance.[263]

The Ordinance applies its important provisions relating to trademarks to service marks.[264] Similarly, a certification mark may be registered if the Registrar is satisfied that the proprietor of the mark is competent to certify the characteristics to be designated by the mark.[265] A certification mark may be registered even if it lacks distinctiveness.[266] However, a certification mark may be transferred only with the permission of the Registrar.[267]

*c. Designs*

A person whose product incorporates an original design may protect the product for 25 years.[268]

An application for the registration of a design may be filed with the Registrar of Patents and Designs who may, at his/her discretion, refuse to register the design and must so refuse if the design is unlawful or is contrary to public order.[269] The registration is *prima facie* proof of the design's validity.[270] A design may be registered with respect to several classes of products and, after being registered, may be further registered with respect to other classes even though it is no longer original or new.[271]

An application for the registration of a design must specify the class of products with respect to which the design is to be registered. If the design relates to several classes of products, the competent authority will divide it into several design applications, so that each application covers one design.[272] The application for registration must specify the product or products with respect to which the design is registered. If the design relates to a specific product, drawings of the design must be filed with the application. If it relates to a set of products, each drawing must demonstrate the different arrangements for the use of the design with respect to each different product.[273]

An objection to the registration of a design may be brought before the Registrar, who at that time must notify the applicant in writing of the details of the objection. In the event the applicant fails to respond to the objection within three months, the applicant is deemed to have withdrawn his or her application.[274] If a response was submitted, the Registrar gives the applicant written notice of his or her decision on the matter. The applicant may request notice of the reasons for the decision for purposes of lodging an appeal before the District Court.[275]

[249] Trademarks Ordinance (New Version), 1972, s. 24; H.C.J. 460/87 *Fuji Electronics M.F.G. Co. v. Patents Designs and Trademarks Registrar*, 42(1) P.D. 485.

[250] Trademarks Ordinance (New Version), 1972, s. 25(a).

[251] Trademarks Ordinance (New Version), 1972, s. 31.

[252] Trademarks Ordinance (New Version), 1972, s. 32.

[253] Trademarks Ordinance (New Version), 1972, s. 46.

[254] Trademarks Ordinance (New Version), 1972, s. 48.

[255] Trademarks Ordinance (New Version), 1972, s. 49; *see also* C.A. 18/86 *Mifaley Zechuchit Israeliyim Ltd. v. De Saint Gobain*, 45(3) P.D. 224.

[256] Trademarks Ordinance (New Version), 1972, s. 50.

[257] C.A. 364/74 *Davidovich v. Miromit Ltd.*, 29(1) P.D. 703; C.A. 650/80 *Ampisal (Israel) Ltd. v. Na´imi*, P.D. 37(3), 780.

[258] C.A. 650/80 *Ampisal (Israel) Ltd. v. Na´emi*, 37(3) P.D. 780.

[259] Trademarks Ordinance (New Version), 1972, s. 54(a).

[260] A Union State is a member of the Union for Protection of Industrial Property under the Paris Convention for the Protection of Industrial Property, including a territory to which the convention has been extended under Convention, Art. 16.

[261] Trademarks Ordinance (New Version), 1972, ss. 54 and 55(a).

[262] Trademarks Ordinance (New Version), 1972, s. 55(b).

[263] Trademarks Ordinance (New Version), 1972, s. 56.

[264] Trademarks Ordinance (New Version), 1972, s. 2.

[265] Trademarks Ordinance (New Version), 1972, ss. 3 and 14(a).

[266] Trademarks Ordinance (New Version), 1972, s. 14(b).

[267] Trademarks Ordinance (New Version), 1972, s. 14(c).

[268] Designs Law, 2017, s. 39.

[269] P.C.A. 1510/04 *New Light v. Or-Ad*, Dinim Mehozi 39(9) 408 (2009).

[270] P.C.A. 2455/91 *Raz v. Arpal Aluminium Ltd.*, 91(3) Takdin 1991, 2882, and D.C.A. 27444/97 *Aloni v. Re´em*, 97(3) Takdin Mehozi 1034.

[271] Designs Law, 2017, s. 19.

[272] Designs Law, 2017, s.19(e); Designs Regulations, 2019, s. 29.

[273] Designs Regulations, 2019, s. 14.

[274] Designs Law, 2017, ss. 29 and 30; Designs Regulations, 2019 s. 33.

[275] Designs Law, 2017, s.106; Design Regulations 2019, s. 62.



ISBN 978-1-63359-061-8

Once a design is registered, the Registrar publishes an announcement specifying the applicant's name and the design's number, class and date of registration, and the purpose of the product with respect to which it was registered.[276]

*d. Business Names*

A special Ordinance of 1935 deals with the registration of business names. The Ordinance requires the registration of names of firms that do not include all the names of the individuals comprising the firm or the corporate bodies interested in the firm.[277]

*Comment:* As a practical matter, few businesses register under the Ordinance.

Protection for a name is afforded by the Companies Law, 1999, which prohibits a company from using the name of another corporate body.[278] A similar provision guarantees that a partnership will not be registered in the name of another partnership or in the name of an existing company.[279] Registration of a company, therefore, provides partial protection for its name and enables it to enjoin others from using it.[280]

*e. Industrial Know-How*

For the most part, industrial know-how is protected by the agreement revealing the know-how to the user, not by a special law. An employee who discloses secrets of an employer is guilty of a criminal offence punishable by law.[281] Moreover, it is common for employment agreements to stipulate that all know-how revealed to an employee must be kept secret, thus making it possible to enjoin the employee from using trade secrets or industrial know-how gained during the term of his/her employment. The Supreme Court has held that the obligation of confidentiality is implied in the relationship established between an employer and an employee.[282]

A decision of the Labor Court of Appeal held that restrictive covenants should be upheld by the courts only where they act to protect the employer's confidential information. In the absence of such needs, the freedom of employment prevails over the freedom of contracts.[283]

*f. Copyrights*

Israel is a member of the Bern Union and a signatory to the Universal Copyright Convention. Israel's former copyright law was based on the United Kingdom Copyright Act, 1911, as amended after Israel's attainment of statehood. Protection was afforded to any literary, theatrical, musical or artistic work (including drawings of industrial products)[284] and to computer software for the life of the creator and an additional 70 years thereafter.[285] A creator was accorded a moral right that enabled the creator to enjoin holders of copyrights of his/her work from omitting his/her name and from making substantial changes in the literary work concerned.[286] If his/her right was infringed, the owner was entitled to compensation.[287]

The Copyright Law, 2007 came into force as of May 2008. The 2007 Law includes a list of four categories of protected works of art: literary works, dramatic works, musical creations, and artistic creations, provided that they are original. Computer programs are also protected under this Law. Fair use is not deemed a breach of a copyright. Foremost among fair use are self-instruction, research, review, journalism and education by an educational institution, etc. To examine whether the use of a work is "fair use," the court may consider the following: the purpose of the use and its nature; the nature of the work; the scope of the use qualitatively or quantitatively in relation to the entire work; and the use's influence on the value of the work and on its potential market. The Law prescribes that the creator is the primary owner of the work. Nevertheless, if an employer or the State orders a work, it will be the primary owner. Copyrights are alienable solely in writing. The protection is granted to the creator for his/her lifetime and 70 years thereafter. The protection of a copyright in a record is 50 years as of its creation. The Law added a right (the moral right), which is the right of the creator for the term of the copyright to have his/her name appear on his/her creation in the appropriate scope and nature, and protects the creator from any action that might cause harm to his/her dignity or good reputation. The moral right is a private right and is not alienable. In the case of infringement, the Law prescribes compensation of NIS 100,000 without the need to prove damage.

Copyrights need not be registered; as Israel is a signatory to the international agreements referred to above, the protection is automatically available, without the necessity of application, to Israeli residents and citizens and to residents or citizens of other countries that are members of the Bern Union or signatories to the Universal Copyright Convention.[288]

*g. Performers' Rights*

The Performers' Rights Law, 1984 accords performers the right that the following not be done without their consent:

(i) A fixation (i.e., the preservation of a performance by any means in a manner making it possible to hear, see or reproduce the performance);

(ii) A reproduction (i.e., the making of a copy of a fixation or a substantial part thereof); or

[276] Designs Law, 2017, s. 31.

[277] Registration of Business Names Ordinance, 1935, s. 3.

[278] Companies Law, 1999, s. 27.

[279] Partnerships Ordinance (New Version), 1975, s. 10(b).

[280] Companies Law, 1999, ss. 27, 29, 30.

[281] Penal Law, 1977, s. 496.

[282] C.A. 155/80 *Rav Bariach Ltd. v. Amgar*, 35(1) P.D. 817; C.A. 1371/90 *Damti v. Ganor*, 42(4) P.D. 847. The most prominent decision reestablishing the obligation of confidentiality, recognizing the importance of trade secrets and balancing both of the above against the freedom of occupation, as stated in the Basic Law: Freedom of Occupation, 1992, can be found in H.C.J. 1683/93 *Yavin-Plast v. The Labor Court*, 47(4) P.D. 702; E.A. 164/99 *Frumer v. Redguard Ltd., Takdin Artzi*, 99(2), 115; C.A. 6601/96 *Aes Systems Ltd. v. Moshe Saar*, 54(3) P.D. 850.

[283] E.A. 164/99 *Frumer v. Redguard Ltd., Takdin Artzi*, 99(2), 115; C.A. 1588/02 *Paz Gas Jerusalem Ltd. v. Raphi Ganon, R.P. Takdin* 2002(4), 251.

[284] C.A. 8152/06 *Maabdot Yam Hmeleh v. Deblio*, Dinim Mehozi 39(8) 997 (2009).

[285] The Law was applied by the British authorities in Palestine according to the King's Order in Council on the Copyright Law, 1911, 1924. Copyright Law, 1911, ss. 1, 3; Copyright Ordinance, 1934, s. 5(4). *See* Amendment to the Copyright Ordinance, 1981; Copyright Ordinance, s. 5(6).

[286] P.C.A. 2687/92 *Geva v. Hevrat Walt Disney*, 48(1) P.D. 251; C.C. (T.A.) 931/92 *Tele-Event Ltd. v. Arutzei-Zahav, Shutfut Reshuma*, Dinim-Mehozi 26(6), 885.

[287] C.A. 592/88 *Sagi v. Ninio*, 46(2) P.D. 245.

[288] C.A. 513/89 *Interlego A/S v. Exin-Lines Bros. S.A.*, 48(4) P.D. 133.



ISBN 978-1-63359-061-8

(iii) A broadcast of a performance (i.e., a transmission or dissemination to the public by wire, wireless or in any other way, of sounds or images or a combination of these).[289]

Nonetheless, the performer may not enjoin acts referred to above that constitute fair use of the performance for purposes of study or teaching on a nonprofit basis or for purposes of research, criticism or review, or a journalist's summary.[290]

The Law further stipulates that the performer has a right to reasonable royalties for any reproduction or broadcast of his/her performance[291] and the right that his/her name be mentioned in any such reproduction or broadcast.[292]

A performer whose right has been infringed is entitled, *mutatis mutandis*, to all the civil remedies available under the Law to the holder of a copyright in a similar event.[293]

The rights accorded by the Law expire after 70 years from the end of the year in which the original performance occurred and after 25 years from the year in which a broadcast was transmitted. Where the performer is an employee and the performance is given in the course and as a consequence of his/her service with his/her employer then, unless otherwise provided by agreement, the latter enjoys the protection accorded by the Law for the first 15 years of the periods referred to above and the former enjoys protection for the remaining years.[294] The Law does not apply to performances outside Israel.[295] Its provisions can be suspended by appropriate stipulation.[296]

*h. Breeder's Rights*

The Breeder's Rights Law provides protection regarding developments in the fields of plant breeding. A plant may be protected if it is registered and: (i) it is a new species;[297] (ii) it has uniform basic attributes; and (iii) its basic attributes are stable, provided that its attributes and description are preserved on reproduction. A species is deemed new if it varies in at least one basic attribute from any other known species, at the time of registration.

An application for a breeding right is filed with the office of the Registrar of Breeder's Rights in the Agriculture Ministry. "Fair use" of a registered breed is the use of a protected breed, which does not require approval of the owner and is not considered a violation of the breeder's right. The Law defines in its schedule various uses as fair uses, for example, research, science, laboratory tests, and private nonbusiness activities. Moreover, the use of reproductive material of a protected breed is allowed without the owner's permission for experiments towards the development of new species.

The rights accorded by the Law expire after 20 years from the time of registration. As for fruit trees, vitis, forest trees, and other perennial plants, the rights are valid for 25 years from the time of registration.

*i. Non-Protected Rights*

The Supreme Court held in *Ashir*[298] that a right that for some reason was not protected under the intellectual property laws might be protected under the Unjust Enrichment Law. *Ashir* dealt with a company that developed a product that had not been registered as a patent or as a design. Another company duplicated the product and, as result, made profits. The majority opinion held that the provisions of intellectual property laws do not limit the scope of the Unjust Enrichment Law. Furthermore, the intellectual property laws do not prevent restoration under the Unjust Enrichment Law. The Supreme Court held that, to be entitled to relief under the Unjust Enrichment Law, there must be proven elements of duplication and imitation as well as of unfair competition.

### *D. Immigration Regulations*

Residents, whether temporary or permanent, may work in the country without a special work permit. Nonresidents may not work in the country without obtaining a special permit issued by the Ministry of Interior. These permits are issued under special circumstances and are not granted as a matter of course.

The Foreign Workers Law of 1991 sets forth the terms for receiving an employment permit for a foreign worker and also imposes duties on the employer with regards to employees, such as providing health care insurance coverage and suitable housing arrangements. The employer may deduct these expenses from the salary of an employee, but no more than the maximum amount set forth in the relevant regulations.

As for asylum seekers and illegal immigrants, the employer is obliged to make a monthly deposit, which in part is deducted from the employee's salary and in part is paid by the employer. The deposit will serve as a guarantee for the departure of the employee from Israel, on the date on which the employee must leave Israel. This can be determined by a final court judgment or a notice from the Minister of Interior or the Head of Population, Immigration and Border Authority in the Ministry of Interior.

It should also be noted that in recent years, a number of different provisions have been enacted to deal with the influx of asylum seekers and illegal immigrants who arrived in Israel, mainly from South Sudan and Eritrea, and to regulate the different aspects of their stay (including detention) in Israel. Some of these provisions were declared void by the Israeli High Court of Justice on the basis of unconstitutionality, such as the period of time that the asylum seekers and illegal immigrants may be held in a detention facility.

*Note:* Foreign workers in Israel were subject to a payroll tax over and above income tax and national insurance. This levy was imposed on employers and generally at the rate of 20%, but at 15% for foreign workers engaged in industry, construction, or certain restaurants and at 0% for those engaged in the agricultural sector. On February 2, 2022, the Knesset passed a law repealing the foreign workers' levy with effect from January 1, 2022 (Israeli Economic Recovery Law (Amendment 20) 2022, Book of Laws 2956).

[289] Performers' Rights Law, 1984, s. 2.
[290] Performers' Rights Law, 1984, s. 4.
[291] Performers' Rights Law, 1984, s. 3A.
[292] Performers' Rights Law, 1984, s. 4A.
[293] Performers' Rights Law, 1984, s. 5.
[294] Performers' Rights Law, 1984, ss. 10, 10A, 11.
[295] Performers' Rights Law, 1984, s. 13(a).
[296] Performers' Rights Law, 1984, s. 16.
[297] C.A. 2909/98 *Tarovot Htzafon Ltd. v. Hazera Ltd.* (1939) P.D. 54-3, 652 (2000).
[298] C.A.R. 5768/94 *Ashir v. Forum*, P.D. 52-4, 289 (1998).



ISBN 978-1-63359-061-8

On February 2, 2022 the Knesset passed a law repealing the foreign workers' levy with effect from January 1, 2022 (Israeli Economic Recovery Law (Amendment 20) 2022, Book of Laws 2956). The foreign workers levy was a payroll tax over and above income tax and national insurance. The levy was imposed on employers generally at the rate of 20%, but at the rate of 15% for foreign workers in industry, construction and certain restaurants and at the rate of 0% for agricultural workers.

### *E. Labor Relations*

Israeli employees earn less than their counterparts in the United States and Western Europe. The average monthly salary as of January 2024 was NIS 12,536 (Israeli employees only).

Employment costs consist of payments made directly to the employee and of fringe benefits that represent approximately 35% of the payments made directly to the employee. Salaries are comprised of various elements and the uninitiated may find it extremely difficult to comprehend the entire system of wage structuring in Israel. The most important items included in the salary are set out in 1. to 14., below.

#### *1. Basic Salary*

The basic salary is the salary to which an employee is entitled according to his/her grade, seniority and personal status (family allowance). There is a general pay scale that applies to all administrative and clerical employees in the public service, and a similar scale for technicians and engineers. Other employees are "linked" to pay scales adopted for employees in another economic sector. Production workers paid on a daily basis are also paid based on a scale that is negotiated separately by each industry. It is common in such industries to use incentive plans or piece rates to increase the employees' salary.[299] Executives in private industry are usually employed based on personal contracts negotiated directly between them and their employers. The family allowance has lost its importance over the years, mainly as a result of the child allowances paid to families with minor children by the National Insurance Institute, regardless of the level of the family's income.[300]

Amendment 24 to the Wage Protection Law, which came into force in February 2009, requires an employer to include additional information in the pay slips of its employees, including, among other items, general data regarding the employee (name, I.D., term of employment, etc.) and also specific details regarding the salary, such as: (i) for salaried employees, the scope of their employment, and for wage earners, the basis on which their wages are to be determined; (ii) the calendar period covered by the pay slip, and the number of actual work days, vacation days, and sick days taken; (iii) detailed information on salary paid; (iv) deductions from salary, such as income tax, social security, health tax, provident funds, and the sum of all deductions; (v) payments for the employee's social benefits; and (vi) the updated legal minimum wage per month or hour.

[299] Most of these scales are legally based on collective agreements that have special legal status according to the Collective Agreements Law, 1957.

[300] National Insurance Law (Consolidated Version), 1995, s. 66.

#### *2. Cost-of-Living Allowance*

All employees receive a cost-of-living allowance to protect their wages from the drastic effects of inflation. Since the commencement of the government's austerity plan in July 1985 (which consisted in part of a temporary wage freeze), the rate of inflation in Israel has been sharply reduced. The cost-of-living allowance is based on a highly elaborate system and is payable periodically based on the increase in prices as reflected by the official consumer price index. The allowance does not compensate for the entire effect of inflation, and if a periodic rate of inflation does not reach a certain minimum, the compensation is deferred to the next period. The last cost-of-living allowance was paid in 2004.

#### *3. Overtime*

The minimum overtime pay is 125% of the usual rate for the first two hours of overtime a day and 150% thereafter;[301] however, an employer may grant leave in lieu of the additional compensation.[302] A special permit from the Minister of Labor is required for overtime employment, which is otherwise forbidden. A general permit, issued by the Minister, allows all employers to employ their employees to the extent of 12 hours overtime a week, provided such overtime does not exceed four hours a day. Working on holidays or days of rest entitles employees to at least 150% of the usual hourly rate.[303] Special permission of the Ministry of Labor and Social Affairs must be obtained for employees to work on holidays or days of rest.[304]

Employers are obliged to maintain a record of their employees' working, overtime and rest hours, either by mechanical means, digitally or electronically, or by having their employees sign daily timesheets to be approved by the employer.[305] The obligation is imposed on the employer but requires the cooperation and participation of the employee. In case of a claim made by an employee for unpaid wages, the burden of proof lies with the employer, if the required records of the hours of work which the employee performed were not maintained.[306]

In 2013, the Israeli Supreme Court ruled that the Hours of Work and Rest Law, 1951 does not apply to non-Israeli therapists and therefore they are not entitled to overtime pay.[307]

#### *4. Shift Work*

A shift premium is not accorded under the law, but rather by virtue of collective agreements or extension orders. Usually, for second shift work (3–11 p.m.), an employee is entitled to a premium at a rate of about 20% increase over the basic salary; for third shift work (11 p.m.–7 a.m.), the increase customarily rises to 40%–45%.

[301] Hours of Work and Rest Law, 1951, s. 16(a).

[302] Hours of Work and Rest Law, 1951, s. 16(b).

[303] Hours of Work and Rest Law, 1951, s. 17(a).

[304] Hours of Work and Rest Law, 1951, s. 12(a).

[305] Hours of Work and Rest Law, 1951, s. 25.

[306] Wage Protection Law, 1958, s. 26B.

[307] A.D.S.C. 10007/09 *Yolanda Gloten v. The National Labor Court* (Mar. 18, 2013).



ISBN 978-1-63359-061-8

*5. Productivity Bonus*

Many collective agreements, particularly in the industrial sector, provide for increases in salaries based on increases in productivity. In many cases, the criteria of productivity for the bonuses are not updated.

*6. Thirteenth Month*

In many industries (especially financial services and computer services), it is common to pay a "thirteenth month" salary in two equal parts on the eve of the Jewish New Year and at Passover in the spring. Financial institutions sometimes pay a "fourteenth month" salary as well.

*7. National Insurance*

Israelis must be insured by the National Insurance for old age benefits, survivors' insurance, maternity insurance, pay while on call to the military reserves and workman's compensation insurance.[308] In addition, under the State Health Insurance Law, 1994, all Israeli residents are covered by state health insurance, entitling them to a prescribed list of medical services. The medical services are provided by several health care funds (*Kupot Holim*), and each resident is free to choose membership in any of them. The state health insurance contribution is paid as part of the National Insurance contributions, and the health care funds offer extended services for an additional fee.

The following table details the contributions to the National Insurance and to Health Insurance (as of 2023):

[308] National Insurance Law (Consolidated Version), 1995, s. 335.

| | **Wage Earners** | | | | | |
|---|---|---|---|---|---|---|
| | **Up to 60% of Average Wage (7,122 NIS)** | | | **Over 60% of Average Wage (7,122 – 47,465 NIS)** | | |
| | **Employee** | **Employer** | **Total** | **Employee** | **Employer** | **Total** |
| **National Insurance** | 0.4% | 3.55% | 3.95% | 7% | 7.6% | 14.6% |
| **Health Insurance** | 3.10% | — | 3.10% | 5% | — | 5% |
| **Total** | 3.50% | 3.55% | 7.05% | 12% | 7.6% | 19.6% |
| | **Self-Employed** | | | | | |
| | **Up to 60% of the Average Salary (7,122 NIS)** | | | **Over 60% of Average Wage (7,122 – 47,465 NIS)** | | |
| **National Insurance** | 2.87% | | | 12.38% | | |
| **Health Insurance** | 3.10% | | | 5% | | |
| **Total** | 5.97% | | | 17.83% | | |

National Insurance Premiums are limited to a monthly income not exceeding a specified statutory ceiling (NIS 47,465 as of 2023), i.e., they are not entirely progressive.

*8. Severance Pay, Provident Funds, Pension Funds*

Under Israeli law, an employee is entitled to severance pay in the event of dismissal after more than one year of employment. In special circumstances, an employee is entitled to severance pay when resigning (i.e., the resignation of an employee after giving birth, resignation following a stay in a woman's shelter, resignation due to health conditions, relocation or a significant deterioration of employment conditions).[309] In the case of an employee's death, severance pay is payable to specified heirs.[310] An employee is not entitled to severance pay on voluntary resignation;[311] however, in such cases, most employers still pay the amount to which the employee would have been entitled had the employee been honorably dismissed. It should be noted that the severance pay provision paid over to a pension fund (see below) cannot be refunded to the employer.[312]

Severance pay is based on the last monthly salary of the employee. It is computed by multiplying the last monthly salary paid to the employee by the number of years in the employment of the employer.[313] Employees who are paid on a daily basis receive severance pay based on two weeks' salary for each year of employment.[314] In computing severance pay, special benefits are not taken into consideration, except where otherwise provided in a collective agreement, or where they are in effect disguised salaries.[315]

Most collective agreements provide for the deposit of money by employers and employees in provident and pension funds. Generally speaking, the employer pays an amount equal to $8^{1}/_{3}$% of the monthly salary into the fund to cover future sev-

[309] Severance Pay Law, 1963, ss. 1, 6, 7, 7A, 8 and 11.

[310] Severance Pay Law, 1963, ss. 4 and 5.

[311] But when Severance Pay Law, 1963, ss. 6–11 apply, a resignation is considered a dismissal.

[312] Severance Pay Law, 1963, s. 26.

[313] Severance Pay Law, 1963, s. 12.

[314] Severance Pay Law, 1963, s. 12.

[315] H.C.J. 105/87 *The Hebrew University of Jerusalem v. The National Labor Court*, 42(3) P.D. 556; H.C.J. 567/87 *Gunik v. The National Labor Court*, 42(4) P.D. 693.



ISBN 978-1-63359-061-8

erance pay. The employer and the employee each contribute a percentage of the monthly salary to provide for a future pension fund or to provide for the accumulation of the contributions in a provident fund, which will be made available to the employee upon the termination of his/her employment. The retirement and severance pay of senior executives is usually covered by special insurance policies taken out by the employer for the benefit of the employee.

An Extension Order of pension funds by the Minister of Industry Trade and Labor came into force as of January 1, 2008. This Order requires all employers and employees in Israel to pay certain amounts, being a percentage of the monthly salary, into a fund to cover future severance pay. The Order does not apply to employees for whom pension funds have already been established.

The following table sets forth the contributions to pension funds:

| Year | Employer | Employee | Severance (Employer) | Total |
|---|---|---|---|---|
| 1.1.2008 | 0.833% | 0.833% | 0.834% | 2.5% |
| 1.1.2009 | 1.66% | 1.66% | 1.68% | 5% |
| 1.1.2010 | 2.5% | 2.5% | 2.5% | 7.5% |
| 1.1.2011 | 3.33% | 3.33% | 3.34% | 10% |
| 1.1.2012 | 4.16% | 4.16% | 4.18% | 12.5% |
| 1.1.2013 | 5% | 5% | 5% | 15% |
| 1.1.2014 | 6% | 5.5% | 6% | 17.5% |
| 1.7.2016 | 6.25% | 5.75% | 6% | 18% |
| 1.1.2017 – onwards | 6.5% | 6% | 6% | 18.5% |

*9. Advanced Education Fund*

Some collective employment agreements call for contributions by both employers and employees to specially designated funds designed to allow employees to save for refresher courses, including traveling abroad to update professional standards and techniques. Normally employees contribute 2.5% of their salary, while the employer contributes 7.5% of the regular salary. Special tax breaks make these funds particularly attractive.

*10. Annual Vacation and Convalescence Pay*

An employee is entitled by law to paid annual vacation, ranging from 16 to 28 days depending on the work tenure.[316] The amount of the annual vacation pay is equivalent to the employee's regular salary, i.e. the salary the employee would have earned had the employee been working during the vacation.[317] Periods of vacation may not be accumulated; however, with the employer's consent, an employee may choose to have a vacation of at least seven days and add the remaining period to the next two years' vacation.[318]

An employer must pay each employee who has completed one year of service "convalescence pay,"[319] which is intended to cover part of the employee's costs during the annual vacation. The entitlement ranges from five to 10 convalescence days, depending on the work tenure. The value of each day is NIS 378 in the private sector and NIS 449 in the public sector (as of 2023). The entitlement is based on collective agreements or extension orders.

*11. Sick Leave Pay*

An employee is entitled to sick leave to the extent of one and a half days per month, which may be accumulated provided that they do not exceed a total period of 90 days.[320] Where an employee is entitled to sick leave, a statutory deduction is made from his/her salary.[321]

Other laws entitle employees to sick leave on account of accumulated sick leave. Thus an employee is entitled to sick leave[322] on the illness of a child living with him (eight to 16 days; in case of a severe illness, 90 to 110 days); for pregnancy and birth (seven days);[323] on the illness of a spouse (six days; in case of a malignant disease — and subject to completion of one year of employment — 60 days);[324] and on the illness of a parent or spouse's parent who has reached 65 years of age (six days).[325]

*12. Commuting Allowance and Company Cars*

As a rule, most employers reimburse their employees for their traveling expenses to and from work. Executives are gen-

[316] Annual Vacation Law, 1951, s. 3.
[317] Annual Vacation Law, 1951, s. 10.
[318] Annual Vacation Law, 1951, s. 7(a).
[319] Originally, convalescence pay was given to cover the employee's costs for staying in a "convalescent home," to recover from an illness or injury, or simply to relax. However, today convalescence pay is mandatory and is intended to cover an employee's vacation costs regardless of whether the employee stays in a convalescent home or goes on vacation.
[320] Sick Pay Law, 1976, s. 4.
[321] Sick Pay Law, 1976, s. 2.
[322] Sick Leave (Leave for Illness of Child) Law, 1993.
[323] Sick Leave (Leave Due to a Spouse's Pregnancy and Childbirth) Law, 2000.
[324] Sick Leave (Leave Due to Illness of Spouse) Law, 1998.
[325] Sick Leave (Leave Due to Illness of Parent) Law, 1993.



ISBN 978-1-63359-061-8

erally provided with a car or are reimbursed for all their costs in maintaining their own cars. In computing the related tax liability, each Israeli resident is entitled to a quarter of a credit point with respect to transportation to the place of employment.

*13. Military Duty*

Workers of military age are called up to reserve duty for up to 30 days, and in extreme cases for up to 60 days a year. Though employers are not required to make up the difference between an employee's regular salary and the amounts paid by the National Insurance with respect to such service, it is customary to pay employees their normal wages even during their military duty.

In August 2008, a Reserve Service Law[326] took effect. According to the law, an employee who served one to five days will receive an extra 40% of the reserve service emolument (which is calculated according to the employee's wages). An employee who served more than five days will receive an extra reserve service emolument in the amount of the daily emolument. The emolument will be paid by the employer and will be refunded by the National Insurance. If employers will receive less than they actually paid, they will be able to set off the balance due from the employee's' salary.

An employee who served 10 days or more is eligible for an additional emolument, which is paid directly by the ITA.[327] In the case of 32 days of service or more, an employee is also eligible for a special emolument, which is paid directly by the IDF.[328]

*14. Minimum Wages Law*

The Minimum Wage Law, 1987 protects an employee's right to fair wages by providing that wages may not fall below a specified minimum amount. The designated minimum wage is a percentage of the average wage on April 1, each year, as adjusted according to the Law (NIS 5,880.02, as of 2024). The Law also applies to teenagers under 18 years of age by virtue of regulations promulgated under it, but such teenagers are entitled to a lower minimum wage — ranging from 70% to 83% of the regular minimum wage — depending on their age.[329] Noncompliance with the law is a criminal offense and a noncompliant employer risks imprisonment for up to six months for each underpaid employee.[330]

*15. Assurance of Income Law*

Under the Assurance of Income Law, 1980, Israeli residents aged 25 years or more are entitled to a monthly allowance provided they belong to one of the following categories: persons who are not able to work and earn their living or are unemployed; persons who are over retirement age; parents providing for at least one child who is not yet two years old, or widowed mothers providing for their children; persons who are mainly occupied in caring for an ailing spouse or a child who needs constant care; women who stay in a women's shelter, etc.[331]

*16. Salary Cap in a Financial Company*

According to a new law that entered into force in 2016, a payment of salary to senior employees or executive officers in a financial corporation (such as banks and insurance companies) that exceeds NIS 2.5 million a year requires approval from the compensation or audit committee and board of directors. In a public corporation the approval of the general meeting is also required.[332] In any case, a salary that is more than 35 times the lowest salary in the company may not be approved.[333] The amount of the salary over NIS 2.5 million is considered as a non-tax-deductible expense.[334]

*17. Retirement Age*

The retirement age is 67 for men and 65 for women.[335] The employer may terminate the employment relationship once the employee — man or woman — turns 67.[336] If the employee asks to continue working after the aforementioned age, the employer must consider the employee's request in good faith and exercise his/her discretion based on the individual circumstances of the request.[337]

*18. Anti-Discrimination Legislation*

Employment discrimination of an employee or job candidate based on the following criteria is prohibited: sex, sexual orientation, marital (personal) status, pregnancy, fertility treatments, in vitro fertility treatments, parenthood, age, race, religion, nationality, country of origin, geographical place of residence, ideology, political affiliation or reserve service.[338] Discrimination required by the character or nature of the position is not considered as unlawful discrimination.[339]

In addition, males and females who are employed by the same employer and in the same place of work are entitled to equal pay for the same or equivalent work.[340]

## *F. Financing the Business*

*1. Banking*

Israel has a modern banking system with nearly 1,000 branch offices. Most banks have their head offices in Tel Aviv; however, they all have regional offices in the major cities. The larger banks have offices abroad and maintain correspondent banks in those foreign countries in which they have not yet established branches. The commercial banks provide checking account services, accept time deposits and offer a wide range of savings accounts with the principal of the amount deposit-

[326] Reserve Service Law, 2008.

[327] Reserve Service Law, 2008, s. 18.

[328] Reserve Service Law, 2008, s. 19.

[329] Minimum Wage (Working Youths and Apprentices) Regulations, 1987, ss. 2 and 4.

[330] Minimum Wage Law, 1987, s. 14.

[331] Assurance of Income Law, 1980, s. 2.

[332] Compensation of Officers in Financial Corporations Law (Special Approval and Non-Deductible Expense for Tax Purposes of Irregular Compensation), 2016, s. 2(a).

[333] Compensation of Officers in Financial Corporations Law (Special Approval and Non-Deductible Expense for Tax Purposes of Irregular Compensation), 2016, s. 2(b).

[334] Income Tax Ordinance, 1961, s. 32(17).

[335] Retirement Age Law, 2004, s. 3.

[336] Retirement Age Law, 2004, s. 4.

[337] W.A. 209/10 *Weinberger v. Bar-Ilan University* (2012).

[338] Equal Opportunities in Employment Law, 1998, s. 2(a).

[339] Equal Opportunities in Employment Law, 1998, s. 2(c).

[340] Equal Pay for Male and Female Workers Law, 1996, s. 2.



ISBN 978-1-63359-061-8

ed sometimes linked to the consumer price index. Saving accounts with fixed nominal interest are also available. In addition, the banks make regular long-term loans in accordance with prevailing market conditions. Usually a short-term loan will take the form of a line of credit on a secured basis. The borrower pays only for the credit actually used and the interest is computed on a daily basis. The banks handle security transactions for their customers and for their own account on the Tel-Aviv Stock Exchange and perform such services on foreign exchanges as well. They underwrite and distribute issues of shares.

In 2004, a special committee known as the "Bachar Committee" was set up to improve the competitive nature of the Israeli capital market, which suffered from the very dominant position of the banks in all its sectors: mutual funds; provident funds; underwriting etc. The committee recommended that: (i) a bank or a person who controls a bank should not control, directly or indirectly, any provident or mutual fund; (ii) no bank in its capacity as an underwriter should act as a "pricing underwriter" with regard to large scale borrowers; (iii) a law should be enacted governing supervision and enforcement in the provident funds sector; (iv) two new disciplines should be defined in the financial industry — advisors and retailers/distributors — and the two should be *totally* separate; and (v) banks that do not own a provident fund or an insurer should be allowed to sell life insurance and pension products. These recommendations were enacted into law in 2004 and began a massive sale of funds (mutual and provident) by the commercial banks, mainly to insurance companies.

Until October 1983, the banks "regulated" the prices of their shares on the Tel-Aviv Stock Exchange and investors reaped handsome profits. A wave of selling brought an end to this practice after the banks could no longer afford to purchase their own shares. A special agreement was entered into with the government pursuant to which long-term holders of the shares received a guaranteed price and return on their shares (converting them in essence into debentures). Subsequently, a special Investigation Committee was appointed by the government in 1985, to investigate the economic effects and legality of this "regulation." The committee's findings, published in April 1986, established that the banks had improperly "regulated" the prices of their shares by resorting to illegal practices. The committee recommended significant changes in the capital market. Only a few of these were implemented (for example, no bank advice on investments in shares in which the bank has an interest). The "bank bail-out" cost taxpayers US$ 7.5 billion. Special measures were taken to avoid a *de facto* nationalization of the banks, including the enactment of a special law designed to guarantee the banks' independence while state-owned and a privatization process, which is being implemented gradually.

In 2005, the government sold its shares in Israel Discount Bank Ltd.; although the government sold most of its shares in Bank Leumi Le, Israel still holds approximately 6% of the bank's shares, which are expected to be sold in the near future.

Furthermore, the banks were required to divest themselves of most of their real assets, as part of the effort to lessen the centralization of the economy.

*2. Bank of Israel*

As of July 2008, the NIS is traded internationally as Israel has become a member of the International CLS Bank System.

Israel's central bank is the Bank of Israel. In 2010, the Bank of Israel Law, 1954 was abolished and replaced by the Bank of Israel Law, 2010. This bank is the only issuer of currency in the country[341] and, as Israel's fiscal agent,[342] holds the government's basic deposits, and holds and manages the country's reserves of foreign currency and gold.[343]

Compulsory and other deposits from banks are maintained with the Bank of Israel.[344] The bank controls the volume of credit through its rediscount role and by the imposition of a liquidity ratio on the commercial banks.[345] The bank also implements the government's economic policy by directing credit to the preferred economic sectors. Furthermore, the Bank of Israel supervises all banks and financial institutions and periodically carries out audits of the commercial banks.[346] All banks must publish their certified balance sheets in a daily newspaper and must furnish the bank controller with current information.[347]

*3. Finance and Credit*

Most business and private credit financing is obtained from the commercial banks. The insurance companies also provide loans. Finally, the "gray market" offers high risk debtors' loans at very high interest rates. This market derives its liquidity from enterprises with surplus cash, which extend credit to "gray lenders" against strong bank guarantees, and is for the most part unregulated. Nonetheless, limited regulation of non-bank credit is provided by the Interest Law, 1957,[348] which limits interest rates chargeable to a statutory ceiling, determined from time to time by the Bank of Israel, and sets a minimum interest accrual term of three months, and by the Law for the Regulation of the Non-Bank Credit, 1993,[349] which imposes a disclosure liability and makes other requirements of the lender.

[341] Bank of Israel Law, 2010, ss. 41, 44.
[342] Bank of Israel Law, 2010, s. 48.
[343] Bank of Israel Law, 2010, s. 36.
[344] Bank of Israel Law, 2010, s. 36.
[345] Bank of Israel Law, 2010, ss. 36, 38.
[346] Bank of Israel Law, 2010, s. 39.
[347] Banking Ordinance, 1941, s. 10.
[348] Interest Law, 1957.
[349] Law for Regulation of Non-Bank Credit, 1993.



ISBN 978-1-63359-061-8