Land of milk and honey

The Covid-19 pandemic hit Israel about as hard as anywhere else but local lawyers are confident operating in an ultra-resilient market

ARTHUR KAY-INGRAMS AND CHARLES AVERY

Few, if any, national economies escaped 2020 with a clean bill of health, and Israel was no exception. As per the Central Bureau of Statistics, the country's economy contracted by 2.4% across the year, the most severe decline since the state was established in 1948. It is a testament to the unprecedented nature of the past year that Israel's performance can be considered a relative success story – the average across the OECD countries was a 5.5% decline.

Though economically speaking Israel has fared comparatively well, more generally the region's handling of the Covid-19 pandemic is a mixed story. When the first wave of the pandemic hit, Israel was still being overseen by a caretaker government following the inconclusive result of the legislative election in March 2020. A state of emergency was declared and legally enforceable restrictions were introduced, preventing citizens from leaving their homes except for a short list of specified reasons. To ease the economic strain, the government introduced a $22bn economic rescue package to bolster the healthcare system, assist the unemployed and support struggling businesses. These restrictions proved largely effective and by the end of May most restrictions had been lifted, allowing most Israelis to enjoy a relatively free early summer.

Despite this early success, the country's handling of the pandemic in the second half of the year was problematic and roundly met with criticism. Following a rise in infections over summer 2020, the government reintroduced some restrictions on business and social gatherings. Some of these were removed following criticism from some business owners, and the regime proved insufficient to stop the spread. By 10 September, Israel had the highest recorded rate of Covid-19 infections per capita in the world, prompting a second full lockdown to be introduced. These restrictions were then gradually eased over late October and November, however a sudden surge in infections, primarily driven by the UK variant, prompted a third lockdown in late December, which was not substantially eased until March 2021.

Where the country has had undoubted success is in the roll out of its vaccination programme. It has received plaudits internationally for the proactivity of its procurement and speed of its roll out. Six weeks after its introduction on 19 December 2020, approximately 64% of the population had received at least one dose of the Pfizer vaccine. A number of factors can be considered to

'Private equity funds are attracted because they want to capitalise on the cutting-edge developments in the field of technology in Israel.' Clifford Davis, S.Horowitz & Co

Erdinast, Ben Nathan, Toledano & Co. completes merger with Hamburger Evron

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Contact Us: office@ebnlaw.co.il | www.ebnlaw.co.il | +972.3.7770111 have contributed to this success, including the country's relatively small land mass, young population and centralised healthcare system.

Rather than attributing the economic resilience to governmental strategy, much of Israel's prosperity can be tied to the sectors that are most important to the economy. Not particularly rich in natural resources, in recent decades Israel has established itself as one of the global leaders in the technology sector. The importance of this sector to the economy can be seen in its R&D spending; OECD figures suggest that in 2019, almost 5% of the country's gross domestic spending was on R&D, the highest percentage of any country in the world.

Globally, the technology sector has been one of the industries to prove robust to the pandemic. Though issues have been felt in disruption to supply chains, these have been offset to a large extent by the increased importance of software and tech solutions initiated by the movement towards home working. This has meant that, after a brief period at the start of the pandemic when the industry took time to consider all options, the technology market has continued to attract investors. As Clifford Davis, co-chair of the international corporate group at large domestic firm S.Horowitz & Co, notes: 'Private equity funds are attracted because they want to capitalise on the cutting-edge developments in the field of technology in Israel.' These innovations have continued through the pandemic, allowing Israel's economy to subsist better than other countries that are reliant on more vulnerable sectors.

'The ability of the large firms to flourish through the pandemic period due to versatility may be another sign to the consolidation of small and mid-size firms with the large firms.' Mike Rimon, Meitar Law Offices

STRENGTH IN NUMBERS

From the perspective of prominent law firms in Israel, the pandemic had a negligible effect on commercial opportunities. As a result of the country's leading position in the hi-tech sector, coupled with its ideal climate for investment in renewable energy and the state's firm commitment to large infrastructure projects, even during a period of political upheaval, many lawyers in the market have reported record growth over 2020/21. The fact that some areas have been extremely busy, while others ground to a halt for much of the year, means that diversity of specialism has been of paramount importance, something which suits the larger firms. As Mike Rimon, a partner in the corporate and securities department at Meitar Law Offices notes: 'The ability of the large firms to flourish through the pandemic period due to versatility may be another sign to the consolidation of small and mid-size firms with the large firms.'

It is certainly the case that some practice areas have been busier than others and some smaller firms have struggled to realign their resources to cope with the change in circumstances. Sectors such as corporate have remain largely busy, while real estate, though quiet during the initial lockdown, has been extremely active so far in 2021. On the other hand, work relating to sectors such as hospitality and tourism has understandably dried up. All this is not to say there is no room for specialist boutique firms, as certain areas of practice continue to be ruled by small independent practices. White-collar and financial crime are excellent examples; boutiques such as Hadad Roth & Co and Kosteliz & Co retain prominent positions in the market and continue to be instructed on all of the significant cases of political corruption currently before the courts.

The country's growing reputation for innovation, driven by the rapid growth of numerous former start-ups over recent years, only incentivises further foreign and domestic investment, creating a buzz in the market and a widespread 'fear of missing out' among PE firms and private investors. In the words of Doni Toledano, head of the M&A and banking and finance departments of Erdinast, Ben Nathan, Toledano & Co: 'On the global front, Israel is perceived as a country with numerous investment opportunities, due to its innovative nature and the countless start-up companies developing cutting-edge technologies. It appears that this is due in part to the

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developing nature of the country, which encourages creativity and entrepreneurship combined with modern western infrastructure and technology.' This is borne out in the data: according to the Israeli Tech Review, companies in the sector were able to secure $9.93bn of investment in 2020, up 27% compared to the year before, across 578 transactions.

Ultimately, the purpose of growing these startups is generally to profit from strong exit transactions, either through IPOs or M&A deals. Perhaps surprisingly, these two areas saw markedly different trends in 2020. According to data from the IVC Research Center and Meitar Law Offices, M&A revenue fell from $14.2bn and 143 deals in 2019 to just $7.8bn and 93 deals in 2020. The Covid-19 pandemic is inevitably considered the primary reason for this, and Rimon agrees: 'M&A declined a little during 2020. This was primarily because strategic buyers took a step back in order to assess the Covid situation and also due to the high valuations given to tech companies in the public markets, but we started to see more movement in M&A in the last few months.'

This upturn throughout the year has been seen across the market, as David Tadmor, managing partner of Tadmor Levy & Co, confirms: 'In the first half of the year we saw less M&A yet continued investment work; later on mergers started to catch up.' Although 2020 was not a banner year for mergers overall, that is not to say that there were no significant transactions in the immediate period following the outbreak of the pandemic. Perhaps the standout acquisition occurred in May 2020, when journey planner app developer Moovit was acquired by Intel for $900m.

When it comes to IPOs, the list of success stories since summer 2020 has been impressive, and it is not a trend that has shown any signs of slowing down in the first half of 2021. This is not necessarily a surprise; Israel has punched above its weight in this area for many years. Despite having the 31st largest economy in the world according to the latest figures published by the World Bank, Israel ranks third for the number of companies it has listed on Nasdaq. This relationship with the US capital markets, and its importance in the latter half of 2020, is summarised by Rimon: 'Since the last quarter of 2020 we saw the capital markets open up, primarily in the US, and they became more receptive to tech companies. Since then, we have seen more Israeli IPOs in the US, and more companies that became unicorns than ever before.'

Software developer JFrog is a prime example of this trend, having raised a total of $428m on its Nasdaq debut, which valued the

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Digital health in Israel – Opportunities and regulatory aspects

The global digital health market is expanding and is expected to reach revenues of $600bn by 2024 (McKinsey, *The Economist*, 2 December 2020).

In Israel, digital health is thriving and attracting international attention, and in particular increasingly substantial investments. This is due to Israel's unique entrepreneurial ecosystem that includes:

- Over 500 active digital health companies
- 4 HMOs (sick funds) which include all Israeli residents, and well-known hospitals, some of which have access to over 25 years of digital medical data
- Local VCs and accelerators
- Local and global medical device and pharma companies
- Government initiated national programme to accelerate digital health
- World class academic institutions, including the Weizmann Institute and the Technion
- Fifth place in the world for patents per capita

In this article we outline the main regulatory aspects to consider when handling digital health in Israel.

ISRAELI HEALTH CARE SYSTEM – LEGAL AND PRACTICAL BACKGROUND

According to the National Health Insurance Law, every Israeli resident is entitled to be a member of one of the four Israeli HMOs and to healthcare services included in the national 'health basket', which is updated yearly, without charge.

The National Insurance Institute charges a mandatory health tax, and transfers it to the HMOs, according to the portion of the population comprised by their membership. The Ministry of Health (MOH) covers the rest of the HMOs' budgets.

Most Israelis are also registered for supplementary health plans provided by the HMOs, and some are insured by private insurance policies.

Eleven hospitals in Israel are owned by the Israeli government, including Sheba that was announced as one of the ten best hospitals in the world according to *Newsweek*; nine hospitals that are owned by Clalit, the largest HMO; six hospitals that are owned by Assuta, a subsidiary of Maccabi, a big HMO; and certain privately owned hospitals and medical centres.

Israel's hospitals and HMOs initiate and encourage innovation, in part by leveraging their access to high-quality digital medical data.

MAIN REGULATORY ASPECTS

Clinical trials

With access to vast digital medical data, relatively low costs and internationally recognised professional excellence, clinical trials in Israel are considered particularly cost efficient and effective. Clinical trials are conducted in Israel in accordance with the Public Health Regulations (Clinical Trials in Humans) 1980 (the 'Clinical Trial Regulations'), and the MOH clinical trials procedures. Generally, the MOH's procedures follow international guidelines with respect to clinical trials.

Clinical trials require the approval of the hospital's Helsinki Committee, the approval of the director of the hospital, and in certain cases, the approval of MOH Helsinki Committee and the approval of the director-general of the MOH.

Privacy

Data protection and privacy are governed by the Protection of Privacy Law 1981 (Privacy Law), regulations, sector-specific laws and directives.

Subject to certain exceptions, personal data may be used only for the purpose for which it is provided by the data subject. Additional uses, including secondary use of medical data, are generally subject to data subject consent.

In addition to the above, secondary use of medical data and cloud computing of medical data are regulated in MOH procedures which outline the requirements for access to medical data and for processing it, as well as contractual requirements from a cloud computing service.

Data security requirements are more granular than the General Data Protection Regulation (GDPR)'s more general requirements. On the other hand, similar to the GDPR, the Privacy Law and regulations include data export restrictions and notice requirements. Due to the 'adequacy decision' from the European Commission, personal data from the EU can be transferred to Israel without the need for additional measures.

Medical device and pharma

Medical devices are required to undergo a registration procedure by an Israeli resident or an Israeli corporate in the MOH registry according to the Medical Device Law 2012. Israeli registration is typically expedited when the medical device has already been registered and marketed in a recognised country (Austria, Australia, Italy, Iceland, Ireland, the US, Belgium, UK, Germany, Denmark, the Netherlands, Greece, Norway, New Zealand, Spain, Portugal, Finland, France, Canada, Sweden, Switzerland).

Similarly, pharmaceutical products are regulated by the Pharmacists Ordinance and are required to undergo registration by an Israeli resident or a corporate in the MOH drug registry. Subject to certain exceptions, in order to register foreign pharmaceutical products, they must be approved by regulatory authorities in a recognised country (US, Canada, EU country (prior to 2004), Switzerland, Norway, Iceland, Australia, New Zealand and Japan). Pharmaceutical products registered by the FDA and EMA and marketed in recognised countries can expect expedient processing of registration.

To summarise, the Israeli healthcare ecosystem is known for its entrepreneurial spirit, high-tech skills, as well as by its quick and results-oriented attitude.

Please feel free to contact us with any questions regarding digital health in Israel:

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company at $3.9bn. Most recently, in June 2021 software company Monday.com raised $574m following its debut on Nasdaq, giving the company a market value of $7.5bn. Impressive exits are not limited to Nasdaq; last July saw insurance tech company Lemonade achieve what was at the time the most successful debut of 2020, following its listing on the New York Stock Exchange. Such exits are vital to the continued prosperity of the sector, as Meitar corporate partner Clifford Felig notes: 'Every time a hi-tech company goes public, it draws in more seed capital for the new companies. This lifecycle is critical [to the economy in Israel].'

Toledano also notes the positive impact these successful exits have had on the general economy as 'Israel has seen tremendous attention from financial investors after a number of mega exit transactions yielded significant IRR ratios to investors.'

A significant component of this prosperity, as Felig identifies, is that, during the second half of 2020, the special-purpose acquisition company (SPAC) phenomenon started to spread across Israel like wildfire, driven in large part by the expedited timeline for going public that this route offers companies compared to IPOs, and in part by the attractive 'redemption offer' that investors receive, whereby they can redeem their investment after two years if the SPAC they choose to support fails to acquire or merge with a target company.

Unsurprisingly, hi-tech companies are at the heart of this surge in SPAC-related activity. In February 2021, Otonomo (a Herzliya-based company that makes a cloud-based platform which allows car companies, service providers and apps to share and integrate data generated by vehicles) merged with Software Acquisition Group, a Nasdaq-listed SPAC, entering the stock exchange with a $1.4bn valuation. Two months later, Innoviz Technologies (the Israeli provider of solid-state LiDAR sensors and perception software) successfully merged with Texas-based SPAC Collective Growth Corporation, also securing a $1.4bn valuation. More recently, Taboola (a major advertising platform) announced that it plans to go public via a SPAC with a $2.6bn valuation in the second quarter of 2021; and the fintech firm Payoneer is poised to merge with the US SPAC FTAC Olympus Acquisition Corp any day now, which will result in a total post-money valuation of $3.375bn.

BUILDING HOPE

Of course, the economy doesn't depend entirely on hi-tech companies to fuel growth. Davis

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points out that 'Tel Aviv… is an absolute magnet for infrastructure projects'. At the epicentre of this attractive asset class is the government-led Tel Aviv light rail project, divided into three stages: the red line, which is expected to be fully operational in November 2022; and the green and purple lines, both of which are due to be completed in 2026. NTA Metropolitan Mass Transit System (the government-owned company overseeing the project) spent over NIS16bn ($4.93bn) financing the construction of the red line and put out a NIS15bn ($4.62bn) tender in early autumn 2020 to build and operate the green and purple last year, which was won by a consortium of five international bidders.

Not only are these projects generating significant and sustained activity for lawyers in Israel (across the spectrum of transport, infrastructure, banking and finance, and corporate and commercial law); but they also promise to have a profound impact on the fundamental nature of the economy in Israel. It is expected that more citizens will gain access to commercial opportunities in Tel Aviv (and indeed other areas of Israel with similar transport projects, such as Jerusalem) that they were previously alienated from geographically. It is also fair to assume that this new, interconnected transport system will lead to the gentrification of various suburbs: affluent citizens will have the freedom to live in more remote areas and commute to work, which will in turn lead to more vibrant local economies, supported by greater investment in infrastructure, retail and hospitality, with the likely drawback being an increase in house prices, which could become another obstacle standing in the way of economic prosperity and equality of opportunity for members of the country's working class.

Israel is now in a position where it is able to look forward and beyond the global pandemic, in part due to its excellent vaccination programme, and so the question inevitably becomes whether the relative economic buoyancy enjoyed over the past year is sustainable. In a number of areas, the market shows no sign of slowing down, and many law firms are in rude health. As an example, Meitar, the largest firm in the country, enjoyed a busier Q1 2021 than any quarter since the beginning of the pandemic. The firm has also increased in size since then, from approximately 320 lawyers in March 2020, to around 370 in April 2021, and is actively looking to recruit further, particularly in the capital markets and corporate departments. As Felig puts it: 'Israel has proved resilient both to the pandemic and the security situation. I don't think anyone in the market is preparing for a downturn.' Tadmor agrees and notes that the biggest law firms are well placed to capitalise: 'I see the larger firms continuing to grow, I see stronger consolidation, definitely. I see no slowdown.'

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Clifford Felig, Meitar Law Offices

Data projections would suggest that this optimism is justified; the OECD predicts GDP in Israel to grow by 5% in 2021, followed by a 4.5% increase in 2022. There is also hope that a potential change in government will help boost economic prosperity in certain areas. Moreover, under the new coalition government led by ultranationalist Naftali Bennett, sworn in on 13 June 2021, there is at least the possibility of reform in key areas of public policy and further investment in ailing sectors of the economy, such as tourism and hospitality. Tadmor elaborates: 'The formation of a new government in Israel will obviously make a change too. We have functioned for two years without any real government. I expect once a government is formed, you will see a new wave of activity.'

Israel's new prime minister, Naftali Bennett

Editorial credit: Gil Cohen Magen / Shutterstock.com

He predicts that a wave of legislation will be 'unleashed', which could benefit citizens whose economic interests were overlooked by Netanyahu's government. Specifically, Tadmor notes that there is a '[policy] supply that will burst' as 'ministries [have been] working hard in all areas for ages but nothing has been implemented because parliament was not functioning'. Of course, it is hard to say exactly how this broad coalition – including politicians across the political spectrum – plans to support more vulnerable members of society until it produces an annual budget, but there is at least a reason to be cautiously optimistic about the prospect of change, given that Israel has its first functioning parliament in over two years.

It is hard to say exactly how this broad coalition plans to support more vulnerable members of society, but there is reason to be cautiously optimistic about the prospect of change, given that Israel has its first functioning parliament in over two years.

Another source of economic optimism came in the form of the Abraham Accords, an agreement between the UAE and Israel normalising relations and paving the way for numerous commercial joint ventures. Lawyers and businesses in the transport sector have already benefited from this development, with direct commercial flights running between the two countries to support tourism and free trade. In addition, a $3bn regional development fund, formerly known as the Abraham Fund, was announced as part of the agreement. This fund exists to support private sector-led investment in initiatives established to 'promote regional economic co-operation and prosperity in the Middle East and beyond', with a predominant focus on infrastructure and renewable energy projects, given that both countries view these sectors as strategically important for sustainable growth.

However, while there is certainly cause for positivity, there are potential issues on the horizon that it will not be plain sailing for the country moving forward. In the words of Davis: 'Where there is a problem is not Covid, but the unknown effect on the US economy depending on what Biden will do with his budget. There is a risk of inflation, which will increase interest rates, which will have a knock on effect by reducing investment in Israel from the US.'

Some are wary of the possibility that the economic benefits of booming technology and infrastructure markets will not be felt by all, expressing concern that the wealth generated from hi-tech and construction has not trickled down to the people who suffered as a result of Covid, meaning that social costs could come into play. However, there is little evidence today of anything that is likely to dampen the spirit of a resilient economy and well prepared legal market. LB

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