THE US-ISRAEL LEGAL REVIEW 2023

Israel's Economy: Turbulence and Hope in Dark Times

A GLOBAL LEGAL MEDIA & NISHLIS LEGAL MARKETING PUBLICATION

GLOBAL LEGAL MEDIA
STRATEGIC LAW FIRM MARKETING

NISHLIS LEGAL MARKETING SETTING THE BENCHMARK

IN ASSOCIATION WITH:
ACC Association of Corporate Counsel ISRAEL

ISRAEL 2023 HIGH-TECH ACTIVITY REPORT

COMPILED BY AXIS INNOVATION

	Total Exits M&As and IPOs (only refers to exit deals of over $10M in value)	Israeli High-Tech Exits (M&As, Buyouts, IPOs)	Number of M&As (only refers to deals of over $10M in value)	Capital Raised	Number of IPOs (only refers to deals of over $10M in value)
2021	**171 deals** average deal size $482M	**280 exits** $24.6B	**99** average deal $117M	**$26 B** 779 rounds	**72 deals** average size $985M
2022	**72 deals** average deal size $235M	**142 exits** $13.5B	**59** average deal size $105M	**$15.5 B** 697 rounds	**13 deals** average size $822M
2023	**45 deals** average deal size $167M	**92 exits** $10.9B	**42** average deal size $119M	**$7.2 B** 393 rounds	**3 deals** average size $842M

Most active VC investors in Israel from the past 5 years:

OurCrowd
VC Investments: 161
Exits: 22

Sarona Ventures
VC Investments: 74
Exits: 3

Entree Capital
VC Investments: 73
Exits: 3

NFX
VC Investments: 70
Exits: 1

Pitango Venture Capital
VC Investments: 67
Exits: 6

iAngels
VC Investments: 63
Exits: 13

Vertex Ventures Israel
VC Investments: 61
Exits: 9

TLV Partners
VC Investments: 56
Exists: 6

Jerusalem Venture Partners
VC Investments: 46
Exits: 9

Peregrine Ventures
VC Investments: 43
Exits: 5

M&As and IPOs by geography

(% represents deal value)

Sectoral Breakdown Based on Amount of Funding

- 26% Cybersecurity
- 21% Enterprise IT & Data
- 19% Health Tech
- 17% FinTech
- 13% Climate Tech
- 4% Agri Food Tech

ANALYSIS BY AXIS INNOVATION AND NISHLIS LEGAL MARKETING, BASED ON RESEARCH BY AXIS INNOVATION, IVC, PWC AND STARTUP NATIONAL CENTRAL
THE DATA COLLECTED IS JANUARY 2022 - DECEMBER 2023
BASED ON PUBLICLY AVAILABLE DATA AS OF DECEMBER 31, 2023. FINAL NUMBERS ARE EXPECTED TO BE GREATER.

Contents

THE US-ISRAEL LEGAL REVIEW 2023

A LEGAL GUIDE TO US-ISRAEL INVESTMENT:

Co-Publishers:

Global Legal Media
Danny Collins, Deepak Vohra

dc@globallegalmedia.com
dv@globallegalmedia.com
www.globallegalmedia.com

Nishlis Legal Marketing
Idan Nishlis

idan@nishlis.com
www.nishlis.com

Welcome

Welcome to the 5th edition of *The US-Israel Legal Review*. As our front cover headline encapsulates, Israel is currently undergoing unprecedented challenges following the Hamas attack on its soil in October last year - the bloodiest in Israel's history - and the direct attack by Iran in April 2024.

Yet Israel and its economy remain resilient, and both have the unstinting support of the United States, Israel's largest defence and trading partner. Harnessing the characteristics of resilience, courage and commitment, as well as their common values to drive innovation and progress have always been at the front of this relationship. Our opening editorial highlights some of the key trends and challenges that shaped the Israeli economy in 2023, and shares some thoughts on the implications for the future.

Israeli law firms explore a variety of topics, covering: litigation in Israel; Israeli M&A amidst transformation and turbulence; noteworthy developments that have shaped the Israeli tax sphere over the past year; the interplay of technology and mental health, with a particular focus on the transformative influence of gamified technology; challenges to Israel's intellectual property landscape amidst the ongoing conflict; and the revolution of financial information & payments in Israel. In addition, US-headquartered professional services firm Marsh examines the expedited rise in the use of representations and warranties insurance (RWI) in Israeli-nexus M&A.

From the US law firm side, there are articles on the ever-changing U.S. regulatory landscape and its impact on Israeli fintechs; the US drug pricing regime - the most complex in the world; Artificial Intelligence regulation in the US; the U.S. Corporate Transparency Act – what Israeli investors need to know; and global M&A activity and the ongoing optimism in the Israeli market. There is also a piece on exploring investment opportunities in the California market, as well as our General Counsel Roundtable.

We also bring you the latest Israel Desks League Tables, which showcases the most prominent law firms, from Magic Circle firms and global powerhouses to large corporate law firms and specialist boutiques, all with clients that are active in Israel-related deals in 2023. With funds being raised, transactions being completed, and joint ventures being formed, the show very much goes on.

We hope you enjoy the issue.

Danny Collins
Director / Global Legal Media
dc@globallegalmedia.com
www.globallegalmedia.com

Idan Nishlis
CEO / Nishlis Legal Marketing
idan@nishlis.com
www.nishlis.com

ACC Association of Corporate Counsel
ISRAEL

Dear Colleagues,

We want to thank our exceptional partners, Israeli and International law firms, who supported the corporate counsel community in Israel during the challenging times of Covid-19, hosting phenomenal webinars, workshops and meet-ups – we couldn't do it without you.

THANK YOU FOR STICKING AROUND!

Agmon & Co. Rosenberg Hachohen & Co
Arnon, Tadmor-Levy
Asserson Law
AYR - Amar Reiter Jeanne Shochatovitch & Co
Barnea Jaffa Lande
Erdinast, Ben Nathan, Toledano & Co.
FISCHER (FBC & Co.)
Goldfarb Gross Seligman
Gornitzky GNY
Greenberg Traurig LLP
Herzog Fox Neeman
Lipa Meir & Co.
Firon
Meitar
Naschitz, Brandes, Amir and Co.
Pearl Cohen Zedek Latzer Baratz
S. Friedman &Co.
S. Horowitz & Co.
Salomon Lipschuts
Shibolet & Co.
Simmons & Simmons
Sullivan LLP

Yours truly,

Edva Liveanu Justo
Region Counsel East Europe, Turkey, and Israel
ACC Israel President and Chairwoman

ACC is the Association of Corporate Counsel, a global organization based in the United States with more than 45,000 in-house corporate lawyers in 85 countries around the world. ACCI is the Israeli chapter of the ACC and the only In-House association in Israel with 1,700 legal counsels involved in our intensive activities.

The Israeli Economy in 2023: Turbulence and Hope

In this article, partners at law firm Arnon, Tadmor-Levy highlight some of the key trends and challenges that shaped the Israeli economy in 2023, and share some thoughts on the implications for the future.

Israel is a small but resilient country that has faced numerous challenges and opportunities throughout its history. Against all odds, it has developed a dynamic and innovative economy that ranks among the world's leaders in technology, entrepreneurship, and human capital.

Despite all this, the economic and social landscape of Israel in 2023 was marked by uncertainty, volatility, and polarization, as the country grappled with the aftermath of a global pandemic, a contentious political environment, and a violent conflict on its borders.

POLITICAL UNREST

At the start of 2023, Israel found itself at a crossroads with a series of proposed judicial reforms that sparked widespread debate and brought thousands out into the streets in protest. These reforms, aimed at recalibrating the balance of power between the judiciary and the legislature, had far-reaching implications for the nation's democratic fabric, public sentiment, and economic vitality, particularly within the burgeoning tech and startup sector.

The proposed judicial reform aimed to curb the judiciary's influence over lawmaking and public policy, by limiting the Supreme Court's power to exercise judicial review, granting the government control over judicial appointments, and limiting the authority of its legal advisors. It should be noted that Israel has no formal written constitution, and its Supreme Court is traditionally very activist.

The reaction to the proposed reforms was polarized. On one side, proponents argued for the necessity of change to prevent judicial overreach. On the other, opponents feared that such reforms would undermine the independence of the judiciary and weaken democratic checks and balances, viewing the reform as an attempt to undermine democracy, human rights and the rule of law. This division manifested in the form of tens of thousands of Israelis taking to the streets in a series of countrywide protests that spanned from January to October, reflecting a society grappling with its core democratic principles.

Historically, foreign investment has thrived in Israel, particularly on account of its strong rule of law and independent judicial system. The uncertainty surrounding the reforms had immediate economic repercussions. The Israeli shekel experienced a decline, and there was apprehension about the potential adverse effects on foreign investment and the local high-tech industry. Analysts cautioned that the perceived erosion of legal safeguards could lead to credit downgrades and diminished economic stability.

The tech and startup ecosystem, a cornerstone of Israel's economic success, was particularly vocal in its opposition to the reforms. Industry leaders and companies engaged in protests, fearing that the changes would tarnish Israel's reputation as a reliable and independent legal jurisdiction, thus deterring investors. Some entrepreneurs and investors recommended diversifying risk by reallocating assets abroad, and even advocated that new companies incorporate outside of Israel. Incorporation in Israel has historically been the norm for Israeli companies, particularly in the technology sector. It did not generally serve as an impediment to direct listings on stock exchanges in the US or around the world, or in attracting multinational companies to acquire local targets. For example, Israel-incorporated companies are the third most listed on the NASDAQ, outside of US-incorporated companies.

According to a report by the Bank of Israel, the reform bill contributed to a 5% decline in foreign direct

SIMON WEINTRAUB
PARTNER, BANKING AND FINANCE

AVI ANOUCHI
PARTNER, BANKING AND FINANCE

investment and a 10% increase in capital outflows in 2023. Another report indicated that 2023 saw a precipitous drop of nearly 56% in VC investments in Israeli startups, with many companies opting to register overseas to avoid the domestic turmoil. Similarly, a report on Israeli tech exits indicated that proceeds from M&A transactions were down approximately 22%, and only four Israeli companies consummated an IPO in 2023.

TROUBLE FROM ABROAD

As if Israel's domestic troubles were not enough, the reform bill coincided with the collapse of Silicon Valley Bank (SVB), one of the largest lenders to Israeli startups, which had served as a gateway to the US market for many of them. It was reported that prior to SVB's collapse, a significant percentage of the local ecosystem with activity in the US had a financial relationship with the Bank. The sudden collapse sent shockwaves throughout the Israeli high-tech sector and, in an ironic twist, had startups scrambling to move assets - including cash - back to Israel, as the major Israeli commercial banks were considered a safer place to hold deposits. The void left by SVB in the Israeli ecosystem has yet to be filled, but many players are testing the waters, with notable activity from HSBC, Comerica Bank and several private equity funds, such as BlackRock and others.

The Israeli economy also faced headwinds from the global economic environment, which was marked by rising inflation, geopolitical instability, and supply chain issues. These global economic trends had negative implications for the Israeli economy, as they reduced the external demand and competitiveness of Israeli exports, as well as increasing import prices and the inflationary pressures in the domestic market. For example, China, which is one of Israel's largest trade partners, significantly decreased its trade volume with the State of Israel for the reasons stated above, but also on account of trade tensions between China and the US, Israel's largest trading partner.

WAR AND TURMOIL

On October 7th, Hamas attacked Israel with both a ground incursion and a massive rocket barrage targeted at major Israeli cities, killing over 1,200 Israelis and kidnapping over 250 individuals.

The attack triggered a swift and fierce response from the Israeli Defense Forces (IDF), which launched a massive military operation to repel the invaders and rescue the hostages. Despite these efforts, the war - commonly known in Israel as Operation Swords of Iron - remains ongoing to date, and efforts to broker a ceasefire and the release of the hostages have been futile.

The human and economic toll of the war has been enormous, as thousands of homes, businesses, and infrastructure were damaged or destroyed, and many people were displaced and/or traumatized. It has been estimated that, to date, approximately 200,000 Israelis have been displaced from their homes, out of a total population of approximately 9.66 million. Moreover, tens of thousands have been called up to military reserve duty, including a disproportionate number of employees from the high-tech sector.

Despite the strain on manpower, Israeli startups continue to adapt and grow. New startups have risen on ideas forged under fire, supporting a wide array of fields including defense, cyber, social well-being, logistics and infrastructure. The Israeli government has allocated NIS10 billion ($3.1 billion) for reconstruction and rehabilitation efforts, but many challenges remain, such as restoring normalcy, security, and trust among the population.

RESILIENCE DESPITE ADVERSITY

Despite the difficulties and uncertainties the Israeli economy faced in 2023, there were also some bright spots and positive developments that showcased the potential and performance of the economy, and its resilience and ability to thrive amid the turmoil.

The banking sector proved to be robust and reliable, as the Bank of Israel implemented strict regulations and supervision to ensure the stability and liquidity of the financial system. While interest rates rose, local inflation was tempered compared with other Western economies.

Specializing in serving startups and SMEs, ONE ZERO, Israel's first digital bank, successfully raised a $200 million Series B round, led by Sequoia Capital and Softbank. Founded by famous Israeli entrepreneur, Amnon Shashua, the bank - which is the first to receive a full banking license from the Bank of Israel in over 35 years - announced that it would use the funds to expand its international operations, and open new branches in Europe, Asia, and the US.

The Bank of Israel made further efforts to increase competition, by authorizing the license of another digital bank, Esh Bank, as well as granting licenses to fintech companies and pushing regulation for open banking services.

Another bright spot was the success of the offshore natural gas exploration tender that was launched by the Israeli government in 2023, which attracted several new players and investors to the field, such as Shell, BP, Total, SOCAR and Eni. The tender was part of the Israeli government's strategy to develop and diversify its energy sector, as well as to enhance its energy security and sovereignty, especially in light of the regional and global dynamics and challenges. Signed in 2023, the Israeli-Lebanese maritime border agreement marked a significant diplomatic breakthrough, establishing a permanent maritime boundary between the two nations. This accord, brokered by the US, delineates the demarcation line between the economic zones of Israel and Lebanon, and is expected to inject billions into both economies while ensuring regional stability.

Despite global trends, a sizeable number of Israeli startups were nevertheless acquired during 2023, including many high-value transactions - notably the purchases of Imperva, Talon, Perimeter 81, and Dig Security. This highlights the global appeal of Israeli companies and talent, as well as the confidence and optimism of the markets towards Israel.

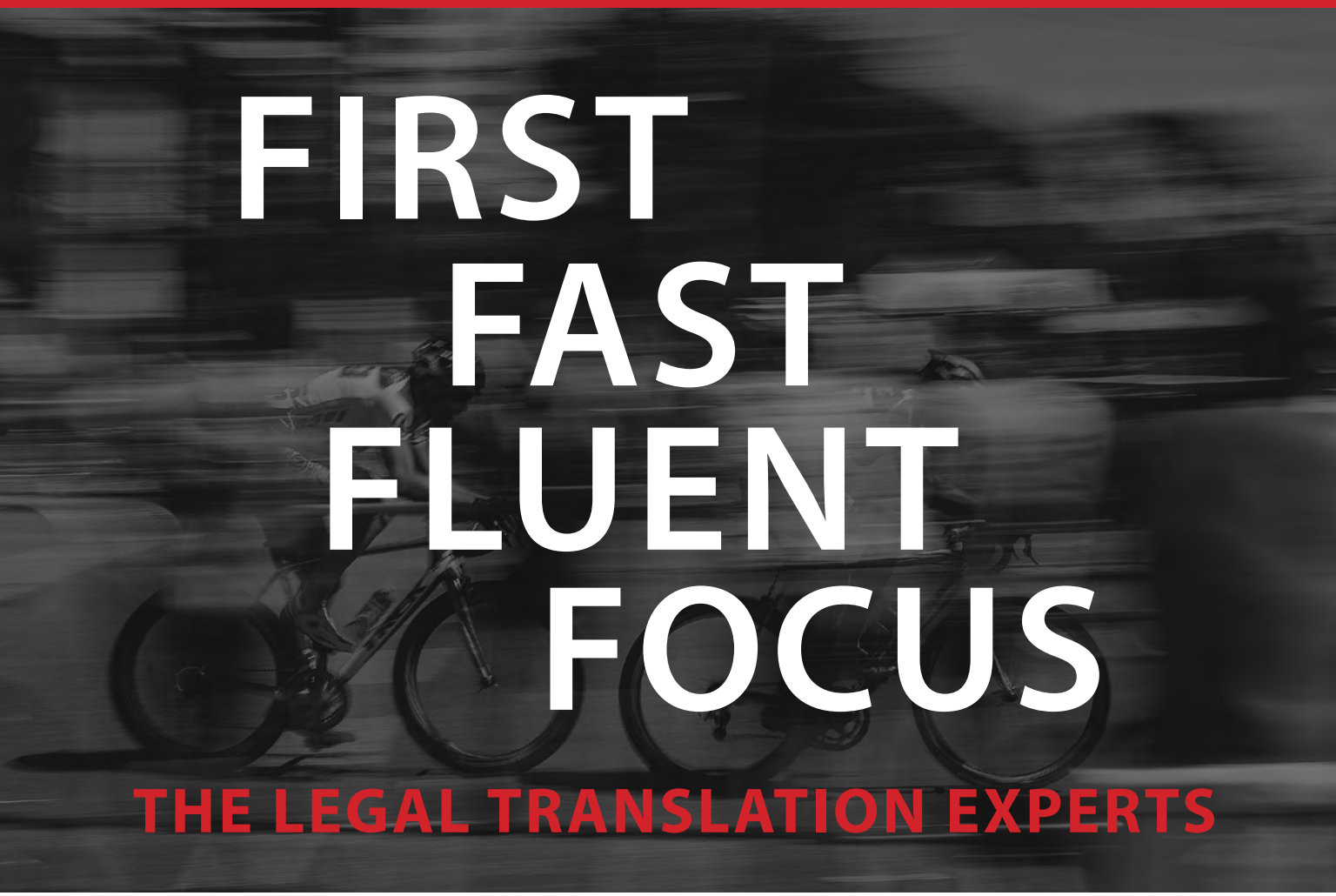
CONCLUSION

The year 2023 will be remembered as a pivotal moment when the nation's commitment to democratic principles and economic prosperity was vigorously challenged and debated. It was a turbulent year for Israeli society, which had to deal with a series of internal and external shocks and challenges as well as the proposed legal reform, such as the collapse of SVB, global economic trends, and the outbreak of war on October 7th. These events and trends had a significant impact on the performance and prospects of the Israeli economy, which experienced a slowdown in its growth but nevertheless remained resilient, even in comparison to the economies of other countries. At times, political and ideological differences looked unbridgeable and yet, following October 7th, the nation stood together in its time of need, shouldering the burden together, ready to rebuild - stronger and more united than ever.

Despite the hardships and setbacks endured in 2023, there is also a positive outlook and a hopeful message for the Israeli economy in 2024 and beyond, particularly once the current conflict subsides. We remain hopeful about Israel's ability to adapt and thrive, the long-term implications for Israel's status as a global tech hub, and its attractiveness to future investors in all areas, including energy and infrastructure projects. We expect that, when the war ends, there will be a significant economic boom, as the fundamentals - especially the tech sector - are still very strong. While many VCs are in a holding pattern, there will likely be a large wave of equity investment when the country's security situation quietens down, not to mention when the people who have been eager to complete their military reserve duty, return to work, and apply their experiences to new innovation. We also expect to see Israel continue to be a pioneer, as well as a contributor to the welfare and prosperity of its people, the region and the world. ■

ABOUT THE AUTHORS

The authors, Simon Weintraub and Avi Anouchi, are partners in the Banking & Finance and High-Tech Departments at law firm Arnon, Tadmor-Levy, based in Tel Aviv, Israel.



We are the leading legal translation team for Israel-related matters. For more than 30 years, we have been serving the largest and most prestigious law firms in Israel, the United States, and Europe.

We work hand-in-hand with top-tier attorneys, providing translation support that is critical to their litigation and transactions. Our language and legal expertise, along with our emphasis on confidentiality, make us highly valued translation partners.

Contact us today:
projects@legaltrans.com | www.legaltrans.com

legaltrans.com

Tel. (Israel) 03 939 9194
Tel. (USA) 732 432 0174
projects@legaltrans.com
www.legaltrans.com

THE CALIFORNIA ISRAEL CHAMBER OF COMMERCE

Exploring Investment Opportunities in the California Market: A Five-Year Outlook

California, renowned for its diverse economy, innovation hubs, and vibrant culture, stands as a lucrative landscape for businesses seeking growth opportunities.

As companies contemplate entering the California market over the next five years, they are poised to leverage various investment avenues across industries. This article delves into the investment opportunities that beckon companies eyeing California's market and examines the key sectors ripe for exploration.

1. Technology and Innovation:
California's Silicon Valley epitomizes the global epicenter of technology and innovation. Companies venturing into this market can tap into a myriad of opportunities ranging from software development to breakthrough advancements in artificial intelligence and biotechnology. With an ever-growing demand for tech solutions across sectors such as healthcare, finance, and transportation, California offers an ecosystem conducive to fostering innovation and driving technological advancements.

2. Clean Energy and Sustainability:
In recent years, California has emerged as a frontrunner in promoting clean energy and sustainability initiatives. With ambitious renewable energy goals and stringent environmental regulations, there exists a burgeoning demand for green technologies and solutions. Companies specializing in renewable energy, electric vehicles, energy storage, and sustainable infrastructure are poised to thrive in this market. Moreover, the state's emphasis on reducing carbon emissions presents ample opportunities for investment in carbon capture and sequestration technologies.

3. Healthcare and Biotechnology:
The healthcare sector in California is characterized by world-class research institutions, biotech companies, and a robust healthcare ecosystem. As the state continues to prioritize healthcare innovation and accessibility, companies entering this market can capitalize on opportunities in pharmaceuticals, medical devices, telemedicine, and personalized medicine. Additionally, collaborations with academic institutions and healthcare providers can foster breakthrough discoveries and advancements in medical research.

4. Entertainment and Media:
California's entertainment industry, centered in Hollywood, remains a global powerhouse. With the proliferation of streaming platforms, digital content creation, and immersive technologies, there exist abundant opportunities for companies to invest in content production, distribution, and digital marketing. Furthermore, the convergence of entertainment with technology, such as virtual reality (VR) and augmented reality (AR), presents new avenues for innovation and consumer engagement.

5. Real Estate and Infrastructure:
California's growing population and urbanization necessitate investments in real estate and infrastructure development. Companies

SHARON VANEK
EXECUTIVE DIRECTOR, CICC

venturing into this market can participate in residential and commercial real estate projects, transportation infrastructure, and smart city initiatives. Additionally, with the rise of remote work trends, there is a demand for flexible office spaces, co-working facilities, and residential properties designed for remote professionals.

As you can see, the California market offers a plethora of investment opportunities across diverse sectors, ranging from technology and innovation to clean energy, healthcare, entertainment, and real estate. Companies venturing into this dynamic landscape in the next five years are poised to benefit from the state's robust ecosystem, entrepreneurial spirit, and commitment to fostering growth and sustainability. By strategically leveraging these opportunities and embracing innovation, companies can position themselves for success in one of the world's most vibrant and competitive markets.

CALIFORNIA'S LEGAL FRAMEWORK: FOSTERING AN ENVIRONMENT FOR STARTUP SUCCESS

California stands as a beacon for innovation and entrepreneurship, attracting startups from across the globe. Beyond its vibrant ecosystem and access to capital, the state's legal framework plays a pivotal role in nurturing startup growth. Let's explore together the legal landscape of California, highlighting key factors that make it an ideal environment for startup companies to thrive.

The California market offers a plethora of investment opportunities across diverse sectors, ranging from technology and innovation to clean energy, healthcare, entertainment, and real estate.

1. Business-Friendly Laws and Regulations:
California boasts a business-friendly regulatory environment, characterized by progressive laws that support entrepreneurial endeavors. The state's flexible corporate laws, such as the California Corporations Code, provide startups with various entity options, including limited liability companies (LLCs), C-corporations, and benefit corporations. Additionally, streamlined registration processes and online filing systems simplify the establishment of businesses, reducing administrative burdens for startups.

2. Strong Intellectual Property Protections:
Intellectual property (IP) is the lifeblood of many startups, and California offers robust protections in this realm. The state's comprehensive IP laws safeguard innovations, inventions, trademarks, and copyrights, providing startups with the nec-

essary legal framework to protect their intellectual assets. Furthermore, California's proximity to leading IP law firms and its renowned judicial system contribute to a favorable environment for resolving IP disputes swiftly and efficiently.

3. Access to Venture Capital and Angel Investors:
California's startup ecosystem is fueled by a vast network of venture capital firms and angel investors seeking innovative opportunities. The state's proximity to Silicon Valley, a global hub for venture capital, ensures startups have access to abundant funding sources. Moreover, California's investor-friendly laws, such as the California Corporate Securities Law and exemptions for accredited investors, facilitate capital formation and investment activities, enabling startups to secure the financing needed for growth and expansion.

4. Supportive Labor Laws and Talent Pool:
California's progressive labor laws and diverse talent pool contribute to its attractiveness for startups. The state's employment laws, including at-will employment, non-compete restrictions, and protections for independent contractors, provide flexibility for startups to scale their workforce rapidly. Additionally, California's renowned universities and research institutions cultivate a rich talent pool of skilled professionals, engineers, and entrepreneurs, enabling startups to access top-tier talent across various disciplines.

5. Commitment to Environmental and Social Responsibility:
California has long been at the forefront of environmental and social responsibility initiatives, aligning with the values of many startups. The state's stringent environmental regulations, such as emissions standards and renewable energy mandates, encourage startups to adopt sustainable practices from inception. Furthermore, California's leadership in social justice, diversity, and inclusion fosters a culture of innovation and creativity, attracting socially conscious entrepreneurs and investors to the state.

These are some additional reasons for choosing California as a destination for both investors and entrepreneurs. California's legal framework catalyzes startup success, providing entrepreneurs with the necessary tools, protections, and resources to thrive in a dynamic and competitive landscape. From business-friendly laws and strong IP protections to access to capital, talent, and a commitment to environmental and social responsibility, California offers a conducive environment for startups to innovate, grow, and make a lasting impact on the global stage. As the epicenter of innovation and entrepreneurship, California continues to inspire and empower the next generation of startups to realize their full potential. ■

CONTACT

Sharon Vanek is Executive Director of The California Israel Chamber of Commerce. If you would like assistance and relevant information regarding the potential of penetrating theCalifornian market, please contact the California Israel Chamber of Commerce at:

317 West Portal St.
PO Box 27625
San Francisco, CA 94127
Email: info@ci-cc.org

The California Israel Chamber of Commerce (CICC) is an industry-independent, non-profit organization that supports and connects businesses in the Israeli-US ecosystem through a variety of activities. Our members include importers, exporters, service providers, wholesalers, and retailers.

Our Services Include • Promotion of sector interests • Organization of conferences on various professional subjects • Developing business relations • Detecting opportunities, tenders, and exhibitions • Consulting on taxation, customs, standards, labor, and more • Courses and Bootcamp programs on specific industries, international trade, procurement, logistics and more.

If you need any assistance in understanding the California business environment and require some market analyses, please do not hesitate to reach out to our team.

CICC
THE CALIFORNIA ISRAEL CHAMBER OF COMMERCE

GROW YOUR BUSINESS WITH US

Why Choose Us?

- Experience
- Tailored Solutions
- Expert Consultants
- Results-Driven

Looking to elevate your business to new heights? The CICC professional services offer expert guidance, strategic insights, and unwavering support to help you achieve your business goals.

Business Strategy Development

Key introductions to fellow strategic members, and other stakeholders to accelerate your go-to-market strategy.

Creating Opportunities

Join our industry or function specific training programs, participate in pitch events or join a delegation to boost opportunities.

Market Research and SDR Service

In-depth market analysis and competitive intelligence.
Reach out to potential partners and meeting scheduling.

Industries we serve

- Healthcare
- FinTech
- Cyber
- Retail
- Climate
- HRtech

Unlock your business's true potential with our professional consulting services.
Don't miss out on this opportunity to take your business to the next level!

Contact Us Today!

WhatsApp: +1-415-5395229
Email: info@ci-cc.org
Website: www.ci-cc.org

IsraelDesks League Tables 2024

LEGALLY ISRAEL100
IsraelDesks League Tables 2024

Presented by
NÍSHLÍS
GLOBAL LEGAL MARKETING

A Word from Israel Desks: Overview

We are pleased to bring you the 6th Israel Desks League Tables, showcasing international law firms that are major destinations for Israeli clients, and are a hub of valuable experience in Israel-related deals. Today, there are approximately 160 law firms with an Israel Desk, a striking 20% increase from the number of firms back in 2019.

While 2023 was undoubtedly plagued with challenges from judicial reforms and the subsequent protests to the start of a war, the Israeli traits of resilience, innovation, and boldness have shone brightly in the commercial and legal sphere, as much as elsewhere. Already in 2024, there are encouraging signs of economic solidarity with many countries, funds being raised, transactions being completed, and joint ventures being formed. This strength out of adversity is underlined by the data showcased in the latest Israel Desks rankings.

With ranked law firms ranging from magic circle firms and global powerhouses to smaller boutiques and new entrants, we have over 50 lawyers who shine across 11 practice areas and industry sectors, a testament to the amount of work carried out by international law firms involved in Israel-related matters.

As a regular fixture in the rankings, we continue to have both Value and Volume tables for M&A and Capital Markets to reflect those law firms that handle a large volume of general corporate and capital markets work, as well as those who are involved in high-value transactions and offerings. Law firms are ranked in order of volume or value but our "Elite" ranking spotlights those who particularly stood out with the largest number of matters and those with the highest value matters in what remains a competitive and vibrant market.

We reviewed the firms' submissions, collected feedback and votes from the most prominent lawyers in Israel, and looked at various factors, such as on-the-ground representatives, relationships with domestic firms, and, where possible, visits to Israel. This allowed us to identify those Leading, Prominent, Recognized, and Notable practitioners abroad, who take a proactive, instrumental, and hands-on role with respect to Israel. Furthermore, with such a huge raft of lawyers involved, those lawyers referenced in the editorial are recommended in Israel Desks rankings.

Congratulations to all!

Table of Contents

Legally Israel 100 IsraelDesks League Tables

League Tables

M&A Volume

Position	Law Firm	Volume
1	DLA Piper	24
2	Freshfields Bruckhaus Deringer	22
3	Greenberg Traurig	15
4	White & Case	13
5	Latham & Watkins	10
6	Bryan Cave Leighton Paisner	7
6	Goodwin	7
7	Clifford Chance	6
8	Bird & Bird	5
8	Sullivan & Worcester LLP	5
9	Baker & McKenzie	4
9	CMS	4
10	Royer Cooper Cohen Braunfeld LLC	3
10	Squire Patton Boggs	3
11	Allen & Overy	2
11	Davis Polk	2
11	Gowling WLG	2
11	Skadden	2
12	Cleary Gottlieb	1
12	Wiggin and Dana	1

Elite

M&A Value

Position	Law Firm	Value ($M)	Volume
1	Freshfields Bruckhaus Deringer	17,110	22
2	Latham & Watkins	10,100	10
3	DLA Piper	3,702	24
4	Cleary Gottlieb	3,600	1
5	Greenberg Traurig	2,758	15
6	White & Case	2,551	13
7	Baker & McKenzie	2,226	4
8	Sullivan & Worcester LLP	1,103	5
9	Davis Polk	680	2
10	Clifford Chance	460	6
11	Skadden	348	2
12	Royer Cooper Cohen Braunfeld LLC	280	3

Elite

Capital Markets Volume

Position	Law Firm	Volume
1	Sullivan & Worcester LLP	36
2	Greenberg Traurig	34
3	Freshfields Bruckhaus Deringer	13
4	Latham & Watkins	8
5	Chapman and Cutler	7
6	White & Case	6
7	Bryan Cave Leighton Paisner	5
8	Allen & Overy	4
8	Carter Ledyard & Milburn	4
8	Davis Polk	4
8	Skadden	4
9	Baker & McKenzie	3
9	Clifford Chance	3
10	DLA Piper	2
10	Taylor Wessing	2
11	Cleary Gottlieb	1
11	Goodwin	1
11	Gowling WLG	1

Elite

Capital Markets Value

Position	Law Firm	Value ($M)	Volume
1	Freshfields Bruckhaus Deringer	7,768	13
2	Baker & McKenzie	4,800	3
3	White & Case	3,525	6
4	Latham & Watkins	2,533	8
5	Skadden	1,947	4
6	Davis Polk	1,544	4
7	Sullivan & Worcester LLP	1,364	36
8	Allen & Overy	909	4

Private Client and Tax

Position	Law Firm	Volume
1	DLA Piper	23
2	Charles Russell Speechlys	12
3	Herrick	7
3	Taylor Wessing	7
4	Asserson	6
4	Bryan Cave Leighton Paisner	6
5	Fox Rothschild	5
6	CMS	4
6	Freshfields Bruckhaus Deringer	4
6	Wiggin and Dana	4
7	Bird & Bird	1

Elite

Employment

Position	Law Firm	Volume
1	Greenberg Traurig	214
2	DLA Piper	194
3	Asserson	62
4	Bryan Cave Leighton Paisner	25
5	Squire Patton Boggs	19
6	Taylor Wessing	12
7	CMS	11
8	Bird & Bird	6
9	Fox Rothschild	5
10	Carter Ledyard & Milburn	1
10	Pillsbury	1
10	Wiggin and Dana	1

Elite

Litigation and Arbitration

Position	Law Firm	Volume
1	Asserson	42
2	Freshfields Bruckhaus Deringer	35
3	Greenberg Traurig	24
4	DLA Piper	20
5	Bryan Cave Leighton Paisner	15
5	Zeichner Ellman & Krause	15
6	DAC Beachcroft	12
7	Taylor Wessing	11
8	Fox Rothschild	9
9	Pillsbury	8
10	Clifford Chance	6
11	CMS	4
12	Herrick	3
13	Allen & Overy	1
14	Ashurst	1
14	Carter Ledyard & Milburn	1
14	Dechert	1
14	Gowling WLG	1

Elite

IP

Position	Law Firm	Volume
1	Greenberg Traurig	11
2	Bird & Bird	10
2	DLA Piper	10
2	Freshfields Bruckhaus Deringer	10
3	Pillsbury	9
4	Charles Russell Speechlys	5
4	Fox Rothschild	5
5	Bryan Cave Leighton Paisner	4
5	CMS	4
5	Taylor Wessing	4
6	Clifford Chance	3
7	Gowling WLG	2
8	Goodwin	1
8	Wiggin and Dana	1

Elite

Patents and Trademarks filed

Position	Law Firm	Volume
1	Greenberg Traurig	19
2	DLA Piper	16
3	Pillsbury	12
4	Bird & Bird	8
4	Wiggin and Dana	8
5	Taylor Wessing	7
6	Bryan Cave Leighton Paisner	4
6	Fox Rothschild	4
7	CMS	3
8	Carter Ledyard & Milburn	2
8	Freshfields Bruckhaus Deringer	2

Elite

Hi-Tech

Position	Law Firm	Volume
1	DLA Piper	180
2	Greenberg Traurig	170
3	Bird & Bird	63
4	Goodwin	50
5	Sullivan & Worcester LLP	46
6	Bryan Cave Leighton Paisner	44
7	Pillsbury	31
8	Freshfields Bruckhaus Deringer	28
9	Taylor Wessing	27
10	CMS	18
11	Fox Rothschild	15
12	Squire Patton Boggs	14
12	Zeichner Ellman & Krause	14
13	Wiggin and Dana	13
14	Ashurst	7
15	Chapman and Cutler	3
16	Clifford Chance	2

Elite

Banking & Finance

Position	Law Firm	Volume
1	DLA Piper	65
2	Freshfields Bruckhaus Deringer	26
3	Baker & Mckenzie	18
4	Dechert	13
5	Clifford Chance	12
6	Zeichner Ellman & Krause	11
7	Taylor Wessing	10
8	Greenberg Traurig	7
9	Bryan Cave Leighton Paisner	6
10	Bird & Bird	4
10	CMS	4
10	Pillsbury	4
11	Ashurst	3
12	Herrick	2
13	Fox Rothschild	1
13	Latham & Watkins	1
13	Wiggin and Dana	1

Elite

Energy & Infrastructure

Position	Law Firm	Volume
1	Freshfields Bruckhaus Deringer	19
2	Clifford Chance	10
3	Allen & Overy	6
4	DLA	4
5	Bryan Cave Leighton Paisner	2
5	CMS	2
5	Fox Rothschild	2
5	Pillsbury	2
6	Ashurst	1

Elite

Real Estate

Position	Law Firm	Volume
1	Asserson	63
2	Greenberg Traurig	60
3	DLA Piper	24
4	Herrick	20
5	Taylor Wessing	18
6	Bryan Cave Leighton Paisner	11
7	Chapman and Cutler	6
7	Zeichner Ellman & Krause	6
8	CMS	4
9	Bird & Bird	1
9	Carter Ledyard & Milburn	1
9	Cleary Gottlieb	1
9	Clifford Chance	1
9	Gowling WLG	1

Elite

Individual Rankings

Leading

Name	Law Firm
Michael Kaplan	Davis Polk
Joshua Kiernan	Latham & Watkins
Jeremey Lustman	DLA Piper
Jonathan Morris	Bryan Cave Leighton Paisner
Joey Shabot	Greenberg Traurig
Adir Waldman	Freshfields Bruckhaus Deringer

Prominent

Name	Law Firm
Ari Berman	Pillsbury
Colin Diamond	Paul Hastings
Josef Fuss	Taylor Wessing
Louis Glass	CMS
Lee Noyek	Allen & Overy
Tali Sealman	White & Case
Mark Selinger	Greenberg Traurig
Daniel Turgel	White & Case
Yossi Vebman	Skadden

Recognized

Name	Law Firm
Guy Ben-Ami	Carter Ledyard & Milburn
Yariv Ben-Ari	Herrick
Clarissa Coleman	DAC Beachcroft
Gary Emmanuel	Greenberg Traurig
Meira Ferziger	Greenberg Traurig
Michael Friedman	Chapman and Cutler
Odia Kagan	Fox Rothschild
Etay Katz	Ashurst
Mayan Katz	Goodwin
Miram Lampert	Squire Patton Boggs
Adam Meisels	Bird & Bird
David Metzger	Clifford Chance
Adam Snukal	Greenberg Traurig

Notable

Name	Law Firm
Trevor Asserson	Asserson
Tom Beaudoin	Goodwin
David Becker	Baker & McKenzie
Susannah Fink	Gowling WLG
Adam Fleisher	Cleary Gottlieb
David Gitlin	Royer Cooper Cohen Braunfeld
Steven Glusband	Carter Ledyard & Milburn
Alexander Gold	Charles Russell Speechlys
Oded Har-Even	Sullivan & Worcester LLP
Kenneth Henderson	Bryan Cave Leighton Paisner
Lee Hochbaum	Davis Polk
Daniel Ilan	Cleary Gottlieb
Adam Levin	Dechert
Ziva Robertson	Charles Russell Speechlys
Anthony Rosen	Bird & Bird
Daniel Rubel	Zeichner Ellman & Krause
Joel Rubinstein	White & Case
Michael Sabin	Clifford Chance
Jason Saltzman	Gowling WLG
Richard Scharlat	Fox Rothschild
Bill Schnoor	Goodwin
Michael Sweet	Fox Rothschild

Editorial

Allen & Overy

With the merger of Allen & Overy ("A&O") and Shearman & Sterling approved in October 2023, A&O has been present in Israel for more than 25 years, offering one of the strongest Israeli practices globally, with 50 partners catering to esteemed Israeli clients in cross-border M&A and international capital markets. Notably, the firm's expertise extends to pivotal sectors such as energy and infrastructure, where it performs very well, and financial institutions, private equity, technology, real estate, and life sciences.

The Israel Group thrives under the role of senior corporate lawyer **Lee Noyek**, who provides a comprehensive array of services including corporate finance, M&A, joint ventures, public takeovers, and IPOs. A key asset to the firm's Israeli offering lies in its profound experience in the energy and infrastructure sector, spearheaded by prominent London partner **Ed Moser**.

Ashurst

With an understanding of the Israeli market, Ashurst's Israel Group has worked on transactions involving Israeli clients reaching outside of Israel and non-Israeli clients transacting in Israel. Heading the Israel Desk is London partner **Etay Katz**, senior partner in the Financial Regulation practice. In 2023, the firm advised on a slew of investments into Israeli start-ups on behalf of venture capitalists.

Asserson

UK-based Asserson maintains a formidable presence in the Israeli market, anchored by its Tel Aviv office. Fronted by **Trevor Asserson**, the team excels in UK legal services for Israeli clients, taking top spot in both litigation and arbitration and real estate, and with an exceptional record in employment, where it is also ranked in the Elite category.

Hadie Cohen specializes in addressing employment concerns for Israeli companies, while co-head of the Dispute Resolution practice, **Baruch Baigel** has a notable track record in handling high-profile UK High Court cases, with several involving Israeli clients or individuals based in Israel. **Yisrael Hiller** heads the U.S. Dispute Resolution division, bringing expertise in contract, shareholder, and construction disputes to Asserson's extensive clientele.

Baker & McKenzie

Over the past five years, Baker McKenzie's Israel Transactional Practice has witnessed a rise in cross-border M&A and capital markets transactions relating to Israel, becoming an Elite firm in capital markets (value).

London based M&A and high yield capital markets partner **David Becker**, formerly with White & Case, is often noted as a leading name on Israel-related cross-border M&A, capital markets and financing transactions. Baker McKenzie also has world leading global tax, regulatory and IP advisory and litigation/arbitration practices that regularly advise Israeli multinationals on some of the most complex situations.

Among a pipeline of capital markets transactions in 2023, Becker led the team advising 10 leading global investment banks as underwriter's counsel on a USD2.5 billion sustainability linked high yield bond offering for Teva Pharmaceuticals. Flying very high in the banking category, the Israel Practice represented Bank Hapoalim in 17 separate European financings. The firm also advised Israeli backed Globe Invest and Unikmind, Teddy Sagi Group investment vehicles, on the GPB1.25 billion take private of London-listed Kape Technologies. This was one of the largest take-private transactions in 2023.

Bird & Bird

Led by **Adam Meisels**, Corporate partner in the London office, the Israel Group of global law firm Bird & Bird comprises lawyers from its 32-office network, with significant presence in the UK, Europe, Middle East and Asia-Pacific regions. Prominent in the high-tech and IP space – where the firm is ranked in the Elite category - the firm's experience cuts across many industry sectors and practice areas, such as venture capital, technology & communications, life sciences & healthcare, as well as retail & consumer, automotive, cybersecurity, financial services and fintech, and renewable energy & climate-tech.

In 2023, the firm advised on the UK aspects of the sale of Israel's global data connectivity company Webbing Solutions to Wireless Logic. The Israel Group also represented Leumi UK in providing credit facilities to Zorca Bloomsbury Ltd. for the refurbishment of two hotels into one five-star boutique hotel within the Zetter Hotel group, and Mizrahi Tefahot Bank in the loan facility to Greenwood Developments to fund the refurbishment of Cavern Walks Shopping Centre in Liverpool. With more than 25 years' experience in technology and electronic communications, **Frederique Dupuis-Toubol** is a key figure in the team, as is Legal Director in the firm's Commercial Department, **Anthony Rosen**.

Bryan Cave Leighton Paisner

With nearly four decades of experience in the Israeli market and a representative office located in Tel Aviv, Bryan Cave Leighton Paisner ("BCLP") acts for more than 200 Israeli and Israel-related entities, both public and private, and across many sectors such as technology, infrastructure, real estate, food and agribusiness, manufacturing, finance, pharmaceuticals, energy, and venture capital.

In 2023, BCLP has excelled in M&A, employment, litigation, and performed well in high-tech and real estate work. Leading the charge are the hugely experienced **Jonathan Morris** (London) and **Paul Miller** (Tel Aviv), together serving as co-chairs of the firm's Israel Desk, alongside **Ken Henderson**, (New York), who brings a wealth of corporate and securities transactional experience to the table. Notable transactions include advising on Teddy Sagi's Unikmind Holdings' public offer for the acquisition of Kape Technologies Plc, valuing Kape at USD1.6 billion in May 2023. In discreet litigation matters, London-based partners **Oran Gelb**, UK Head of Banking Litigation, and **George Burn**, Co-Lead of International Arbitration, have been actively representing Israeli clients, contributing to a busy year for the firm.

Carter Ledyard & Milburn

Built on the foundation of 160 years of legal service, one of New York's oldest law firms, Carter Ledyard Milburn (CLM) has been representing Israel-based companies for over 20 years in corporate, securities, M&A, among other areas.

In 2023, the Israel practice group was busiest in capital markets transactions, among others, recently advising on private placements for Scoutcam Inc. and TAT Technologies. Key figures include **Steven Glusband**, who also co-chairs the firm's Corporate department and chairs the Securities practice group, and Israel-born **Guy Ben-Ami**, a leader of the firm's Israeli Cross-Border practice and licensed to practice in both the U.S. and Israel.

Chapman Cutler

There is yet another stellar showing for Chapman Cutler, which was recognized in 2023 for its involvement in capital markets and real estate transactions, among others. Where capital markets and restructuring overlap, Chapman is at the sweet spot, acting as counsel to Israel-based Mishmeret Trust Company, Ltd. in a raft of maters, including separate restructurings of bonds issued by Zarasai Group Ltd. and Delshah Capital Ltd. In other Israel-related mandates, the Israel Group also enjoyed a presence in 2023 in the fintech sector and advised on real estate loans for Israeli lenders.

The compact Israel Practice is led by partner **Michael Friedman**, who advises Israeli financial institutions, investment funds, trustees and law firms seeking U.S.-based counsel in finance and restructuring matters.

Charles Russell Speechlys

London real estate partner **Alexander Gold** also heads the Israel Desk of Charles Russell Speechlys, which makes its entrance into this year's Israel Desks rankings – especially proactive in private wealth, taking an Elite position in private client and tax in its debut year. London partner **Ziva Robertson** has also been active in private client disputes.

The firm was particularly active in IP, especially trademark applications for Israeli clients. **Charlotte Duly**, head of the firm's Brand Protection department, advised on applications for SWIFTERIO in the name of SWFT Technologies Ltd., as well as for Israeli private company, KORRO AI Limited.

Cleary Gottlieb

Headquartered in New York, international firm Cleary Gottlieb ("Cleary") is acknowledged for its solid track record and in 2023 advised on one the landmark transactions. Brussels partner **Patrick Bock** led the team advising Thales, which bought Imperva, an Israel-founded leading provider of application and data security solutions, from software investment firm Thomas Bravo in a transaction valuing Imperva at USD3.6 billion.

The firm's Israel Group comprises prominent capital markets lawyers, such as **Adam Fleisher**, who has represented numerous Israeli clients in the industrial, defense, tech and biotech sectors. In 2023, he advised UroGen Pharma Ltd. a biotech company dedicated to developing and commercializing innovative solutions that treat urothelial and specialty cancer, on a USD120 million private placement, while Israeli clients also benefit from **Daniel Ilan**, who has an IP, cybersecurity and privacy focus.

Clifford Chance

A hugely active participant in the Israeli market for many years, Clifford Chance successfully harnesses its global reach to help Israeli clients reach international markets, and international clients access Israel. Ranked in the Elite category in energy and infrastructure and strong in banking, among other areas, the Israel Group has been advising bidders and lenders on light rail projects in recent years – notably acting for HSBC and Bank Leumi on financing the construction of the Tel Aviv Light Rail (Purple Line), with

David Metzger, global head of Clifford Chance's Construction Group, a key figure.

The Group features many other big-hitters, such as **Sam Clinton-Davis**, a New York based M&A and private equity lawyer acting as the Managing Associate of Clifford Chance's Israel practice. Co-head of Clifford Chance's US Funds & Investment Management Group, Hebrew-speaking **Michael Sabin** has an active Israel practice, advising Israel-based sponsors and investors on their fundraising and global investment activities. Highlights include the August 2023 representation of Affinity Partners, Jared Kushner's private equity fund, backed by the Saudi PIF on their first investment into an Israeli company, Shlomo Group. Furthermore, New York-based **Jason Parsont**, promoted to partner in 2023, maintains an active and broad corporate practice, while global head of the Restructuring and Insolvency Group, **Philip Hertz** is another prominent member of the team.

CMS

CMS stands out among European-focused law firms for having senior equity partners based in Israel, making it a key player for over 100 Israeli clients seeking overseas investment opportunities or expansion, as well as for businesses and investors aiming to strengthen their presence in Israel. With a track record of over 25 years serving Israeli clients and international entities with interests in the country, CMS solidified its commitment by establishing a Tel Aviv office in 2021.

Within the Israel Group, **Andrew Besser** and **Louis Glass** are key figures. While Besser is an Israel-based and experienced real estate finance partner, acting for the three largest banks in Israel, Glass, a specialist in high-tech and VC, is one of the few international UK-facing lawyers who can lead M&A transactions in fluent Hebrew.

In 2023, CMS was acknowledged for its advice to Israeli clients in the banking, energy, real estate and high-tech sectors – and also ever-present in M&A, litigation, brand protection and IP ,and employment, notably advising on hires and exits overseas.

DAC Beachcroft

Israel is an important region for DAC Beachcroft, with 2023 seeing the Group act for a raft of clients in high-stakes litigation and arbitrations. The firm was especially prominent in class actions, litigation, product liability and contract disputes, as well as pension and shareholder disputes.

The compact team features the experience of London-based trio **Clarissa Coleman, Chris Wilkes** and **Ilana Gilbert,** especially active throughout 2023.

Davis Polk

Comprising a team of Hebrew speakers and graduates from Israeli law schools, the 37-strong group is often involved in the country's milestone transactions. The firm's co-heads of the Israel Practice are head of the Corporate department, **Michael Kaplan**, M&A partner **Lee Hochbaum**, and New York litigation partner, **Benjamin S. Kaminetzky**, who acts for clients in complex commercial and bankruptcy litigations in courts across the U.S.

Harold Birnbaum led one of 2023's most striking M&A transactions - advising Smith+Nephew, a U.K.-based portfolio medical technology business and equipment manufacturer, on its USD180 million acquisition of CartiHeal, a privately held medical device company based in Israel and New Jersey. The target develops proprietary implants for the treatment of cartilage and osteochondral defects.

Dechert

Philadelphia-born firm Dechert has been involved in Israel-related matters for more than 40 years and offers a 24-strong team led by **Adam Levin**, who also co-heads Dechert's Corporate group in London, while fellow London partner, **Douglas L. Getter** also brings experience in cross-border M&A transactions involving Israeli parties.

In 2023, the team was involved in a number of capital raisings involving Israeli clients. New York global finance partner, **Andrew Pontano**, who also leads Dechert's Asset Finance and Securitization group, was an integral part of multiple financing transactions in 2023. Among them, he acted for Pagaya Structured Products LLC in its fourth securitization of unsecured consumer assets, as well as a USD285 million 144A Private Asset Backed Securitization backed by automobile loan receivables. Managing Partner of the Boston office and is the global Chair of Dechert's Cybersecurity & Privacy Practice, **Brenda Sharton** acted for Flo Health, Inc. in a putative class action pending in Israel on behalf of all Israeli users of the Flo fertility tracking App. This dispute focused on the alleged sharing of users' data with third-party analytics divisions.

DLA

The global knowhow and resources of DLA ensure that it is once again ranked in multiple Elite categories and regularly involved at the top end of the Israeli market. The Israel Group took first place in M&A (volume), banking and high-tech, and also earned Elite rankings in employment, litigation and arbitration, IP, real estate, and private client and tax, snapping up first place in the latter.

From the U.S. to Latin America, Europe to Asia, the Israel Group counts more than 100 lawyers and almost twice as many as Israeli clients and is led by **Jeremy Lustman**. Tapping into his wealth of experience, he advised Kedma Capital on its acquisition of a controlling interest in Mexican company Politiv A.A. Ltd. and OpenWeb on the U.S. aspects of the USD100 million acquisition of Jeeng. He and London-based **Jon Kenworthy** acted for MoonActive Ltd. in its acquisition of the mobile game, Zen Match, from Turkey-based Good Job Games, and Solar Edge Technologies on the acquisition of Hark Systems Ltd. Co-chair of M&A Group, and New York corporate partner **Jon Venick** advised on a string of M&A transactions, including the business combination between Freightos and SPAC, Gesher I Acquisition Corp., while Phoenix partner **Steven Pigeon** advised Roth CH Acquisition IV, a publicly traded SPAC, on its merger with Israeli energy storage company Tigo Energy, at a company valuation of USD600 million.

Fox Rothschild

The Israel practice group at Fox Rothschild, boasting a team of 31 professionals, serves as a pivotal link between Israeli ventures and the expansive landscape of U.S. markets. The practice is led by **Michael Sweet, Odia Kagan,** and **Sarah Biser**, situated across the San Francisco, Philadelphia, and New York offices respectively. The experienced New York-based employment litigator **Richard Sharlat** is another recognized lawyer in Israel Desks.

Recognized for its expertise in IP, among other areas, the firm provides strategic counsel to clients within the software, agriculture and other sectors, while also delivering robust data privacy services to companies operating in healthcare and medtech fields. Notably, chair of the GDPR Compliance & International Privacy group, Kagan (Philadelphia) brings extensive experience in facilitating cross-border transactions for Israeli startups and multinational corporations. The Group also supports Israeli families, offering assistance in family law and estate planning matters.

Freshfields Bruckhaus Deringer

A powerful force in the Israeli market, Freshfields' Israel Group excels across diverse sectors, ranked in the Elite categories for banking and energy and infrastructure, taking first place in the latter. The Israel Group also is ranked in the Elite category in both M&A (value and volume) and capital markets (value and volume), as well as in litigation and arbitration.

Spearheaded by a formidable trio of principals, the team comprises **Adir Waldman**, stationed in Israel, who leads a multi-jurisdictional group of Freshfields attorneys dedicated to advising Israeli clients and enterprises with interests in the region; **Taryn Zucker**, a partner based in New York, renowned for her extensive experience in guiding Israeli clients through capital markets transactions; and **Menachem Kaplan**, a seasoned partner in New York with longstanding ties to Israel.

In a notable 2023 highlight, the Group represented Aristocrat Leisure, an Australian entertainment and content creation entity, in its all-cash acquisition of NASDAQ-listed Israeli NeoGames, and provided counsel to Delek Group regarding the contemplated sale of an interest in New Med Energy to BP and Abu Dhabi National Oil Co (ADNOC), culminating in a take-private of New Med, marked by the signing of a non-binding MOU in March 2023. Freshfields has also been instrumental in advising Israeli company SodaStream in various IP, product safety and competition matters across a number of jurisdictions.

Goodwin

Rated highly in high-tech and M&A, Goodwin's Israel Practice taps into a diverse team across various practice areas and global offices, acting for private equity and VC firms investing in Israel, entities conducting business within Israel, and investors seeking opportunities in the region.

Notably, the Israel Group excels in supporting start-ups, with Life Sciences partner **Mayan Katz** in New York playing a pivotal role in advising BioSight on its merger with Ayala Pharmaceuticals and representing ReWalk Robotics Ltd. in its acquisition of AlterG. In the dynamic cyber sector, the team achieved significant milestones, including advising SoftBank Corp. on the initial closing of a USD100 million Series G financing for Cybereason Inc. and Charles River Ventures as lead investors on a USD40 million Series B financing for Legit Security.

Other key figures include **Bill Schnoor** in Boston and London, a partner with a rich background in the firm's Technology and Life Sciences groups, and **Thomas Beaudoin** in Boston, a partner in the Business Law Department and a member of the Private Investment Funds practice.

Gowling WLG

Multinational law firm Gowling WLG's Israel desk is co-led by Londor **Susannah Fink** and Toronto-based **Jason Saltzman** and compris 40 lawyers. In M&A, the team advised Beersheba cannabis compar Biotechnologies, on a business combination, in accordance with a rever over ("RTO") transaction. In patent litigation, the firm has been couns Aviv pharma company Neurim in a complex series of patent litigation which validity and infringement of two of Neurim's patents has been a Trademark expert **Jon Parker** is a key advisor from the firm's Dubai o

Gowling WLG was formed from the merger of Canada-based Gowli UK-based Wragge Lawrence Graham & Co in February 2016.

Greenberg Traurig

One of the strongest firms of 2023, Greenberg Traurig is ranked in t categories in high-tech and real estate, as well as in M&A and Capital I (both volume), litigation, IP and employment, where it takes top spo Aviv office houses over 100 professionals dedicated to its Israel F Serving as a significant conduit for Israeli enterprises and innovators ve into global markets, it also assists non-Israeli entities keen on esta themselves in Israel.

Under the guidance of Managing Shareholder **Joey Shabot**, wh the Corporate department in Israel, the Israel Practice flourishes. is extensively engaged in various M&A, joint venture, and venture transactions with Israeli entities, in addition to litigation proce throughout 2023. This past year saw a cross-border team USD107 million acquisition by Sega Sammy Holdings Inc., a Tokyo entertainment, gaming and resorts company, of GAN Limited company with an Israel subsidiary.

The Israel Group is packed with instrumental figures, such as Tel Aviv **Lawrence Sternthal**, who leads the International Real Estate depart Israel, which advised Israel's Menora Mivtachim on the joint acquisit €500 million student housing portfolio in the UK together, as well as a Clal Insurance Company in a USD306 million Programmatic Joint Ver buy multifamily and industrial properties in the U.S. Employment shar **Meira Ferziger** is prolific on a raft of employment issues for Israeli representing Scadafence, an Israeli developer of cybersecurity solutic U.S. employment matters related to its acquisition by Honeywell. Co and securities partner **Gary Emmanuel** brings clients more than 2 experience, especially in relation to capital raisings and IPOs. In 2 supported NASDAQ listed Akari Therapeutics on closing a Registere

Offering, as well as a private placement offering (PIPE). **David Huberman** also works closely with Israeli and domestic clients in capital raising transactions and **Mark Selinger** divides his time between Israel and the U.S. and represents public and private U.S., Israeli in public offering and M&A transactions.

Adam Snukal is also recognized this year for his work in the technology sector, across many verticals and industries.

Herrick Feinstein

New York-based law firm, Herrick offers a robust Israel practice group, a key component of the firm's broader global experience. The 15-lawyer group is recognized by Israel Desks rankings for a depth and diversity of experience, especially in the real estate sector, where it is once again an Elite firm. Co-chairing the firm's Israel and Real Estate Hospitality practice groups, Real Estate partner **Yariv Ben-Ari** acts for real estate lenders, trustees, servicers, owners, operators, developers and contractors on a variety of sophisticated matters. He is backed by a team including seasoned veteran of New York City's commercial real estate market, Real Estate Chair, **Belinda Schwartz**, who was named Herrick's Executive Chair in March 2023, as well as cross-border tax expert, **Louis Tuchman**, partner and chair of the firm's Tax department.

In real estate, the Group represented Bank Hapoalim as senior co-lender in a USD165 million acquisition and construction loan to Moinian Group to develop a mixed use residential and hotel property in Manhattan, and also acted for Valley National Bank in a USD252 million syndicated construction loan for a property located in Coney Island, Brooklyn.

Latham & Watkins

With a towering presence in M&A and capital markets, Latham & Watkins' ("Latham") Israel Practice is ranked in the Elite categories for both value and volume. The firm leverages its global reach to provide strategic advice to Israeli clients on some of the highest profile and highest value transactions in the Israeli market. **Joshua Kiernan** (London) is an influential figure in a large team spanning many offices and that takes center stage in many of the largest M&A and capital markets transactions.

In 2023, Kiernan and **Joshua Dubofsky** (Silicon Valley) acted as buyer's counsel in Palo Alto Networks' purchase of Talon Cyber Security, an Israel-based cybersecurity firm. Together with partner **Leah Sauter** (New York), they also acted for NeoGames, an Israeli-founded online gaming firm, in its sale to Aristocrat Leisure. In capital markets, **Ryan Lynch** (Houston) acted

Paul Hastings

There was a leap forward for the U.S.-based global law firm Paul Hastings with recent hires boosting its Israel Practice. Representing a number of Israeli high-tech clients and public companies, the firm benefited from the February 2024 arrival of **Colin Diamond**, who co-chairs the firm's Global Securities and Capital Markets Practice. Ranked in last year's Israel Desks, the former White & Case lawyer advised on key offerings in 2023. Also in the department, as Of Counsel, is **Gil Savir**, who joined the firm from Davis Polk in 2023. Based in New York, both lawyers are leading the Israel related endeavors.

Pillsbury

The Israel team of this distinguished U.S. firm, comprising ten seasoned professionals, serves over 25 Israeli clients across the high-tech, life sciences, finance, and energy sectors. Ranked in the Elite category in IP, the team is renowned for its expertise in trademark and patent applications for Israeli tech firms, as well as specialized regulatory advice. The team was also present in the banking and high-tech sectors, among others.

Heading the Israel Practice is **Ari Berman**, who also co-chairs Pillsbury's Securities Litigation & Enforcement practice. With a focus on commercial litigation, Ari has defended clients in shareholder disputes and navigated federal securities laws investigations, leveraging his experience with Teva Pharmaceuticals in pivotal litigation matters, including M&A and insurance disputes. Assisting him is Deputy Head **Nathan Renov**, an expert in IP strategy across sectors like software, cryptocurrency, and cybersecurity. Renov's strategic counsel extends to groundbreaking ventures, such as facilitating the establishment of the Shaare Zedek Arieli Innovation Hub, SHAAR, advising Areli Capital in the JV, which aims to connect innovation with capital investment opportunities.

Royer Cooper Cohen Braunfeld

With two offices in Pennsylvania and another in New York, Royer Cooper Cohen Braunfeld ("RCCB") enters this year's Israel Desks rankings. Playing a pivotal role in fostering business ties between Philadelphia and Tel Aviv, the highly acclaimed M&A lawyer **David Gitlin** leads the group, having been a former president of the Philadelphia-Israel Chamber of Commerce. He led the team acting as lead counsel to Israel's Lidorr Elements Ltd. on its sale to the global company, Azelis Group NV.

Skadden

Recognized as a premier global law firm with a dedicated focus on Israel, Skadden has a longstanding history of advising Israeli companies operating internationally and assisting non-Israeli entities in their ventures within Israel. With a traditional presence in M&A and capital markets, the Israel practice strongly features New York capital markets partners **Yossi Vebman** and **Michael J. Zeidel**, who advised financial institutions J.P. Morgan Securities LLC, BofA Securities, Inc., and Barclays Capital Inc. as joint bookrunning managers in Enlight Renewable Energy Ltd.'s USD252 million IPO on NASDAQ.

Furthermore, corporate partner **Michelle Gasaway** led a team out of the LA and Palo Alto offices, representing Intel in a significant USD1.6 billion secondary offering of Mobileye Global Inc.'s Class A common stock by Intel Overseas Funding Corporation.

Squire Patton Boggs

The 33-strong Israel Desk at Squire Patton Boggs has a longstanding and high-profile Israeli client base, particularly across the technology sector, notably in fintech, cyber and smart transportation, among others. The team is particularly recognized by Israeli clients for its immersion in the employment field, with work involving significant advice on the recruitment of employees overseas, share options/benefits and data privacy.

With two decades' experience in and understanding of the Israeli market, **Miriam Lampert** provides UK employment advice to a raft of Israeli corporates on their UK operations, while Beijing-based **Sungbo Shim** is one of few lawyers in China with real-world experience of advising Israeli companies on both employment issues, as well as their acquisitions.

Sullivan

U.S.-based international firm Sullivan showcases considerable Isr expertise in capital markets, taking pole position in capital market With lawyers across its New York, Boston, Washington D.C., ar offices, the team also undertakes M&A, particularly in cross-bor Israeli corporates, seed financings, and investments.

With the strongest presence in capital markets, Sullivan serves a counsel for publicly traded and pre-IPO companies, offering gu various securities matters. Sullivan is renowned for its role as un counsel in public offerings of Israeli and U.S. companies tradec NYSE, or NASDAQ. It has notably advised many Israeli compani NASDAQ listings since 2013. In 2023, it also served as a key adviso Alliance Global Partners.

With almost 20 years' experience, **Oded Har-Even** (New York) the international capital markets practice, advising Israeli private companies on their Wall Street issuances. In 2023, Har-Even's included advising DarioHealth and PolyPid Ltd. on private plac well as a direct offering for Evogene. Co-managing the Tel Aviv off **Alfiah**, who has been advising Kadimastem Ltd. and Upsellon Bra capital markets related work and also acted for UserWay in its by Level Access. In the high-tech sector, partner **Tamir Chagal** Biomica's investment from a Chinese-Israeli fund, while partner **Eli Oz** supported Wearable Devices in its collaboration with Qualcom **Tehila Levi Lati** brings unique experience of Israeli companies doir in China, and Chinese companies doing business in Israel.

Taylor Wessing

With over 20 years in the Israeli market, the Israel Desk of Taylc continues to make an impact with its focus on dynamic sect recognized in the Elite category in real estate. One notable highlig the representation of Israeli insurance group Harel on the sale of 50 London, a trophy building let to the UK Government.

The firm also performs well in the high-tech and banking sectors and key employment, litigation, private client and tax work. The Israel by London-based **Josef Fuss**, who co-leads the international T Media & Communications sector group. In 2023, **Laurence Lieb** been especially prominent in litigation involving Israeli parties. experienced London real estate partner **Keith Barnett** is another name in the team.

White & Case

One of the most preeminent firms with a commitment to Israel spanning several decades is White & Case, which is entrenched among the elite law firms in Israel related M&A (volume) and capital markets (value). One of the outstanding groups for sophisticated and high-quality transactions, the team is active across a broad range of industries in Israel, including high-tech, healthcare and medical devices, clean tech, agriculture, real estate, energy and oil and gas, chemicals, consumer products and financial services.

Headed by London partner **Daniel Turgel**, the Israel Desk advised on a raft of high-profile transactions in 2023 – including acting for SPAC Prospector Capital Corp. on its combination agreement with automotive software company LeddarTech Inc. Committed to the Israeli market for over a decade, Turgel has advised on a string of M&A and investment transactions in 2023, including in the semiconductor industry. One highlight saw Turgel advise Israel-headquartered Camtek Ltd. on its purchase of Germany's FRT Metrology business (FRT) from California-based FormFactor Inc. for an all-cash purchase price of USD100 million.

The Israel Desk also comprises partners **Tali Sealman** (Silicon Valley), whose cross-border M&A practice saw her represent Israeli start-up Autotalks Ltd, a fabless semiconductor company, in its sale to Qualcomm, and capital markets partner **Joel Rubinstein** (New York), who has also had a busy 2023 in Israel related transactions. Together with **Laura Katherine Mann** (Houston) he advised Tigo Energy, Inc., a leader in solar and energy storage solutions, on its merger with Roth CH Acquisition IV Co., and the listing of the combined company on NASDAQ.

Wiggin and Dana

This year Wiggin and Dana enters the Israel Desks rankings for its representation of start-ups and large publicly traded companies across various sectors including defense, aerospace, software, and medical devices. With a roster exceeding 70 Israeli clients in 2023, the Israel Desk is led by **Steven Malech** (New York) and **Tahlia Townsend** (Washington DC and Connecticut). Malech focuses on disputes concerning family wealth and closely held businesses, while Townsend specializes in international trade compliance, particularly in representing Israeli clients. **Daniel Goren** (Connecticut) also works extensively with Israeli clients in international trade compliance.

The firm performed well in IP, particularly in patent prosecution, where Chair of the Patent Prosecution Group **Pierre Yanney** (New York) provided expertise in patent applications for Israeli clients.

ZEK

Based in Manhattan, Zeichner Ellman & Krause LLP ("ZEK") has an Israel Desk spread across New York, New Jersey, Connecticut, Washington DC, as well as in a Tel Aviv office. ZEK was the very first law firm to be certified as a foreign attorney's office by the Israel Bar Association.

Daniel Rubel is the founder and co-head of the Israel practice group, which has performed well in banking and real estate in 2023. Dispute Resolution partner Rubel acted in a dispute between American Foundation for Basic Research in Israel and the Israel Academy of Sciences and Humanities over the control of USD17 million in assets designated for charitable purposes. The group is involved in multiple examples of breach of contract, fiduciary duties and other types of litigation. Executive partner **Stuart Krause** leads cross-border (US/Israel) litigation in New York, California, Delaware, and other U.S. locations relating to commercial disputes. He has been acting for the CEO of large Israeli company in multiple high profile U.S. commercial disputes. **Fred Umane** has led on multiple loans and real estate financings with an Israeli angle throughout 2023. New York litigation partner **Bruce Goodman** is another key figure who has been active in 2023.

General Counsel Roundtable

The US-Israel Legal Review *invited three senior in-house lawyers – one from the US, two from Israel - to give us an insight into their working lives, and the impact of Israel's state of war on their roles.*

We are pleased to introduce our three in-house counsel participants in this year's GC roundtable discussion. From Washington, DC, we welcome **Gerald (Gerry) Sachs**, Vice President of Legal for New Product Initiatives at **Remitly**; and from Tel Aviv we are delighted to host B**at-sheva Boker**, Senior Vice President Legal Affairs and General Counsel at **Ness Technologies**; and **Ariel Zeewi,** Head of the Legal Department at **Nitsba**.

Let's start off by each of you introducing the companies you work for. Could you outline for us the various markets and industries you operate in? Bat-sheva, would you like to kick off?

Bat-sheva Boker: Ness is one of Israel's largest and most prominent Information Technology and Digital service providers. This is attributed to its hundreds of loyal customers and partners and to its over 4,000 professional employees, who are the most valuable asset of the company. For the past 25 years, our employees have been the driving force behind our ability to execute our core business and deliver substantial value to our customers.

We have decades of cumulative experience and a track record for successfully, effectively, and efficiently managing some of the largest-scale and complex projects ever executed in Israel. Ness has a deep understanding of what it takes to be a leading technology projects service provider and is well equipped to do so. This achievement starts with a high level of professional expertise, deployment of comprehensive quality assurance processes and methodologies, as well as risk management processes. Moreover, Ness sets the training and development of its skilled personnel as the highest priority combining business understanding with advanced technical knowledge. All these are leveraged by Ness to ensure timely project delivery to the customers' satisfaction.

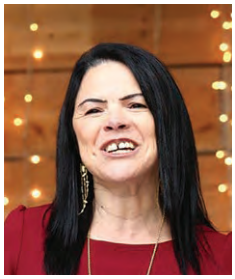
That's a very impressive endorsement of your company and its employees, and the markets and industries you're active in!

Bat-sheva Boker: Yes, NESS operates in all worlds of technology and IT, such as: development, digital, testing, Automation, ERP, DATA, AI, infrastructure, cloud, cyber, representation of leading software products, IP development for the financial sector and more. We provide services and solutions to about 500 of the largest customers in the Israeli market, and operates mainly in the following sectors: financial, government, defence, health, and hi-tech.

Thank you Bat-sheva. Gerry, if I may turn to you. Remitly is known as an international digital payments company. Please tell us more about your markets and company. You recently made an Israeli acquisition.

Gerald Sachs: My pleasure. Just before I come on to the Israeli acquisition, I'll give you an overview of my organisation. Remitly is a trusted provider of digital financial services that transcend borders. The company was founded in 2011 and initially launched services in only a handful of corridors. Today, our global footprint spans over 170 countries, and we serve customers across over 5,000 different corridors. I recognize "corridor" is a bit of a jargon-y term, so to clarify, this word refers to a country pairing, or the combination of the country where a customer originates payment, and the country where that payment is received. Given the global nature of our business and the diversity of our customer base, it's also important to note that we offer a wide array of delivery options in the markets we serve through our robust disbursement network, including billions of bank accounts and mobile wallets, hundreds of thousands of cash pickup locations, and even home delivery in some markets. Additionally, our product is available in 18 languages.

GERALD (GERRY) SACHS
VICE PRESIDENT OF LEGAL FOR NEW PRODUCT INITIATIVES
REMITLY



BAT-SHEVA BOKER
SENIOR VICE PRESIDENT LEGAL AFFAIRS AND GENERAL COUNSEL
NESS TECHNOLOGIES

ARIEL ZEEWI
HEAD OF THE LEGAL DEPARTMENT
NITSBA

And the Israel side of your business?

Gerald Sachs: In January 2023, Remitly acquired Rewire, an Israel-based remittance and financial services platform for migrant workers. Rewire is now known as Remitly Israel and combines Remitly and Rewire's expertise and strategic alignment to continue executing on Remitly's vision to transform lives with, as I mentioned at the outset, trusted financial services that transcend borders. We have an amazing team in Tel Aviv who work hard to provide Israeli customers the ability to send money to the United States, the United Kingdom, and Europe while also leveraging Remitly's extensive payments network to allow customers from around the world with the ability to send money to Israel. Personally, I know it can be expensive to send money to/from Israel, so I encourage any of our readers who haven't tried our app to do so - it's very easy, quick, and low-cost.

Ariel, Nitsba Group is a well established real estate company, headquartered in Israel. Tell us more.

Ariel Zeewi: I'd be happy to. Nitsba Group is one of the largest real estate companies in Israel that mainly deals with entrepreneurship and operation of profitable real estate. Nitsba owns real estate assets of all types, including office buildings, commercial centers, transportation centers, parking lots, logistic centers, hotels, long-term leased apartments, and more.

As Head of the Legal Department at Nitsba, what is the size and scope of your legal team, and can you give us a brief overview of your daily role in managing the legal and regulatory aspects of the company's business, and your particular specializations within that?

Ariel Zeewi: Unlike other companies, almost all of the legal work at Nitsba is done by the in-house legal department, which has approximately 20 employees who are allocated into divisions. There is a real estate contract team, a municipal taxation team, a team that advises the engineering department, a customer relations team, litigation team, and so on. The main reason I established the legal department and do most of the work in-house is that I believe that although every legal advisor is an attorney, not every attorney is a legal adviser. A good legal adviser is one who knows how to acquire the information from all departments, see the bigger picture, understand the strategy of the company and sees in his own eyes the commercial aspect and not only the "victory". I believe that he needs to have a direct relationship with the company's owner and the decision makers in all its departments and can give the company a value that an outside lawyer would find difficult to give.

Today's rental market in Israel is a very difficult market and there is literally a war for every potential tenant, so as part of my role as head of the department, I am very rigorous about very fast response times of all department employees in order to promote contracts and to create an appropriate legal framework for contracts that on the one hand prevents exposure of the company, but on the other hand will allow the closing of the deal.

That's a great insight into your role. Same question to our other guests. Over to you Bat-sheva.

Bat-sheva Boker: As Head of Legal, I find myself dealing with numerous issues every day. The legal depart-

ment is responsible for all legal and regulatory aspects in the company, this in addition to being part of every aspect of the ongoing business in the company. On the one hand we need to ensure full compliance with all rules and regulations, on the other hand we need to provide full and on going commercial assistance to the business, enabling smooth and rapid deal flow and on the third hand (yes, to be an in-house you need at least three hands) you need to be available to answer ad hock questions and deal with emergencies and challenges as they arise. During the course of one day I will find myself dealing with labour law issues, antitrust regulations and data protection, while handling the negotiations of an M&A deal, solving a dispute with a client and reviewing marketing materials. As head of legal I must be knowledgeable in all aspects relating to our business (and there are so many of them), for some of which I am the specialist (like corporate, labour law, antitrust, commercial etc.) and for some I have appointed specialists from the lawyers in the legal department. It is actually very important, in my opinion, that every lawyer in the legal department will have at least one area of expertise, as it provides the in-house counsel a special position in the company as everybody know he or she is the "go to person" for that specific issue, this of course is in addition to any ongoing commercial responsibility they all have.

"It is actually very important, in my opinion, that every lawyer in the legal department will have at least one area of expertise" - Bat-sheva Boker, Ness Technologies

Gerry, are your responsibilities just as varied?

Gerald Sachs: They certainly are. My days largely revolve around working with various Remitly teams who are all trying to find the most customer centric approach to developing and delivering products and services. As opposed to my days as in private practice, I only have one client now, which in this case is Remitly. However, I support various business units within Remitly, so the teams that I work with keep me plenty busy, especially considering Remitly has offices located everywhere from Seattle, Washington to London, UK to Tel Aviv, Israel and in other parts of the world, too. My day may start off, as many of our days do, with catching up on emails and Slack messages seeking advice or input, or even just sent to me for visibility into something that may need advice/input in the future. Considering all of the time zone differences as a global company, it is not unusual to have a decent number of messages before my day even starts. So, I usually block off time in my calendar to focus on catching up when necessary and researching, writing, and providing substantive legal advice for any outstanding tasks. For example, I may be asked to review someone else's work for input or to review regulatory requirements for money movement, new user experiences, product development, or marketing. Some days I am asked to draft or review commercial contracts for vendors or partners. I often work with outside counsel to understand foreign legal requirements that may include drafting legal terms and conditions, privacy notices, electronic communications and signature consent, and understanding any other related and required regulatory terms. I'll also have scattered throughout my day various meetings ranging from 1:1 meetings with a legal team member, a direct report, or cross-functional meetings with various team members. Depending on the day, I may also have a legal team meeting, company-wide meeting, or a board committee meeting.

Because of my past experience as a litigator, federal prosecutor, and consumer protection enforcement attorney, I specialize in anything and everything financial services related, such as money movement, payment systems, consumer protection laws, Bank Secrecy Act / Anti-Money Laundering, and product development. I also like to stay close to our customers by carving out time to read feedback and reviews. This helps to ensure I am always tethered to our core values, the most important of which is customer centricity.

Thanks Gerry. Now I want each of you to gaze into your respective crystal balls and tell us some of the key legal issues you expect to be dealing with in the coming months.

Bat-sheva Boker: Unfortunately, in the past six months Israel is in a state of war that was forced upon us by a cruel terror attack on October 7th, 2023. This affects all aspects of our lives including in the legal field. We need to keep updated as to regulatory changes derived from the state of war we are in and keep track of the effect it might have on the company. In addition, the rapidly changing technological environment Ness operates in, requires adapting the legal work accordingly and demands that we keep close track of all changes in applicable rules and regulations. We must be aware of and address the different changes applying to the commercial dealings in our daily work. Some of the most seriously and rapidly affected legal issues are privacy, data protection, dealing with cyber threats and regulations applying to digitalisation. We must be agile in our legal thinking, updated as to all regulatory changes and be able to adapt ourselves to the situation.

Ariel, what about yourself?

Ariel Zeewi: Yes, the recent war and conflict in Israel have a true effect on the market. There are many tenants who for many months could not operate their businesses in light of their recruitment into the army reserves, properties in certain locations which were ordered to be closed due to government orders. That together with the high interest rate in Israel can lead to the fact that there will be quite a few tenants who will have difficulty keeping up with the payments applicable to them, while on the other hand, the bond holders and banks expect to receive their money on time. If those tenants have to close their businesses, there will probably be a problem finding replacement tenants. Therefore, I expect that the challenge will be finding legal and commercial solutions that will allow the continuation of business to the satisfaction of all parties.

Gerry, from your standpoint in the US, what legal issues do you expect to be dealing with in the coming months?

Gerald Sachs: Probably not a surprise, but financial services and global payments are constantly evolving, and it's important for me to always be plugged into the issues that may impact our customers and our business. For that reason, I'll expect to be closely tracking open data in the U.S., the use of artificial intelligence, privacy laws around the world, and consumer protection. By staying involved and up to speed on legal issues related to these topics, I can help ensure our business can continue to innovate and create even better experiences for customers, while also meeting our compliance and regulatory requirements.

Allied to the previous question, Gerry, what are some of the key commercial challenges and interesting opportunities facing Remitly in 2024 and beyond?

Gerald Sachs: Well, as Remitly continues to reimagine international money movement and payments, some of our significant opportunities will be in growing our customer base while continuously improving the remittance experience. Cross border payments are inherently complex, and we take our responsibility to remove unnecessary friction from the customer experience very seriously and strive to deliver a seamless and reliable experience with every transaction. Today, Remitly is just 2% of a $1.8 trillion market, with nearly $40 billion of send volume in 2023. As our share of cross-border payments continues to grow, we believe there is tremendous opportunity to expand to meet the needs of even more customers. For example, today we serve more than 5,000 corridors, and we continue to invest in geographic expansion. Also, while our customer base today is primarily customers who regularly send home to family and friends in developing countries, we believe over time, we can better serve a broader set of customers who have cross-border financial needs. There are also enormous opportunities to deepen customer relationships by leveraging the unique technology platform Remitly has built and continues to build to efficiently scale new features and products to the millions of customers Remitly serves today and to make our offerings even more attractive to other customers that have cross-border financial needs.

Bat-sheva, what about the key challenges and opportunities facing Ness?

Bat-sheva Boker: Well, rapidly changing technologies and markets require that we be able to provide our customers the solutions and services they require

as they require them, in order for us to be able to do that we need to think ahead and anticipate the possible needs of our customers in this rapidly changing technological environment. We need to be ready to incorporate AI solution, digitalised solutions and address cyber threats. One the challenges we face is the need to quickly recruit professionals in different fields of expertise. In addition, as mentioned before, we are unfortunately, still in a state of war, which requires special attention and the ability to quickly adapt to rapidly changing situations.

Ariel, what are Nitsba's key challenges and opportunities?

Ariel Zeewi: As I mentioned, the commercial challenges are dealing with tenants who will find it difficult to meet the payments applicable to them and keep their business alive. However, in terms of opportunities - since Nitsba is a company with a large sum of capital and income, it seems that it will have quite a few opportunities to make successful purchases of new properties.

Gerry, you mentioned closely tracking the use of artificial intelligence as an important aspect of your legal work. There is much talk on whether, and how much, AI is going to transform the legal industry. What impact do you think it will have for the in-house legal department, both in terms of expediting legal work and the impact it will have on employment of staff? Do you see it as more of a threat than an opportunity, or vice versa?

Gerald Sachs: AI is a wonderful advancement in technology, but it is not without its flaws or concerns. Like almost anything, it has a lot of potential for amazing advancement. AI is still young in its lifespan so the ability for it to drive impact today with regard to in-house legal use is minimal compared to where I think it has potential to get to in the months and years ahead. In my world, we're very much in a test-and-learn phase. For example, we are currently testing two use cases in our legal department for how we could leverage AI responsibly to make our team more efficient (with human oversight). I can envision a future where AI might be able to cut down on attorney hours by undertaking the first review of contracts for certain terms and to give a summary, or to review mountains of legal case law or court opinions to create a first draft of a legal analysis for litigation, or to review massive amounts of documents quickly to find key content prior to it being produced to another party. AI has a lot of potential, and as a tech company, we love to try leveraging technology through the lens of solving problems and delivering value to our customers. At the same time, we are also aware that AI needs to have established guardrails and oversight to prevent bias or inaccuracies in the analysis or work it undertakes. I'm really excited to see where AI can take us in the future.

Thanks Gerry, I think we're all excited to see where we're headed with AI. Ariel, what's your take on it from the real estate perspective?

Ariel Zeewi: The work of a legal adviser, is not a copy-paste job and it is true we work a lot with master documents, but we never negotiate with ourselves. AI can definitely facilitate and give ideas, but it will never be able to replace the lawyers who deal with real estate since every contract has its own characteristics and the different needs of the parties so, in order to bring the parties to a WIN-WIN situation (because otherwise the deal will not be signed) many times you have to find creative solutions a machine simply cannot create.

Bat-sheva Boker: I definitely see AI as an opportunity. I do not think it will impact the quantitative aspect of the employment of staff but it will impact the quality of our staff and our work. I believe it will help us expedite and improve the legal services we provide our companies. We will be able to do our work better and faster. We will definitely need to adapt as some work we do today will be done automatically, allowing us to focus and concentrate on other aspects of the legal domain in our companies, thus for example I believe that the basis of all contract drafting will be created by AI, freeing us to give more thought as to the really important and unique aspects of every deal and not spend time on same issues over and over again. We will not need less employees in the legal department but we might need to ensure different and more precise training for our staff. As AI will be taking more and more of our work, creative and open minded thinking will definitely be more in need from us.

Thank you all for your fascinating thoughts on the impact this rapidly evolving technology will have on the legal industry. And finally, to close our discussion, I'd like to get up close and personal, and ask you about your careers. You each started out in private practice before moving to senior in-house roles. Can you tell us about your decision to go in-house and what you enjoy about your current role? Ariel?

Ariel Zeewi: Sure. Before joining the Nitsba group, I worked for many years in the real estate department for Gornitzky & Co. law firm and represented large companies and rich individuals in a variety of real estate transactions. One of the things that always bothered me was that after signing the agreement, someone else took the reins and basically took away "the work of art" I was working on. I was looking for a place where I would have a greater ability to influence it from the idea stage, through the execution stage to the final Ribbon-cutting ceremony and not only be a small piece in the stage of the process. As a legal consultant I am very involved in the processes and business decisions and in the macro thinking about the projects and the strategy of the company and that is exactly what I lacked as an external attorney.

Yes, thanks Ariel for confirming that today's GC is so much more than a lawyer; he or she needs to be sitting in with the C-suite and serve as a strategic partner to the business while giving the legal counsel that affects business decisions. Bat-sheva, tell us about your decision to move in-house.

Bat-sheva Boker: One of the best decisions I made in my career was to go in-house. This decision was derived from my need to be part of the business and not be satisfied in consulting. I found it very hard to give advice without being part of the decision-making process, I hated not knowing what became of my advice, I found it very hard to be called upon when a draft was needed and not be part of the process that led to the deal. I found myself looking for opportunities to participate in meetings in my client offices rather than having them in the law firm as I found their offices to be the real world while I found the law firm to be somewhat detached from what is really going on in the business. I must say, it is sometimes much harder to be "part of" rather than just "give the advice", it is more demanding, time consuming, and requires you to take more responsibility, but I find it rewarding, exciting, more interesting and generally more fun. As in-house I really get to be a business partner and to use Sharyl Sandberg's words, I get to be in the room and to "lean in", and I am loving it!

"I am very involved in the processes and business decisions and in the macro thinking about the projects and the strategy of the company." - Ariel Zeewi, Nitsba

Finally, Gerry. I know you've quite a CV in the world of financial crime, consumer protection and payments. Please feel free to wax lyrical and tell us more about your career path!

Gerald Sachs: I actually started my career in public service as a Peace Corps volunteer in Honduras from 1998 to 2000. This experience really helped inform the direction in my legal career. When I returned from the Peace Corps, I sent money from the United States to Honduras to help out a few friends, and was unpleasantly shocked at how much it cost and the less than great foreign exchange rate that I received from one of the legacy money transfer companies. The process was slow, including the use of carbon copy papers, and overall just not a great experience. That remittance experience has always stuck with me. However, before I found my way to Remitly, I worked as an Enforcement Attorney at the Federal Trade Commission prosecuting consumer fraud cases like one of the first wireless internet kiosk schemes (before the Iphone or Android), and separately a multi-level marketing pyramid scheme leveraging digital music to trick consumers. Then, I moved to the United States At-

torney's Office for the Northern District of Georgia where I prosecuted both civil and criminal cases. Among other things, I saw first-hand the impact of unlawful conduct in financial services (e.g. ponzi schemes, elder abuse, money laundering, cybercrime, identity theft, money laundering) on hard-working people and their communities. I was fortunate to work with an amazing group of people, many of whom are still serving in the Government. Finally, before going to private practice, I helped set up the Enforcement Office for the Consumer Financial Protection Bureau and worked on some of the Bureau's early initiatives. It's not that often that new government agencies get set-up, especially dedicated to consumer protection. So, I really enjoyed working with a very dedicated group of people trying to improve financial services for consumers and putting the customer first.

"AI is still young in its lifespan so the ability for it to drive impact today with regard to in-house legal use is minimal compared to where I think it has potential to get to in the months and years ahead." - Gerald Sachs, Remitly

After my time in the government, I went to work in private practice representing individuals and companies related to government investigations, regulatory compliance, product development, and criminal defense. I really enjoyed it, but during my work with a few financial services clients where I helped advise on new products and services, I discovered how much I enjoyed the challenge of figuring out how the law applies to a situation not likely contemplated when the law was drafted/created. So, during COVID I transitioned to working in-house. A friend of mine mentioned that the Facebook Payments Legal Team wanted to hire experienced attorneys to help out on new products. So, I checked it out and after various rounds of interviews joined the team at Facebook (now known as Meta). Among other things, I worked with great attorneys, product teams, engineering teams, design teams, and of course outside counsel to launch P2P payments on WhatsApp in Brazil, the now defunct Novi, and payments around the world.

While I was enjoying Meta, Remitly reached out to me to see if I would be interested in leading the legal team for new product initiatives. Of course, I knew about Remitly and have always been impressed with its customer-centric values, leadership, and innovation in remittances. So, I jumped at the opportunity to join the team. It's been an amazing past couple of years. I really enjoy working with our legal team, which raises the bar for in-house counsel (yes, I'm biased), and importantly is also collaborative, joyful, introspective, and fun.

I love that we have a global team with attorneys everywhere from Seattle and San Francisco to London, Dubai, Tel Aviv, and, of course, me on the East Coast of the U.S. It's wonderful to have so many different views and be connected around the world. Outside of the legal team, I really love working with the product, design, engineering, marketing, customer service, government relations, communications, and compliance teams at Remitly.

Everyday brings a different challenge - some easy and some more difficult, but one thing that always helps me get to the right outcome is to anchor on our core values and vision to transform lives with trusted financial services that transcend borders.

I love working out of Remitly's Tel Aviv office, the team is always warm and welcoming. I have even been able to bring my family, who have a special connection to Israel. We are already talking about visiting again and volunteering to support the country in light of the ongoing war.

Thank you Gerry, and that's a good note to end on. And thank you again to Bat-sheva and Ariel for taking the time to share your thoughts and experiences with our US and Israeli readership in both the legal and business worlds. ■

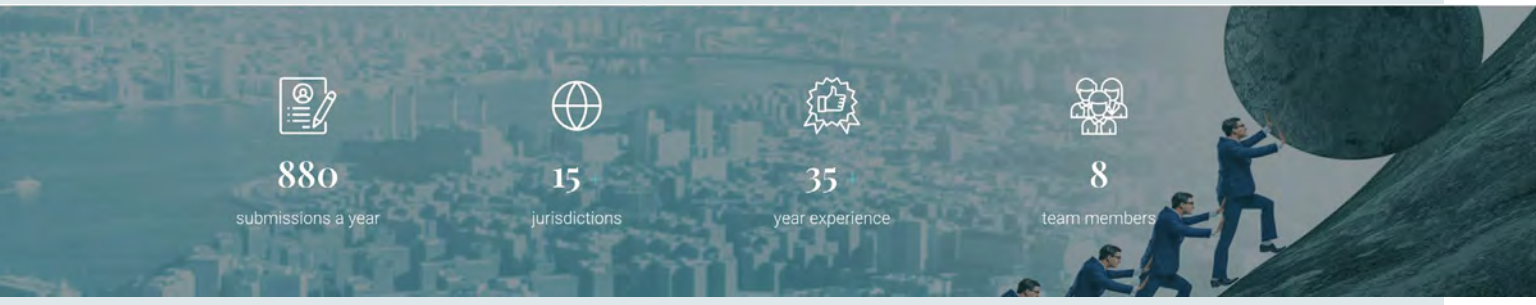
Tier One
RANKINGS by NÍSHLÍS | GLOBAL LEGAL MARKETING

Let us help improve the odds for your firm and your lawyers to earn the recognitions they deserve.

Tier One Rankings has only one focus: to help you succeed with your directories and awards submissions.

Services

- Submissions Outsourcing
- Submissions Editing
- Strategic Content Creation
- Workshops



Contact us

ARNON
ARNON, TADMOR-LEVY

A Brief Guide to Litigation in Israel

With litigation involving global corporations gaining unprecedented prominence in Israel, becoming acquainted with Israeli litigation practices could offer significant advantages for companies and individuals already operating in, or considering entering the Israeli market.

The State of Israel operates an independent, adversarial legal system, modeled after the Common Law tradition in form and procedure (though with continental influences in codified substantive law). Litigants are free to define the scope of their dispute and the court will adjudicate only on the basis of their pleadings and the evidence they present.

In determining the outcome, the court applies the law, encompassing primary legislation enacted by parliament, subsidiary legislation such as regulations, and legal precedent. All judicial proceedings in Israel are bench trials, as there is no right to trial by jury.

Traditionally, Israeli civil procedure favored written submissions and affidavits (subject to cross examination), over oral arguments and testimonies. The Civil Law Procedure Regulations, which have gone through an extensive revision that came into force on January 1st, 2021 (the "Regulations") now theoretically prioritize direct examination and oral summation in certain proceedings. Many judges have yet to adopt this new approach, preferring to rely on their discretion as established by the Regulations.

For many years, the Israeli legal system has shown identifiable influences of Continental Law principles. These influences can be seen, for instance, in the revision of the Regulations, which envisages a more active role for judges, as well as in the long-time and continuous effort by the Knesset (the Israeli Parliament) to codify substantive civil laws. However, the "look and feel" of the legal system is more like that of a Common Law system, as exemplified by the strong emphasis on precedents as legal authority, and the importance of the right to cross-examine witnesses.

Israel is a highly litigious state. It has the highest number of lawyers per capita, and an overwhelming number of claims filed each year, crowding its courts. According to the Courts Administrator, approx. 861,000 new claims and appeals were filed in 2022 – roughly 1 claim for every 11 citizens. This exceptional prevalence of litigation is likely caused by the tendency to default to legal proceedings (both in the court system and alternative dispute resolution forums such as arbitration) as the go-to option for solving disputes.

THE STRUCTURE OF THE ISRAELI LEGAL SYSTEM

The Israeli judiciary is comprised of a general court system, alongside specialized tribunals. The general court system includes the Supreme Court, six District Courts (one in each judicial district), and dozens of magistrate courts located throughout the different districts.

Permanent specialized tribunals, each with limited subject matter or personal jurisdiction, function alongside (and sometimes as part of) the general

DROR VARSANO
PARTNER, COMMERCIAL LITIGATION

SIVAN WULKAN-AVISAR
PARTNER, COMMERCIAL LITIGATION

ROY MASURI
PARTNER, COMMERCIAL LITIGATION

ROEY SASSON
PARTNER, COMMERCIAL LITIGATION

NIR WEINTRAUB
ASSOCIATE, COMMERCIAL LITIGATION

court system. These tribunals include, inter alia, labor courts, administrative courts, military courts, religious courts, family courts, the Competition Tribunal, and the Standard Form Contracts Tribunal.

The magistrate courts serve as the trial court of first instance for most civil disputes, with subject matter jurisdiction over claims for relief valued under ILS 2.5 million, and in certain real estate disputes. Magistrate court claims are usually presided over by one judge.

District courts have appellate jurisdiction over the magistrate courts, and they also serve as a residual trial court of first instance when the magistrate courts and specialized tribunals lack jurisdiction. The district courts are usually presided over by one judge in their capacity as trial courts, and three judges in their capacity as appellate courts.

The Tel Aviv and Haifa District Courts each have a specialized economic division. These economic courts are granted exclusive subject matter jurisdiction within the court over economic claims (such as shareholder disputes or derivative actions). Judges with the relevant knowledge and experience preside over each of these divisions.

The Supreme Court is Israel's highest judicial authority, functioning both as an appellate court for district court decisions (with an automatic right of appeal for first-instance cases and by certiorari for appellate cases) and as a High Court of Justice endowed with judicial review powers. It comprises 15 justices, headed by the President of the Supreme Court. Most cases are presided over by three justices, and five or more justices can preside over matters deemed especially significant. The decisions of the Supreme Court are final and are not subject to appeal, yet under extremely rare and unique circumstances a Supreme Court verdict can be subject to a re-hearing before an enlarged panel.

As the High Court of Justice, the Supreme Court has material jurisdiction over petitions for judicial review of legislative and administrative action, including limited review of decisions of the specialized tribunals. While in some of these cases the High Court of Justice is in fact the court of first instance, it is not a trial court and it applies administrative rules of evidence, rather than the civil law rules of evidence. Appropriately, the High Court of Justice also has unique procedural regulations.

Because many cases are granted rights to the Supreme Court, either by appeal or as first-instance petitions, the Supreme Court is extremely active – with almost 9,000 proceedings opened in 2022.

According to the Courts Administrator, the average length of regular civil proceedings in the magistrate courts is 11.2 months (including claims that are dismissed or settled before final judgment). The average length of regular civil proceedings initiated in the district courts is 20.1 months (including claims that are dismissed or settled before final judgment), and 17.9 months for civil appeals in the Supreme Court.

JURISDICTION AND EXTRATERRITORIAL SERVICE OF PROCESS

The purpose of service of process is both to notify the defendant of the legal proceedings and to establish the Israeli court's jurisdiction over a defendant – including a foreign defendant.

The Regulations establish that a prospective plaintiff can serve a foreign prospective defendant in its domicile outside of Israel – if there are grounds for such extraterritorial service – without needing to obtain prior permission from the court. The plaintiff is still required to file a motion to the court requesting orders for executing the service. This motion must be accompanied by an affidavit supporting the cause of action of the prospective suit, as well as the existence of grounds for extraterritorial service, and must include the defendant's address abroad to which process is intended to be served.

The Regulations include a comprehensive list of grounds for extraterritorial service, such as that the claim concerns a property located in Israel, or that the claim concerns a contract that is subject to the laws of Israel. All the grounds require some connection between the claim and the State of Israel which justifies the court assuming jurisdiction over the claim.

The court has the discretion to deny the prospective plaintiff's motion for orders for extraterritorial execution of service, and rule that under the given circumstances process will not be served extraterritorially. If the court does not deny the motion, and process has been served accordingly, the defendant may move to quash the extraterritorial service, arguing that the Israeli court lacks jurisdiction, or that it is not the appropriate forum for adjudicating the dispute (forum non conveniens). The performance of extraterritorial service is regulated by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), to which Israel is a party.

A claim may also be served on a foreign defendant not present in Israel through a local representative on its behalf that represents it on a regular basis with respect to its matters in Israel, if the action pertains to the same matter. This method is commonly used to serve a claim on an international enterprise that does business in Israel through a subsidiary or a permanent local distributor.

CLASS ACTIONS

Class action lawsuits have become a prevalent phenomenon in Israel in recent years, including against foreign international corporations. The legal framework for filing and adjudicating class actions in Israel is outlined in the Class Actions Law, 2006 and the Class Action Regulations, 2010.

The Class Actions Law limits the causes of action that can be certified as a class action, listing several class actions that may be certified. Some prominent examples for such class actions are listed below:

1. Most commonly used of these is any civil cause of action against a business in a matter between that business and a customer, whether derived from contract law (e.g. breach of contract) or torts law (e.g. breach of a statutory duty). These may include, for example, claims based on the Consumer Protection Law, 1981, such as misleading consumers regarding material aspects of a transaction (e.g. the nature of the asset or service); transaction cancellation terms, etc.
2. In recent years, there has been a marked rise in private enforcement of the Economic Competition Law, 1988 (the "Antitrust Law") through the filing of class actions, for example in the context of alleged damages caused in Israel by international price-fixing conspiracies (cartels). A declaration of a breach of the Antitrust Law by the Director General of the Israeli Competition Authority serves as prima facie evidence in all legal proceedings, and thus facilitates the submission of class actions regarding the subject of the declaration.
3. Another prominent cause of action in recent years is unlawful invasion of privacy, especially in cases where personal information regarding customers is collected and stored.

Under Israeli law, a class action is adjudicated in two stages:

1. The certification stage – where the court decides whether to allow the class plaintiff to lead a class action on behalf of the class they claim to represent.
2. The adjudication of the action itself – which is similar to the adjudication of any other civil claim in Israel.

The certification stage begins with the plaintiff filing a motion to certify the class action. The motion to certify must demonstrate that the

claim meets the cumulative conditions required for the court to certify the motion, being that:

1. The plaintiff has a personal cause of action concerning the subject of the motion.
2. The class action raises material questions of law or fact that are common to all the members of the putative class.
3. There is a reasonable chance that said mutual questions will be decided in favor of the putative class in the adjudication of the claim.
4. A class action is the fair and effective mechanism for resolving the dispute.
5. There is a reasonable basis to assume that the class plaintiff will duly and properly represent the interests of the represented class.
6. There is a reasonable basis to assume that the interests of all class members will be represented and managed in good faith.

The respondents are entitled to respond to the motion to certify, and the class plaintiff is then entitled to reply to the respondents' response.

Following the parties' submissions, the court will usually set a preliminary hearing, for the purpose of simplifying and expediting the adjudication of the motion to certify, or to explore the option of resolving dispute through a settlement. At times, the court might propose that the parties turn to mediation.

Should mediation or the preliminary hearing not be fruitful, the court will usually schedule evidentiary hearings, wherein the affiants on behalf of both parties are subjected to cross-examination (unless the parties agree to forgo cross-examinations).

The evidentiary hearings are typically followed by written summations, following which the court decides whether to certify the class action.

If the motion to certify is granted, the court will include in its decision the legal and factual questions that will be adjudicated, and the definition of the class to be represented by the plaintiff.

In general, the decision to certify a class action can be challenged by leave of appeal filed to the relevant court of appeal. A decision to deny the motion to certify, on the other hand, can be appealed by right. However, the court's decision in the claim itself (following the granting of the motion to certify) can be appealed by right to the relevant court of appeal.

The Class Actions Law sets out a unique procedure for the approval of settlements, which are subject to the court's approval. The parties must publicize a notice to the public with the terms of the proposed settlement. Furthermore, a copy of the proposed settlement must be sent to the Attorney General, the Courts Administrator, and the relevant regulator (such as the Custodian of Consumer Protection). These officials, as well as any member of the represented class, and any entity or government body that operates to further public goals in fields relevant to the motion, may file objections to the proposed settlement.

The settlement will only be authorized if the court finds it fair, reasonable, and proper, considering the interests of the represented class. If the settlement is reached during the certification stage, the court must also find that the prerequisites for certifying the motion are fulfilled.

INTERNATIONAL COMMERCIAL ARBITRATION

On February 12, 2024, the Knesset enacted the International Commercial Arbitration Law, 2024 (the "ICAL"). This law closely conforms to the United Nations Commission on International Trade Law's ("UNCITRAL") Model Law on International Commercial Arbitration, initially adopted in 1985 and subsequently amended by UNCITRAL in 2006 (the "Model Law"). The ICAL's primary purpose, as outlined in its introductory provision, is to establish a comprehensive legal framework for conducting international commercial arbitration proceedings in Israel, guided by the principles contained in the Model Law.

Before the ICAL came into effect, all arbitrations conducted in Israel, whether domestic or international, were governed by the Israeli Arbitration Law, 1968 (the "Arbitration Law"), which also referred to certain terms of international conventions on arbitration, where applicable. However, the explanatory notes accompanying the ICAL bill contended that the Arbitra-

tion Law inadequately addressed the distinct features of international commercial arbitration. As a result, the ICAL was introduced to bridge this gap by adopting a framework based on the provisions of the Model Law, which reflect a globally-recognized standard for international arbitration practice. It should further be noted that Israel is a party New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

NOTEWORTHY PROCEDURES AND PRINCIPLES IN ISRAELI LAW

A. GOOD FAITH

Great emphasis is placed on the principle of Good Faith under Israeli law, which is applicable across all domains of private law. The duty of a party to act in good faith is often sufficient to establish liability (or rights), and sometimes even to create duties towards a party harmed by conduct in bad faith – even if said obligations are not expressly included in the original agreement between the parties.

The duty to act in good faith was set in the Israeli Contracts (General Part) Law, 1973 and applies to all the contractual stages – negotiations, the execution of the agreement, and termination thereof.

B. UNJUST ENRICHMENT

Unjust Enrichment is a codified and well-established cause of action under Israeli law. It may be used as an independent cause of action where there is no contract or specific tort, but where a party is deemed to have benefitted unfairly at the expense of another. It may also be useful as a cause of action accompanying a more 'traditional' one, such as copyright infringement, where there is difficulty proving damages (or where it is impossible to do so), but where the injured party can show that there is enrichment resulting from such unlawful conduct. Under such circumstances, a party may be required to reimburse the other party for its enrichment.

Under Israeli law, a plaintiff must prove three cumulative elements in an unjust enrichment claim: (1) the existence of enrichment; (2) that the enrichment is at the expense of the plaintiff; and (3) that the enrichment is unlawful.

C. STANDARD FORM CONTRACTS

A standard form contract (or a contract of adhesion) is a contract with a uniform formulation intended for many engagements. Generally, the contract is drafted by one party, or at its request, in order to be used in agreements with its customers and is usually presented to the customer as a finished product that cannot be negotiated ("take it or leave it").

The Standard Form Contracts Law, 1982 was enacted to protect customers that are party to a standard contract. The law stipulates that in circumstances where – considering the entirety of the contract's provisions and the context of the engagement – a specific clause of a standard form contract is found to be exploitative or provides an unfair advantage to a service provider, the court is empowered to invalidate it. The law also includes a list of instances which are presumed to be exploitative.

Numerous claims, including class actions, are submitted alleging that the provisions delineated in the agreements which are the subject of the claim (in the case of a class action, for example, user agreements, or terms of service), prescribed by the service providers, are exploitative and hence non-binding. ■

THE AUTHORS

The authors of this article, **Dror Varsano** (Partner), **Sivan Wulkan-Avisar** (Partner), **Roy Masuri** (Partner), **Roey Sasson** (Partner) and **Nir Weintraub** (Associate) are members of Arnon, Tadmor-Levy's Litigation Department, and have extensive experience in civil litigation encompassing class actions and legal proceedings entailing prominent global corporations.

For further information or consultation regarding litigation in Israel, please feel free to reach out to Drorva@ArnonTL.com, Sivan@ArnonTL.com, RoyM@ArnonTL.com, Roeys@ArnonTL.com or Nir.W@ArnonTL.com.

PREEMINENT ISRAELI LAW FIRM

ARNON

ARNON, TADMOR-LEVY

ArnonTL.com

CHAPMAN
Focused on Finance

U.S. Regulatory Landscape: Fintech Product Overview

Amidst an ever-changing U.S. regulatory landscape, Israeli fintechs need to carefully consider their licensing obligations when offering their products to U.S. consumers.

Israeli fintech companies offering financial products to U.S.-based consumers must be very mindful of the regulatory considerations associated with the credit products they plan to offer. A "consumer" means a natural person to whom "consumer credit" is offered or extended. Consumer credit typically means credit offered or extended to a consumer primarily for personal, family or household purposes. Credit extended to a legal entity, such as a trust or a company, generally falls outside of the definition of consumer credit. In consumer financial services, a consumer is a natural, individual borrower who plans to obtain credit for a personal as opposed to a commercial or business purpose.

Heightened regulatory considerations arise when any fintech company—Israeli or domestic—offers consumer financial products through a "marketplace lending" arrangement. Marketplace lending is the practice of pairing borrowers and lenders through the use of an online platform without a traditional bank intermediary. The business model used by the companies determines the precise regulatory issues and the extent of such issues. The predominant model involves an arrangement where a fintech partners with a bank. Under this model, the fintech finds consumers interested in obtaining financial products offered by the bank. Consumers apply for the products offered by the bank. If approved, the bank provides the product to the consumers. At some point after the bank provides the product to the consumers, the fintech buys either a loan participation or the whole loan from the bank. The fintech also services the products on the bank's behalf.

The regulatory issues posed by this arrangement depend on exactly which services the fintech performs for the bank in the marketplace lending structure. The traditional model where the fintech finds the consumers, the bank funds the product and the fintech services the product raises licensing issues centered around whether the fintech triggers broker, servicing and debt collection licensing requirements. Several states also require specific licenses to take assignment of loans. Due to regulatory scrutiny of marketplace lending arrangements, some fintechs merely service the products offered by the bank. A completely different set of regulatory issues arise in this scenario. Only servicing and debt collection related licensing issues arise.

In addition to licensing related issues, multiple regulators regulate marketplace lending arrangements. The regulator governing a particular consumer financial product to U.S.-based consumers depends on whether the company offering such products is a credit union, bank or nonbank. The type of legal entity determines both licensing and usury related regulatory issues.

U.S. FINANCIAL SERVICES REGULATORS

Multiple federal and state regulators regulate marketplace lending arrangements. The financial institution involved in the marketplace lending arrangement will be either a credit union or bank. Fintechs rely on the credit union or bank's ability to make loans under one uniform set of laws and to export interest rates from their home jurisdictions across the United States. To leverage interest rate exportation, such institutions must decide to obtain a charter (i.e., effectively become licensed) under federal or state statutes.

TOBIAS P. MOON
PARTNER

A credit union is a nonprofit financial institution that accepts deposits, makes loans and provides a wide array of other financial services and products. The National Credit Union Share Insurance Fund insures all consumer deposits. The National Credit Union Administration (NCUA) manages the insurance fund. NCUA also charters and supervises federal credit unions. State regulators such as the New York State Department of Financial Services and the California Department of Financial Protection and Innovation regulate state-chartered credit unions.

Banks can be chartered by the Office of the Comptroller of the Currency (OCC) or by a state regulatory body. The OCC is an independent bureau of the U.S. Department of the Treasury. The OCC charters, regulates and supervises national banks, federal savings associations and federal branches and agencies of foreign banks. State regulators such as the Utah Department of Financial Institutions (DFI), Texas Department of Banking and the Illinois Department of Financial and Professional Regulation, Division of Banking regulate banks chartered in each of these states. The entity must pick which regulatory body will regulate its activities. This can be a tricky proposition. Each regulatory body has its own pluses and minuses. Entities typically pick the regulator and statutes most favorable to the products they plan to offer. For consumer lenders, many entities choose to become Utah state-chartered banks due to the favorable lending statutes. The DFI charters, regulates, supervises and examines Utah state-chartered financial institutions.

State-chartered banks also may join the Federal Reserve System. The Federal Reserve regulates financial holding companies in addition to savings and loan holding companies and financial market utilities.

The entity must pick which regulatory body will regulate its activities. This can be a tricky proposition. Each regulatory body has its own pluses and minuses.

The Federal Deposit Insurance Corporation is the primary regulator for state-chartered banks that do not join the Federal Reserve System.

Separate federal regulators regulate a financial institution's compliance with federal consumer protection statutes. The Consumer Financial Protection Bureau (CFPB) separately regulates certain financial institutions for compliance with federal consumer protection statutes and regulations. The CFPB generally regulates banks and credit unions with assets over $10 billion and their affiliates. In late April 2022, the CFPB previously announced that it was "invoking a largely unused legal provision to examine nonbank financial companies that pose risks to consumers." CFPB Press Release, April 25, 2022. Under the Dodd-Frank Act, the CFPB already had broad supervisory authority over all nonbank entities in the mortgage, private student loan, and payday loan industries regardless of size and nonbanks that are determined by regulation to be "larger participants."

Larger participants include consumer reporting, debt collection, student loan servicing, international remittances and auto loan servicing. This authority has not been used before. The announcement seems to target fintech companies as the CFPB stated that this will allow it to supervise entities that are fast-growing or in markets outside the bureau's existing supervision programs. In essence, any nonbank not currently supervised will be subject to this unspecific and uncertain rule. Critics see this as a return to the mantra of "regulation by enforcement" rather than regulation, given the lack of guidelines the CFPB must follow in assessing risk to consumers or engaging in supervisory activity. While the bureau sees this as leveling the playing field with banks, it proposes to make its actions public, whereas this is not the case with much of the supervisory activities of depository institutions. At least in the short term, fintechs should expect closer scrutiny, examination and enforcement from the CFPB.

At least in the short term, fintechs should expect closer scrutiny, examination and enforcement from the Consumer Financial Protection Bureau.

The Federal Trade Commission (FTC) regulates nonbanks' compliance with certain consumer protection statutes. The FTC regulates nonbank financial services providers with regard to deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research and education. The FTC does not have supervisory or enforcement authority over banks and credit unions.

In many instances, the same regulator regulating state-charted banks regulates nonbank fintechs. The DFI follows this path. In addition to Utah state-chartered banks, the DFI regulates nonbank mortgage servicers, consumer lenders and money services businesses. The New Jersey Division of Banking also regulates nonbank entities offering financial products to consumers. These regulators also may impose regulatory requirements on loan servicing and debt collection activities. State regulation typically includes: (i) licensing; (ii) disclosures; (iii) interest rates; and (iv) fees. The states may require licenses to make unsecured consumer loans in addition to arrange loans, service loans, engage in debt collection activities or take assignment of the loans. Not every state requires a license for every type of activity. For instance, Florida requires a Consumer Finance Company license to make unsecured loans. However, Florida does not require a broker license to arrange such loans, a loan servicing license or a debt collection license.

State attorneys general also have enforcement authority over financial service providers for violations of state consumer protection statutes and regulations.

STATE REGULATORY CONSIDERATIONS

Broker Licensing

Depending on the specifics of the marketplace lending model used, a state may require the fintech to obtain a license to arrange (i.e., broker) loans for another lender. The state statutes vary in terms of licensing triggers. For instance, Nevada requires an entity to obtain a license to "engage in the business of lending" in Nevada. NEV. REV. STAT. ANN. § 675.060. Engaging in the business of lending in Nevada includes each of the following: (i) soliciting loans in Nevada, making loans in Nevada or making loans to Nevada residents, unless such transactions are isolated, incidental or occasional; or (ii) being physically present in Nevada and soliciting loans from consumers located in other states or making loans to consumers located in other states, unless such transactions are isolated, incidental or occasional. NEV. REV. STAT. ANN. § 675.020(4). Nevada also requires a license when a fintech "holds, acquires or maintains a material economic interest in the revenues generated by the loan" that is funded by a bank (i.e., an exempt entity). NEV. REV. STAT. ANN. § 675.035(3)(c). The Nevada statute does not define what a material economic interest means. The Nevada regulator reads these statutory provisions as requiring a license for any fintech finding potential consumers interested in financial products issued by a bank.

While solicitation is the primary trigger for a

Nevada license, other states focus on arranging loans for others. A license is required in Tennessee to engage in the business of an industrial loan and thrift company. TENN. CODE ANN. § 45-5-103(a). The definition of industrial loan and thrift company includes an endorsement company. An endorsement company is engaged in the business of arranging a loan for a fee. TENN. CODE ANN. 0§ 45-5-102(8), (11). In Hawaii, an installment loan license is required to: (i) offer or make consumer loans; (ii) arrange a consumer loan for a third party; or (iii) act as an agent for a third party regardless of whether: (a) the third party is exempt from licensure; or (b) approval, acceptance or ratification by the third party is necessary to create a legal obligation for the third party through any method including mail, telephone, the internet or any electronic means. HAW. REV. STAT. §§ 480J-31(a), 480J-1, 480J-2(a)(2).

Other states require a license based on the totality of the circumstances. In Maine, a fintech must obtain a Supervised Lender License when acting as an agent, service provider or in another capacity for an exempt institution (i.e., bank) when: (i) the fintech holds, acquires, or maintains the predominant economic interest in the loan; (ii) the fintech markets, brokers, arranges, or facilitates the loan and holds the right of refusal to purchase loans, receivables or interests in the loans; or (iii) the "totality of the circumstances" indicate that the fintech is the lender and the transaction is structured to evade Maine statutes. ME. REV. STAT. ANN. tit. 9-A, § 2-702(1)–(3).

Maine looks at the following factors to ascertain whether the "totality of the circumstances" indicate that the fintech is the lender: (i) the fintech indemnifies, insures, or protects an exempt entity for any loan related costs or losses; (ii) the fintech predominantly designs, controls or operates the loan program; or (ii) the fintech purports to act as an agent, service provider or in another capacity for an exempt entity while acting as a lender in other states. ME. REV. STAT. ANN. tit. 9-A, § 2-702(3)(A)–(C).

Illinois similarly measures the totality of the circumstances by looking at whether the fintech: (i) indemnifies, insures or protects an exempt entity for any loan related costs or losses; (ii) predominantly designs, controls or operates the loan program; or (iii) purports to act as an agent, service provider or in another capacity for an exempt entity while acting as a lender in other states. 815 ILL. COMP. STAT. ANN. § 123/15-5-15(b)(3)(i)-(iii)

Servicing and Debt Collection Licensing

The fintech typically services the loan in a marketplace lending arrangement. Collecting periodic payments from the consumers raises licensing issues. Many states require loan servicers and debt collectors to obtain licenses to perform their contractual obligations in a marketplace lending arrangement.

Texas requires a license to "contract for, charge, or receive, directly or indirectly" interest or fees in connection with a loan with an interest rate exceeding ten percent on an annual basis. TEX. FIN. CODE ANN. § 342.051(a)(2). Any fintech receiving interest and fees directly or indirectly from a consumer due and owing to a bank or lender must obtain a license to service loans made pursuant to a marketplace lending arrangement. Nebraska requires a license to hold or acquire loan serving rights or any other form of loan participation. NEB. REV. STAT. ANN. §§ 45-1005, 45-1004(1)(b). The license allows a servicer to charge, contract for and receive the maximum amount allowed for interest and charges under the Nebraska Installment Loan Act. NEB. REV. STAT. ANN. § 45-1004(1)(a). Georgia requires a license to engage in the business of acting as an "installment lender." GA. CODE ANN. § 7-3-4(a). Georgia defines an installment lender in a manner that includes servicing loans of $3,000 or less made by others, excluding loans made by affiliated entities. GA. CODE ANN. § 7-3-3(6)-(7).

While other states have similar loan servicing licensing requirements, states also require a license to engage in debt collection. In the context of a marketplace lending arrangement, debt collection occurs when the fintech collects payments for a bank or lender that owns the underlying loan. California and Hawaii illustrate this point. The Debt Collection Licensing Act requires a license to engage in the business of "debt collection" in California. CAL. FIN. CODE § 100001(a). Debt collection includes any act or practice used in connection with the collection of "consumer debt." CAL. FIN. CODE § 100002(i). "Consumer debt" means money due or owing or alleged to be due or owing from a natural person resulting from a "consumer credit transaction." CAL. FIN. CODE § 100001(f). Under the statute, a consumer credit

transaction means a transaction in which property, services or money is acquired on credit by a natural person primarily for personal, family or household purposes. CAL. FIN. CODE § 10001(e). The term "debt collector" means any entity regularly engaging in debt collection on its own behalf or behalf of others. CAL. FIN. CODE § 100002(j).

Hawaii requires a collection agency collecting or attempting to collect any money or any other forms of indebtedness alleged to be due and owing from any consumer residing in Hawaii without first registering. HAW. REV. STAT. § 443B-3(a).

Taking Assignment of Loans Licensing

A license also may be required to take assignment of a consumer loan. Many of these statutes require a license when the fintech takes assignment of the loan and undertakes direct collection of payments due and owing from the consumer. Wyoming illustrates this point. In Wyoming, a nonexempt entity must not engage in the business of taking assignments of non-servicing rights relating to consumers loans that are not in default without a license. WYO. STAT. ANN. § 40-14-302(b).

Many states have licensing requirements triggered simply by engaging in activities in that state.

Idaho, Louisiana, and Colorado also illustrate this point. Unless exempt, Idaho requires a license to engage in the business of taking assignment of and undertaking direct collection of payments from or enforcement of rights against debtors arising from regulated consumer loans. IDAHO CODE § 28-46-301(1). Louisiana similarly requires a license to take assignment of and undertake direct collection of payments from or enforce rights against consumers arising from consumer loans. LA. REV. STAT. ANN. § 9:3557. Assignees engaged in direct collection of loans require a Colorado supervised lender license if the loan is under $75,000 with an interest rate exceeding twelve percent. COLO. REV. STAT. ANN. §§ 5-1-301(15)(a), 5-1-301(46)-(47).

Massachusetts is unique in the sense that it potentially requires a fintech to obtain both servicing and debt collection licenses. Massachusetts requires a "third-party loan servicer" to register (i.e., become licensed) with the Division of Banks. MASS. GEN. LAWS ANN. ch. 93, § 24A(b). The definition of third-party loan servicer means any entity that uses an instrumentality of interstate commerce or the mail in any business the principal purpose of which is "servicing" a loan directly or indirectly owned or due or asserted to be owed or due another. MASS. GEN. LAWS ANN. ch. 93, § 24. "Servicing" means receiving a scheduled periodic payment from a consumer pursuant to the loan's terms and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. MASS. GEN. LAWS ANN. ch. 93, § 24.

Massachusetts also requires licensing for a "debt collector" or any entity engaging in soliciting the right to collect or receive payment for another of an account, bill or other indebtedness. MASS. GEN. LAWS ANN. ch. 93, §24A(a). The definition of debt collector includes any entity that uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt or that regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. MASS. GEN. LAWS ANN. ch. 93, § 24. However, the definition of debt collector does not include an entity that collects a debt that was not in default of the time it was originally obtained for collection. MASS. GEN. LAWS ANN. ch. 93, § 24.

Avoiding Licensing Triggers

Many states have licensing requirements triggered simply by engaging in activities in that state. Nevada illustrates this point. A license is required for helping Nevada consumers obtain a loan from a bank or lender. In other states, fintechs can avoid triggering licensing requirements by refraining from certain types of loans. A state's licensing trigger often relates to loan amounts and

either the loan's interest rate or annual percentage rate.

Massachusetts illustrates this point. A broker license is required for loans of $6,000 or less with interest rates exceeding twelve percent. MASS. GEN. LAWS ANN. ch. 140, § 96. A license is required for any person, directly or indirectly, engaging, for a fee, commission, bonus or other consideration in the business of negotiating, arranging, aiding or assisting the borrower or lender in procuring or making loans of $6,000 and carry an annual percentage rate of twelve percent or more. MASS. GEN. LAWS ch. 140, § 96.

In New Hampshire, a license is required to broker or service a loan of $10,000 or less with an annual percentage rate of ten percent or more. N.H. REV. STAT. ANN. §§ 399-A:2(I), 399-A:1(XX). Licensing is required for any entity that for compensation or gain or in expectation of compensation or gain, either directly or indirectly: (i) acts as an intermediary, finder or agent of the lender or borrower for the purpose of negotiating, arranging, finding or procuring loans or loan commitments; (ii) offers to serve as an agent for a lender; (iii) performs services or any of the business functions auxiliary or supplemental to the production, distribution or maintenance of loans for a lender; and (iv) holds the servicing rights to a small loan. N.H. REV. STAT. ANN. § 399-A:1(XX)(a)-(b), (d), (g).

Fintechs can avoid Massachusetts licensing requirements by keeping the annual percentage rate below twelve percent. Alternatively, loans above $6,000 do not trigger a licensing obligation in Massachusetts. A license requirement similarly is not triggered in New Hampshire if the loan contains an annual percentage rate less than ten percent or the loan exceeds $10,000.

CONCLUSION

In light of an ever-changing regulatory landscape, fintechs need to carefully consider what licensing obligations may be triggered by their business arrangements. Because complying with licensing requirements is complex and ever changing, fintechs should review industry releases and state enforcement actions to keep abreast of licensing considerations. ■

ABOUT THE AUTHOR

Tobias Moon is a partner in Chapman's Banking and Financial Services Department and serves as U.S. regulatory counsel to Israeli fintechs, lenders, and investors. His practice focuses on advising financial services companies, from startups to large financial institutions, on consumer and commercial lending, regulatory, compliance, and product innovation matters.

Tobias is a former in-house counsel for bank and nonbank financial services providers and is a recognized thought leader on mortgage, mortgage fintech, marketplace and online lending, and personal loan topics. As regulatory counsel, Tobias provides policy and program advice on every aspect of U.S. federal and state consumer law and regulation.

In emerging technologies, Tobias has extensive experience helping fintechs, marketplace lenders, mortgage fintechs, and online and small dollar lenders establish compliance management systems and address regulatory issues impacting design and delivery of new financial services products. With respect to compliance programs, Tobias advises on building, reviewing, and auditing compliance management systems to minimize risks associated with various consumer and commercial financial products.

Email: tmoon@chapman.com

COVINGTON

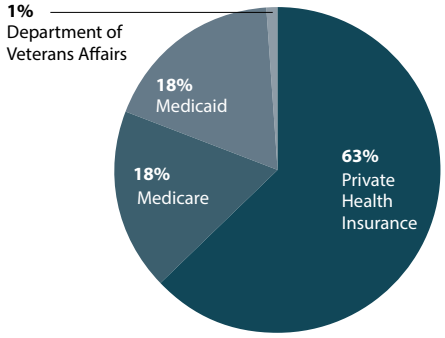
Drug Pricing and Spending in the United States

The United States' ("U.S.") drug pricing regime is the most complex in the world given its multi-payer model and the complexities of the U.S. drug supply chain. The payers and programs involved in drug coverage and reimbursement are constantly evolving, and emerging proposals for reform could significantly impact drug pricing and reimbursement in the future.

Whereas many other countries employ a single-payer system, the U.S. health care system involves a sophisticated mix of private and public payers and private-public partnership. The breakdown of payers in 2022 is displayed below.

Government-funded programs include Medicare (a federal program that primarily covers individuals 65 years of age and over) and Medicaid (a joint federal-state program that provides coverage for individuals with limited income and resources), as well as programs for military personnel, veterans, uninsured children, and others. Private health insurance, which covers about two-thirds of the population, is more prevalent than public health insurance. Most private insurance is offered through employer-sponsored plans, but Americans can also purchase coverage directly. Coverage for prescription drugs is an important component of both private and government health insurance programs.

Breakdown of Payers in 2022



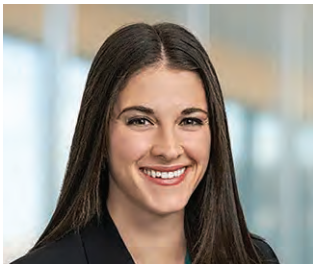
U.S. health care spending makes up 17.3% of the country's Gross Domestic Product, totaling about $13,493 per capita. Prescription drug spending is estimated to make up 8.4%, or $405.9 billion, of national health expenditure as of 2022. Some sources estimate that the percentage of spending on prescription drugs is actually closer to 15% of total health care spending, when accounting for non-retail drug sales and the gross profits of other parties in the drug supply chain, such as wholesalers, pharmacies, pharmacy benefit managers ("PBMs"), providers, and payers.

While approximately nine out of ten prescriptions filled are for inexpensive generic drugs, prescription drug spending is primarily driven by on-patent drugs. In general, after ten to fifteen years, branded drugs lose patent protection, and inexpensive generic versions enter the market. Offering manufacturers higher prices for on-patent drugs for a limited period of time incentivizes innovation, and indeed a consequential amount of innovation in the international drug sector is driven by the U.S. market.

Payers take multiple factors into account when classifying a branded drug as part of a small sub-

BETH BRAITERMAN
ASSOCIATE, COVINGTON

RUJUL DESAI
PARTNER, COVINGTON



AUBREY STODDARD
ASSOCIATE, COVINGTON

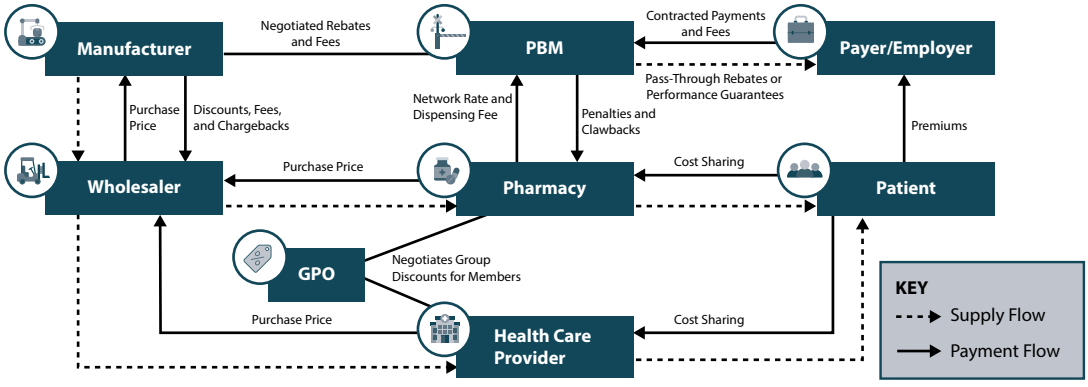
set called "specialty drugs," including cost (e.g., Medicare defines specialty drugs as pharmaceuticals costing $950 or more per month); novelty; requirement of special handling, monitoring, or administration; and rareness of the condition treated. Specialty share of net prescription drug spending increased from 32% in 2012 to 51% in 2022, driven by growth in immunology and oncology. In particular, cell and gene therapies represent the next frontier of specialty medications, with products such as chimeric antigen receptor T-cell therapy presenting tremendous promise to treat cancer on a highly personalized level. Many of these innovative treatments are priced – or are expected, once approved, to be priced – above $1 million for a course of treatment but offer potential cures for otherwise fatal or debilitating conditions.

The U.S. leads the globe in terms of patient access to innovative therapeutics. Patients in the U.S. have access to most, if not all, of these cutting-edge therapies. Many of the 200 top-selling drugs are not available for sale in countries of comparison. For example, in the United Kingdom, only 132 of the 200 drugs showed evidence of significant sales. Put another way, certain prescription drugs, such as some of the most innovative treatments for cancer, are more readily available in the U.S. than they are abroad.

PARTIES INVOLVED IN THE U.S. DRUG SUPPLY CHAIN

Understanding the pharmaceutical supply chain is key to understanding the cost of prescription drugs in the U.S., particularly in the private market. Between the initial manufacturing and ultimate dispensing of a given drug product, numerous transactions must take place among manufacturers, wholesalers, pharmacies, PBMs, providers, and payers, as displayed in the graphic below.

Parties Involved in the U.S. Drug Supply Chain

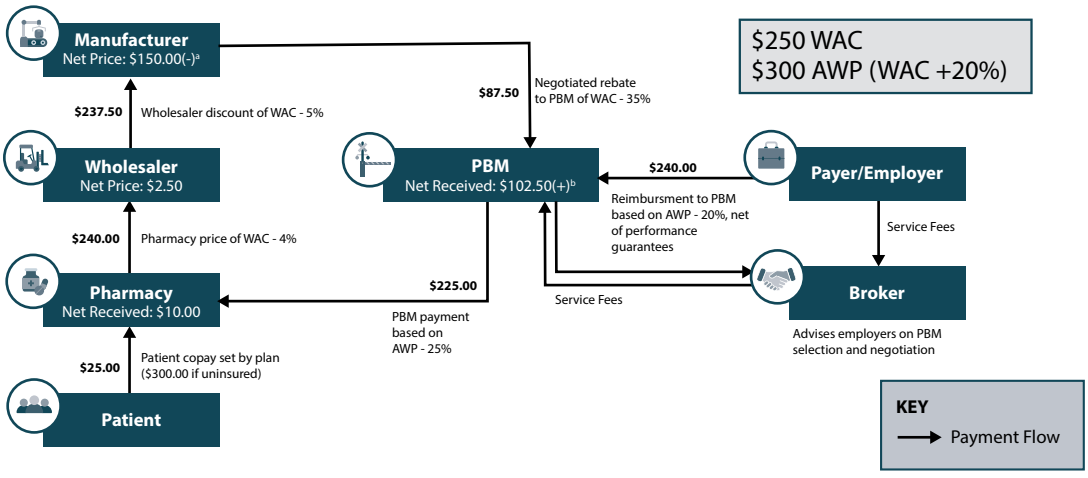


- **Manufacturers.** There is a significant gap between the list prices often cited in policy debates on drug pricing and the net prices that reflect the amount of money manufacturers actually receive. The gap between list price and net price reflects various price concessions, such as discounts and rebates associated with the numerous transactions throughout the U.S. drug supply chain, displayed above. According to the Pew Charitable Trust, manufacturer rebates grew from $39.7 billion in 2012 to $89.5 billion in 2016, significantly offsetting increases to drug list prices. The prevalence of additional fees, such as administrative and service fees required by PBMs, may also impact pricing considerations. Manufacturer list and net pricing scenarios for new products must account for all supply chain concessions over a multi-year time horizon with growing limitations on the ability to increase pricing year over year, as well as model impacts based on government price reporting obligations and mandatory rebate liabilities. Manufacturers also must account for the financial assistance they offer and the free products for patients through manufacturer-sponsored patient assistance programs that facilitate access.

The U.S. health care system involves a complex mix of private and public payers and institutions.

- **Wholesalers and Pharmacies.** Wholesale distributors buy drugs from manufacturers and distribute them to pharmacies, hospitals, and other medical facilities. Pharmacies negotiate with wholesalers to purchase prescription drugs for their inventory, and, in turn, wholesalers negotiate with manufacturers to obtain drugs to distribute to pharmacies and other purchasers. Wholesalers also facilitate charge-backs for manufacturers to effectuate negotiated prices for their customers.
- **PBMS.** PBMs represent payers (including state Medicaid agencies) and employers in the selection, purchase, and distribution of prescription drug benefits, and often serve as brokers, without fiduciary obligations, among individual employers, payers, drug manufacturers, and pharmacies. PBMs play several roles throughout the supply chain, including developing and maintaining prescription drug formularies for insurance plans; negotiating discounts from manufacturers in the form of rebates; creating pharmacy networks; and negotiating lower dispensing fees. When a plan beneficiary pays for a prescription, the pharmacy generally passes the copayment or coinsurance to a PBM, which then pays the pharmacy the negotiated reimbursement and dispensing fee. This arrangement allows the PBM to create spread-pricing profits and impose penalty fees on pharmacies that do not achieve contracted performance goals such as rate of generic dispensing. PBMs also may operate pharmacies themselves, including mail-order and specialty pharmacies. When payers and PBMs operate and drive utilization to their own pharmacies through narrow networks, they can negotiate additional bulk purchase discounts from manufacturers that are retained by the payer or PBM pharmacy.
- **Payers.** As explained above, the U.S. health care system involves a complex mix of private and public payers and institutions. Payers, and PBMs, have various tools at their disposal with which to control spending on prescription drugs. These tactics include requiring greater cost sharing for high-cost products; utilization controls, including prior authorizations; mandatory substitution of generics; cost-sharing/copayment accumulators and maximizers to minimize and/or capture the effect of drug manufacturer copayment assistance; benefit carve-out or "lasering" programs to "laser" certain specialty drugs out of plan sponsors' drug formularies; value-based contracts; and cost-effectiveness assessments.

Example Drug Product Pricing For Commercial Payers



[a] Represents approximate amount net of PBM rebates and certain supply chain discounts; does not reflect all supply chain charges and other costs incurred by manufacturer.

[b] Represents approximate amount based on the amount manufacturer rebates and payer reimbursement exceed PBM payment to pharmacy; does not reflect additional revenue such as service fees from manufacturer, ancillary service fees from payer/employer, and other payments received or retained by PBM or its affiliates.

Above is a drug product pricing chart for a hypothetical drug with a wholesale acquisition cost ("WAC") of $250 and average wholesale price ("AWP") of $300 that shows the flow of money among these parties.

EMERGING FEDERAL AND STATE POLICY TRENDS

Addressing U.S. drug prices has been the subject of significant debate and reform. In August 2022, Congress enacted the Inflation Reduction Act, whose multiple reforms included:

- **Drug price negotiation.** The legislation purports to give the Department of Health and Human Services ("HHS") Secretary the ability to "negotiate" the prices of certain high-spend drugs. Manufacturers that are not in compliance with these provisions must either face a significant excise tax or cease participation in Medicare and Medicaid (for all products) to avoid this tax. Thus, several of these provisions are subject to ongoing legal challenges claiming that this process between the HHS Secretary and manufacturers is a "negotiation" in name only and forces manufacturers to agree to a government-dictated statutorily capped "maximum fair price."
- **Inflation penalties through mandatory rebates.** The inflation rebate provisions require manufacturers to pay inflation-based rebates for Medicare utilization of certain drugs and biologics with price increases higher than inflation.
- **Medicare prescription drug benefit redesign.** The legislation gives beneficiaries the option of a monthly cap on cost-sharing. It also established a manufacturer discount program, under which the HHS Secretary and manufacturers will enter into an agreement that the manufacturer will provide discounted prices for certain drugs and retain appropriate data to demonstrate compliance with the program starting in 2025.

Other federal initiatives aimed at drug pricing reform include:

- **Innovation Center models.** Established by the Affordable Care Act, the Centers for Medicare & Medicaid Services ("CMS") Innovation Center develops and tests new health care payment and service delivery models. These models aim to improve healthcare quality and lower costs for federal healthcare programs.

- **PBM oversight.** In June 2022, the Federal Trade Commission launched an inquiry to evaluate the impact of vertical integration of PBMs on the access to and affordability of prescription drugs. In addition, federal legislators have introduced several proposals to regulate PBMs.

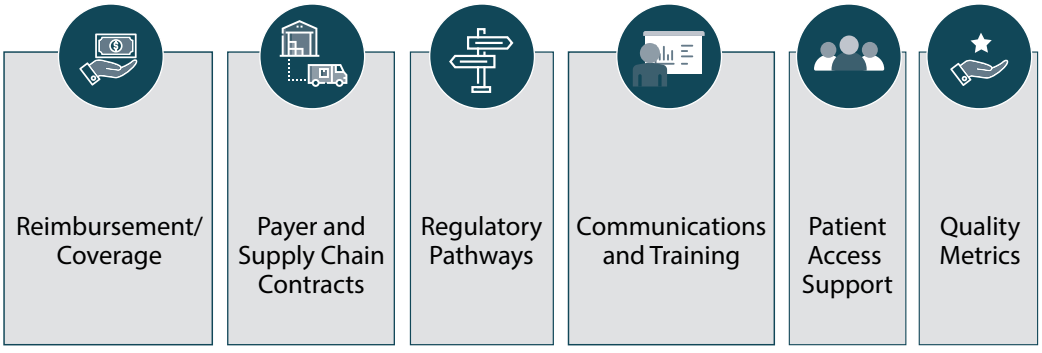
States also continue to be active with respect to drug pricing reform proposals. A significant number of states have proposed and enacted transparency laws that require manufacturers, PBMs, insurers, and other entities to report certain drug pricing information to state agencies. While reporting requirements vary by state, these laws generally require manufacturers to report information regarding drug prices and drug price increases above a certain threshold. States have adopted other mechanisms for price reporting, such as authorizing an independent board to compile a list of drugs on which the state spends significant dollars and/or for which the WAC has increased significantly over a period of time. States are also considering and adopting proposals related to generic manufacturing; drug importation; prescription drug affordability review boards; anti-price gouging and price increase penalties; and certain proposals that would leverage newly enacted federal-level pricing considerations, such as the price-capped "maximum fair prices" "negotiated" under the August 2022 provisions. Although state laws related to drug pricing are proliferating, a number of these laws have been subject to legal challenges or struck down by the courts.

MARKET ACCESS CONSIDERATIONS

Successful market access requires navigating the complex patchwork of policies and institutions discussed above in a way that ensures drug products are available to patients, reimbursable by patients' health care plans, and appropriately valued. These efforts must be compliant with various overlapping regulatory requirements and minimize enforcement risk under federal and state laws. The broad range of activities that constitute market access are illustrated in the graphic below.

If possible, manufacturers should develop U.S. market access strategies at least two years before approval and launch in the U.S. and integrate these strategies with global market access efforts. When appropriately structured, market access strategies developed by manufacturers can inform clinical development and clinical trial outputs; help guide positioning during the drug approval process; and facilitate market entry upon approval. Market access strategies also should include frequent review and updates based on changes in the U.S. reimbursement framework. ■

Market Access Strategy



In an increasingly regulated world, we have an exceptional ability to help clients in Israel navigate their most complex business problems, deals, and disputes.

Our lawyers and advisors deliver commercially minded advice, combining a deep industry understanding of our clients' industries—including many of Israel's major sectors—with sophisticated and integrated legal knowledge.

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT JOHANNESBURG LONDON
LOS ANGELES NEW YORK PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

www.cov.com

EBN Erdinast Ben Nathan Toledano

Navigating the Maze: Israeli M&A Amidst Transformation and Turbulence

In this article, we delve into the pivotal events that shaped the Israeli M&A landscape last year, explore the global context, and peer ahead to the prospects awaiting the market in 2024.

In the tumultuous landscape of M&A, the Israeli market stood its ground in 2023, even as seismic shifts reverberated through the nation. Against the backdrop of the judicial overhaul, Israeli companies deftly navigated the complexities of dealmaking. Simultaneously, the war against Hamas added an additional layer of uncertainty, impacting regional stability and strategic considerations. As global M&A trends surged, driven by private equity investments and cross-border synergies, Israeli firms grappled with both opportunities and challenges.

HEADWINDS IMPACTING ISRAEL'S M&A LANDSCAPE

During 2023, Israel faced several significant headwinds, among which the most significant and influential is the war against Hamas which commenced in early October and is yet to cease. The ongoing conflict and concerns about regional instability created uncertainty for investors worldwide leading to cautious investment behavior. As the investors are closely monitoring the political and financial developments in the region, the uncertainty about the conflict's duration, potential escalation, and economic repercussions led to a halt in cross-border M&A transactions. Thus, many Israeli companies became vulnerable due to operational disruptions and investor caution. Past wars (such as the 2014 Israel-Hamas conflict) had minimal global economic impact, however, the 2023 war occurred in a context of broader geopolitical tensions, affecting investor sentiment worldwide. **With Israel more than five months into the war, Israeli companies faced challenges in initiating deal-flow and attracting investments, especially from foreign sources, and major deals became increasingly elusive.**

Another headwind is the Israeli government's planned judicial overhaul which played a pivotal role in shaping the investor sentiment during the first half of 2023, having significant implications while sparking controversy. In a nutshell, it aimed to limit the powers of the Israeli supreme court, allowing the Knesset (Israel's parliament) to override court rulings with a simple majority, and raising concerns about judicial independence by allowing politicians to play a greater role in appointing judges. Additionally, ministers could appoint their own legal advisers, impacting parliamentary corporate governance. Foreign investors grew cautious due to uncertainty, leading to a decline in foreign investments. The proposed changes raised concerns about legal stability and predictability, prompting many acquirers to adopt a "wait-and-see" stance, wary of the potential impact of the judicial overhaul. Consequently, the volume of foreign investments nosedived by 67% in the first three quarters of 2023 compared to the same period in 2022.

In addition, the confluence of global events that preceded 2023 – including the COVID-19 pandemic, the war in Ukraine, and the 2022 inflation surge – has significantly shaped M&A trends in 2023,

VIVA GAYER
PARTNER, CORPORATE
AND M&A DEPARTMENT

IRINA (IRIS) KUSHEL
PARTNER, CORPORATE
AND M&A DEPARTMENT

SHANI TAL EVEN-ZAHAV
SENIOR ASSOCIATE, CORPORATE
AND M&A DEPARTMENT

worldwide and in Israel in particular –

1. The COVID-19 pandemic, while devastating in many ways, paradoxically catalyzed M&A activity. In 2021, we witnessed an unprecedented surge in both deal volumes and values. Companies, driven by strategic imperatives, sought to adapt, transform, and capitalize on emerging trends. Israeli M&A, in particular, thrived during this period. Startups and established companies leveraged their technological prowess, leading to a flurry of domestic and cross-border deals. The pandemic underscored the importance of resilience, agility, and innovation, prompting companies to explore strategic partnerships and acquisitions as means of survival and growth.

2. Further along the road, the ongoing war between Russia and Ukraine which commenced in early 2022, reverberated through the global economy. While the humanitarian crisis unfolded in Ukraine, the conflict had broader implications. Key disruptions included energy source diversification, defense spending increases, cyber warfare, sanction legislation, and corporations' cautious approach toward Russia, Russian based individuals and its economy in general. As often is the case, the geopolitical uncertainty and economic shifts influenced M&A strategies. Companies assessed risks, navigated supply chain disruptions and relocation of employees and service providers, and reconsidered their exposure to the region. Investors reevaluated risk profiles and stability in regions affected by the conflict, and asset divestment transactions were performed.

3. Inflation and increasing interest rates during 2022 had significant ramifications on M&A activity, which followed a prolonged period of low interest rates. As a result, acquisitions became more expensive, impacting return on investment. Stricter lending requirements added complexity to the process, resulting in longer approval times and lower overall approval rates. High interest rates also prompted thorough acquisition due diligence as buyers required greater confidence in their targets, leading to comprehensive investigatory work. Buyers seeking debt financing for acquisitions faced higher interest expenses which affected their ability to structure deals with favorable terms and required them to carefully assess the impact of interest rates on cash flows and overall transaction costs. Strategic M&A deals gain prominence over financial investors which may wait for interest rates to decrease, as strategic acquisitions serve as a buffer against interest rate risks by diversifying revenue sources, bolstering resilience, and tapping into new customer segments.

In summary, the global events of previous years significantly impacted 2023 M&A trends, worldwide and in Israel in particular. The COVID-19 pandemic continued to influence investor confidence, while supply chain disruptions drove digital transformation deals (such as Salesforce's acquisition of Slack, Microsoft's acquisition of Nuance Communications,

Procter & Gamble's digital transformation initiatives, the joint venture of BMW Group and Daimler AG's Mobility Services, Starbucks and Alibaba's partnership in China, and more). The war in Ukraine disrupted energy markets and commodity supplies, affecting various sectors. Lastly, the 2022 inflation surge led to financing challenges and altered M&A valuations. Globally, in 2023, M&A volumes declined by 6%, and values dropped by 25%, with a 20% decrease between the first and second halves of the year. Sectors like energy, technology, and pharma - surged, while others faced slower recovery.

In 2023, M&A deals in Israel plummeted in value by almost half in comparison to 2022, reaching $9.8 billion, the lowest figure since 2014. Additionally, the number of M&A deals involving Israeli firms declined by 23%, hitting the lowest count since 2015, with an average deal value of $131 million compared to an average of $202 million in the previous year. Israel's tech ecosystem, heavily reliant on foreign investments, grappled with the repercussions, emphasizing the delicate balance between economic stability and geopolitical tensions. To put things in perspective, in 2023, global M&A activity experienced a 9% decline compared to the previous year, dropping from $3.4 trillion in the previous year to $3.1 trillion. It should also be noted that the sharp decline in the Israeli market can be partly attributed to the exceptional growth Israel experienced in 2022, in which rapid expansion let the subsequent downturn to be more pronounced.

TAILWINDS PROPEL ISRAEL'S M&A MARKET

Despite global and domestic challenges, Israel's startup ecosystem remained resilient, fueling technological breakthroughs, and attracting investors from around the world. Israel continued to be a hotbed for unicorn startups. These unicorns spanned various sectors, including technology, health, and fintech. Their growth, although not at the pace of prior years, showcased Israel's ability to foster innovation and attract substantial investments. Notable unicorn success stories included companies like Lemonade, an AI-driven insurtech firm, and Monday.com, a collaboration platform. These companies not only achieved unicorn status but also expanded their global footprint, even during 2023, demonstrating Israel's prowess in creating disruptive solutions.

As described above, during 2023 **Israeli hi-tech companies faced challenges, which were also reflected in lower valuations, prompting many to implement innovative strategies to sustain growth and support their founders and employees. To address these issues, some companies pursued "carveout plans"**, providing founders and key employees with equity stakes or ownership in specific technology assets or divisions, thereby incentivizing them to drive value creation within those segments.

In 2023, companies found themselves in a precarious position due to global and local economic conditions. Many entered what can be described as a "survival mode" characterized by two distinct strategies. The first, **companies engaged in restructuring and M&A activities by combining forces, hoping to achieve synergies that would eventually make the joint entities more attractive for acquisition at higher valuations.** The second approach was downsizing. Companies focused on cost reduction measures to extend their financial runway until economic conditions improved. These strategies were driven by the need to adapt and survive amidst the challenging economic landscape.

Due to the described factors, in 2023, the Israeli M&A witnessed a few notable shifts. **First, towards more local deals as opposed to cross-border transactions.** This trend emerged amidst a global economic landscape marked by geopolitical uncertainties and trade tensions, prompting Israeli companies to focus on consolidating their positions within the domestic market. Factors such as regulatory changes, geopolitical risks, and economic instability contributed to a cautious approach towards international expansion, leading companies to prioritize local opportunities for growth and consolidation. The prevalence of local deals underscored a strategic shift towards leveraging domestic strengths and opportunities, reflecting a pragmatic approach by Israeli businesses amidst evolving global dynamics. Various Israeli tech companies also engaged in acquisitions of local startups in sectors like cybersecurity and artificial intelligence. **In the financial sector, Harel Insurance Company Ltd., one of Israel's largest financial services group, made a significant move in 2023 by offering to acquire Isracard**

Ltd., Israel's largest credit card company, for NIS 2.7 billion. This transaction reflects the dynamism of the Israeli M&A market and its resilience despite challenges. The deal progressed further, with a binding agreement reached for NIS 2.9 billion on February 12, 2023. Notably, on March 19, 2023, Harel increased the cash consideration per share, potentially raising the total consideration to approximately NIS 3.164 - 3.304 billion. Amidst headwinds, this acquisition demonstrates the market's stability and the ability of buyers to navigate risks while evaluating potential target companies. Although the above transaction was eventually not approved by the Competition Authority and while overall M&A deal value in Israel declined in 2023, this strategic move by Harel underscores the market's adaptability and long-term vision.

The second shift was towards transactions of traditional industries and infrastructure, such as the change of hands in the Eshkol power plant and the Haifa port privatization. While technology companies still played a crucial role, accounting for half of all transactions (similar to 2022), the spotlight shifted to other sectors. Notably, for the first time, entities from the United Arab Emirates made substantial investments in Israeli companies. These developments reflect a diversification of Israel's investment landscape, with infrastructure and cross-border collaborations playing pivotal roles in shaping the economic landscape in 2023.

The third shift was a noticeable increase in the use of earnouts as a strategic tool to address valuation gaps in M&A deals. Earnouts are arrangements where part of the purchase price is contingent on the future performance of the acquired company. This approach allows buyers and sellers to bridge differences in valuation by linking financial outcomes to specific milestones or targets. Moreover, the M&A landscape witnessed more distressed exits during this period. Distressed exits occur when companies face financial challenges or operational difficulties, leading to a less favorable exit scenario.

2024 ISRAELI M&A – FORWARD LOOKING STATEMENT

Looking ahead to the Israeli M&A market in 2024, several key predictions emerge. Continued geopolitical tensions and global economic uncertainties are likely to shape the landscape, influencing the volume and nature of M&A activity. Factors such as regional conflicts, trade disputes, and shifts in global alliances could contribute to a cautious approach among investors and businesses, potentially leading to a slower pace of deal-making and a focus on risk mitigation strategies.

Despite these challenges, the Israeli M&A market is expected to remain dynamic and resilient, driven by the country's strong innovation ecosystem and thriving technology sector. Israeli companies, particularly in areas such as cybersecurity, artificial intelligence, and biotechnology, are anticipated to attract interest from both domestic and international investors seeking access to cutting-edge technologies and intellectual property. **Strategic acquisitions aimed at acquiring talent, expanding market reach, and enhancing product portfolios are likely to continue, with a particular emphasis on sectors poised for growth in the post-pandemic world.**

Regulatory developments and government policies could play a significant role in shaping the M&A landscape in Israel in 2024. Continued efforts to streamline regulatory processes, improve investor confidence, and support entrepreneurship and innovation are expected to create a more conducive environment for M&A activity. Additionally, initiatives aimed at promoting competition and fostering domestic industry could impact deal dynamics, influencing the balance between local and cross-border transactions.

Further in the regulatory aspect, **it is probable that the war against Hamas has halted the judicial overhaul for the time being, as the government may prioritize security and stability concerns over domestic policy reforms during times of conflict. Assuming this to be the case, such a development could indeed have a positive effect on the Israeli M&A market once the intensive stage of the war is over.** A pause in judicial overhaul could provide businesses with a period of relative regulatory stability, reducing uncertainty and potentially facilitating smoother M&A processes. Additionally, **a focus on post-war reconstruction and economic recovery efforts**

may create opportunities for investment and growth, stimulating M&A activity in sectors such as infrastructure, construction, and technology. As the security situation stabilizes and attention shifts back to economic priorities, the Israeli M&A market is expected to see renewed momentum, supported by a more conducive regulatory environment and a revitalized focus on business development.

However, as geopolitical tensions persist, it remains too early to fully assess the impact of ongoing conflicts on the Israeli M&A market in 2024. Despite the uncertainties outlined in this article, **there are entities that are already signaling their intention to re-enter the Israeli market, contingent upon the security situation not escalating beyond its current level. These entities may view Israel's resilient economy and innovative ecosystem as attractive long-term investment opportunities.** Notable examples include tech giants like Google, venture capital firms such as Sequoia Capital, and strategic investors like Check Point Software Technologies. Their confidence in Israel's ability to navigate challenges and maintain stability, underscores the enduring appeal of its technology sector and entrepreneurial spirit, potentially injecting momentum into M&A activity as the year progresses.

Furthermore, for Israeli companies that have amassed significant cash reserves from previous years of strong performance and investment, a wait-and-see approach may prevail in 2024. These companies, equipped with ample liquidity, may opt to observe market trends and potential developments before committing to large-scale M&A activities. The cautious stance could be attributed to a desire to maintain financial flexibility and navigate uncertainties prudently. While these companies may remain vigilant for strategic opportunities that align with their long-term objectives, they may also prioritize internal growth initiatives, research and development efforts, or returning value to shareholders through dividends or buybacks. Their ability to patiently assess market conditions and deploy capital opportunistically could serve as a stabilizing force in the Israeli M&A landscape, influencing the pace and direction of deal-making in the coming year.

The downgrading of Israel's credit rating by rating agencies adds another layer of complexity to the outlook for the M&A market. **While such downgrades may initially raise concerns about the country's economic stability and creditworthiness, it's important to note that Israel's rating is expected to develop positively over time.** The Israeli government has a track record of implementing prudent fiscal policies and structural reforms to address economic challenges, which could contribute to a gradual improvement in the country's credit rating. Moreover, as the Israeli economy demonstrates resilience and rebounds from external shocks, investor confidence may strengthen, further bolstering Israel's creditworthiness. However, in the short term, the downgrade could potentially impact M&A activity by raising borrowing costs for companies and investors, leading to a cautious approach towards deal-making. Additionally, the perception of increased risk associated with the downgrade may prompt some investors to reassess their investment strategies, potentially resulting in a temporary slowdown in M&A transactions as market participants await greater clarity on the economic and financial outlook for Israel. Despite these challenges, the underlying strengths of the Israeli economy and its vibrant M&A landscape suggest that the impact of the downgrade may be mitigated over time, paving the way for a resurgence in deal activity as confidence in Israel's economic prospects is restored.

Anticipation is high that the Israeli M&A market will recover swiftly, drawing on past experiences where the market demonstrated resilience and agility despite geopolitical challenges. Historically, the Israeli economy has showcased a remarkable ability to rebound following periods of conflict or geopolitical instability. Previous wars and military operations have been followed by rapid recoveries, with the M&A market displaying resilience and robustness in the aftermath. Investors and businesses alike draw confidence from this track record, expecting a similar pattern to unfold as the current situation stabilizes. This anticipation of recovery is bolstered by the fundamental strengths of the Israli economy, including its highly skilled workforce, innovative ecosystem, and strong government support for entrepreneurship and investment. As such, there is a prevailing sentiment that the Israeli M&A market will once again demonstrate its capacity to bounce back and thrive in the face of adversity. ■

EBN Erdinast Ben Nathan Toledano

Market Leader in Cross-Border Transactional and Contentious Matters

EBN stands out as one of Israel's leading and rapidly expanding law firms, providing full service to clients with a team of over 160 lawyers who specialize in various practice areas and disciplines.

With our team's international training, and hands-on experience, the firm consistently plays pivotal roles in complex, high-profile, cross-border transactions and legal proceedings.

EBN serves a broad spectrum of clientele, including multinational corporations, private and public companies listed on domestic and foreign stock exchanges, private equity and venture capital funds, strategic investors, real estate companies and high net worth individuals.

Main Practice Areas

M&A • Private Equity • Hi-Tech and Venture Capital
Commercial Litigation • International Arbitration
Class Actions • Banking and Finance
Securities and Capital Markets • Tax
Labor and Employment • Privacy and Data Protection
ESG • Zoning and Planning
Insolvency and Reorganization • Antitrust
Energy and Infrastructure • Real Estate
Government Relations, Legislation and Regulation

Renowned as a top-tier firm by leading international ranking guides

Chambers TOP RANKED Global 2024 Erdinast Ben Nathan Toledano & Co. with Hamburger Evron

The LEGAL 500 EMEA TOP TIER 2023

IFLR 1000 Top Tier Firm Erdinast Ben Nathan Toledano & Co with Hamburger Evron Israel 2023

T. +972.3.7770101 • F. +972.3.7770111
Office@ebnlaw.co.il • www.ebnlaw.co.il

Fox Rothschild

The State of the AI Union: A Conversation

A data protection expert and their apprentice discuss artificial intelligence regulation in the United States[1]

[1] *The format of this article is inspired by the apprentice/philosopher conversation in the excellent book "The Courage to be Disliked" by Ichiro Kishimi and Fumitake Koga.*

A young apprentice in the field of data protection sends a direct message to a data protection expert. This is their conversation:

Apprentice: Artificial intelligence is a highly specialized area. It is so specialized that the tools we have can never be used to regulate it. We obviously need a specialized law for this.

Expert: Must is a strong word. What makes you say that this is the case?

Apprentice: First, AI is a completely new technology and all new technologies need their own legal regime. This has been the case in other instances in history.

Expert: Let's see. All new technologies need their own dedicated regulation. There is a famous discussion about this in the article "Cyberspace and the Law of the Horse" by Frank Easterbrook[2]. It says: "Beliefs lawyers hold about computers, and predictions they make about new technology, are highly likely to be false. This should make us hesitate to prescribe legal adaptations for cyberspace. The blind are not good trailblazers." Should lawyers, then, be trusted in prescribing legal adaptations for AI?

[2] *https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2147&context=journal_articles*

There is precedent, even in the EU, for the approach of using existing laws to regulate AI. This appears to be the approach in the U.S. as well.

Apprentice: But what better evidence is there that this is the right path to regulating AI than the fact that the European Union, which is a known leader in innovative regulation, has decided, after a long deliberation, that a dedicated law, the AI Act, is the way to go.

Expert: The European Union certainly deserves credit for the General Data Protection Regulation (GDPR), which was certainly an innovative law when it came out and has definitely set its mark on data protection enforcement both in the EU and throughout the world. Many other laws have been modeled after it (like many U.S. State privacy laws, the new Quebec data protection law, the Brazil LGPD, and several other such laws in South America and Africa). But just because they got GDPR right (and not everyone agrees they did), that does not prove that their approach to AI regulation is the right one. What makes you feel so strongly that this is the right approach?

In the article we just discussed about the "Law of the Horse," Easterbrook continues by saying, "the best way to learn the law applicable to specialized endeavors is to study general rules. Lots of cases deal with sales of horses; others deal with people kicked by horses; still more deal with the licensing and racing of horses, or with the care veterinarians give to horses, or with priz-

ODIA KAGAN
PARTNER, FOX ROTHSCHILD

es at horse shows. Any effort to collect these strands into a course on "The Law of the Horse" is doomed to be shallow and to miss unifying principles."

Apprentice: OK. I agree that using horses as work animals and forms of transportation changed lives in the olden days, but can you really compare this to how AI has burst onto the scene without prior warning?

Expert: Do you think that is what happened with artificial intelligence? Did it really just "burst onto the scene?" What would you say is artificial intelligence?

Apprentice: Well, I understand many are having a hard time agreeing on a definition. The OECD defines an Artificial Intelligence System[3] as a "machine-based system that can, for a given set of human defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments."

Expert: Look at that definition. What about an excel spreadsheet? If you put in a formula that would be computed, wouldn't it fall under this definition? What about recommendation of movies when you watch a streaming service like "People who watched this movie also watched this movie?" What about shopping recommendations on an e-commerce website? What about a chat bot denying entry to a website if you reply that you are under 18?

Apprentice: I suppose that if you look at it that way, it could really encompass some things that have already been happening for a number of years.

Expert: What about algorithms?

Apprentice: What about them?

Expert: There is the age-old discussion about a service provider (also known in data protection circles as a "data processor") that has a SaaS service or a mobile application and wants to use the personal data collected in the provision of the service or the app to "improve the service." Is the use of the data for the improvement of the service considered AI?

Apprentice: No, that's machine learning.

Expert: What is machine learning?

Apprentice: Well, per the Oxford dictionary, machine learning is "the use and development of computer systems that are able to learn and adapt without following explicit instructions, by using algorithms and statistical models to analyze and draw inferences from patterns in data."

Expert: Do you think that's related to artificial intelligence?

Apprentice: Well, it seems it is machine based and makes recommendations and predictions so I would say that it is a subset of artificial intelligence.

Expert: It seems that both IBM[4] and MIT[5] in their definitions of machine-learning agree with you. Has

[3] *https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449*

[4] *https://www.ibm.com/topics/machine-learning*

[5] *https://mitsloan.mit.edu/ideas-made-to-matter/machine-learning-explained*

machine learning been around for a while?

Apprentice: Well, it seems that machine learning powered the checkers game on an IBM 7094 computer that won against checkers expert Robert Nealey, and that was in 1962. So, yes, I would say machine learning has been around for a while.

Expert: What about "profiling and automated decision making?"

Apprentice: Profiling "means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyze or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements." Under GDPR, a person has the right not to be subject to "a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."

Expert: We will come to this later, but this is under GDPR you say?

Apprentice: Yes. So I guess that means that this too has been around for at least seven years. Since the final GDPR version was published, and before that too.

Expert: So you are telling me that at that time, the EU did not set out to have a law of automated decision making, just a law of data protection that happens to regulate automated processing where the thing being processed is data?

Apprentice: I see what you did there. Yes, under the EU regime, if automated processing / decision making, which we nowadays call "AI," involves the processing of personal data, which is information that identifies people, then GDPR would apply in addition to the new AI Act. But the AI Act will apply to more than just AI that touches personal data. It will apply to using AI when this could result in "high risk" and imposes various requirements like labelling, risk assessments etc. on the developers (the ones that create the AI) and deployers (the ones that use the system).

Even when using AI, you are still responsible for making sure that the data you use for your processing was obtained with the necessary notices and consents.

Expert: So we see that there is precedent, even in the EU, for the approach of using existing laws to regulate AI. This appears to be the approach in the U.S. as well. Let's call it "Have laws, will regulate."

Apprentice: That reminds me of a sign in a picket line, but what does it mean?

Expert: It means that if something is already illegal under the existing laws, privacy laws, labor laws, copyright laws, election laws and so forth, it will also be illegal if you do the illegal thing using AI.

Apprentice: Can you give me some examples?

Expert: (chuckles) So, first in this imaginary picket line of yours is a representative of the Federal Trade Commission (FTC), the de facto privacy regulator. They have stated that they will enforce uses of AI that constitute "unfair or deceptive acts or practices." This is the FTC's authority under Section 5 of the FTC Act, which it has been using for a while now to regulate data protection in the U.S. in the absence of a federal data protection law. So in this case, if you use AI and make claims about how effective it is, or how accurate it is, or the things that it is able to do – you had better make sure that these claims are accurate and substantiated. If not, that could be deceptive.

Apprentice: So you can't make up claims. Got it. What else?

Expert: You can't omit claims either. The FTC has said that not disclosing all material information to consumers about how you're using and sharing information is also misleading and could also be unfair.

Apprentice: Ok this is getting more complicated. Don't exaggerate, don't mislead by omission. Anything else?

Expert: You are also responsible for making sure that the data you use for your processing was obtained with the necessary notices and consents. That was made clear in the recent FTC decisions on X-Mode[6] and Inmarket[7] that discussed location and other sensitive data.

Apprentice: Interesting…that seems to be a lot like what is required under GDPR to attain your "fair and lawful" status for your processing. But that seems like a tall order for applications that train AI. Don't they hoover up a lot of information from everywhere?

Expert: Yes, and this is the issue. The FTC is currently investigating OpenAI regarding this very issue. In the recent Rite Aid enforcement[8] on smart (biometric) CCTV, the FTC has said[9] very clearly that it is "not afraid of requiring disgorgement of data that it determines to have been ill-gotten, including deleting algorithms or other products that were developed using those images and photos." It has already ordered such remedies in the Kurbo[10] and Ring[11] cases.

Apprentice: So let's say you are using a third-party AI service and you are not collecting the data yourself, how do you know if consent was gotten? Can you just stick it somewhere in the terms of use?

Expert: No. The FTC has said that if consent is needed (which isn't always the case), you need to make sure that whomever is collecting and giving it to you has gotten the right consent. Getting them to say that they "will comply with the law" in your contract with them is not enough. You have to actively check.

Just like under GDPR, profiling and automated decision making is regulated under most, if not all, of the new U.S. state privacy laws.

Apprentice: So the FTC is really serious about its "picket sign," but you mentioned that there are other participants in my imaginary picket line.

Expert: Yes. Along with the FTC, the U.S. Department of Justice (which brings litigation on behalf of the U.S. government), the Consumer Financial Protection Bureau (CFPB), which is a regulator of financial institutions, and the Equal Employment Opportunity Commission (EEOC) issued a joint statement[12] saying that they are ready to enforce AI under the respective laws under their mandate. For example, the EEOC, who is in charge of enforcing against discrimination in employment, has already entered into a settlement with a company for discrimination that was carried out using AI tools and has issued guidance on this topic.[13] The CFPB has also already provided guidance on the use of chatbots[14] and on making credit decisions based on complex algorithms.[15]

---

[6] *https://www.ftc.gov/system/files/ftc_gov/pdf/X-Mode-D%26O.pdf*

[7] *https://www.ftc.gov/system/files/ftc_gov/pdf/D%26O-InMarketMediaLLC.pdf*

[8] *https://www.ftc.gov/system/files/ftc_gov/pdf/2023190_riteaid_stipulated_order_filed.pdf*

[9] *https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without*

[10] *https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive*

[11] *https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users*

[12] *https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf*

[13] *https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence*

[14] *https://www.consumerfinance.gov/data-research/research-reports/chatbots-in-consumer-finance/chatbots-in-consumer-finance/*

[15] *https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/*

Apprentice: And what about "profiling and automated decision making?" You mentioned we would come back to that. Did it make it into our virtual picket line?

Expert: Certainly. And thank you for reminding me. Just like under GDPR, profiling and automated decision making is regulated under most, if not all, of the new U.S. state privacy laws. Under the Colorado Privacy Act, for example, if you engage in profiling with legal or similarly significant consequences, you need to provide the right to opt-out of the processing and you need to conduct a data protection risk assessment, which is called a DPIA under GDPR. The California Privacy Protection Agency (CPPA) is currently considering regulations under the California Consumer Privacy Act (CCPA) to specifically address automated decision making.

Apprentice: So, basically, in the U.S., if there is already a law that regulates certain conduct, if you engage in this conduct using AI, you can be enforced against under the existing laws. Sounds really simple. Maybe we really don't need any AI specific laws after all?

Expert: If it seems too good to be true, then it usually is. In parallel with enforcing the existing laws, the U.S. has started on a path of laws that will specifically regulate certain aspects of AI.

Apprentice: Uh-oh. Like what?

Expert: Well, one such family of laws are meant to regulate how the government and government entities use AI. To this end, we have now seen both the White House's Blueprint for an AI Bill of Rights and the White House's Executive Order on AI.[16] Since then, things have been happening quickly, and the agencies are hard at work. For example, the OMB has recently published its rules[17] and they have a lot of similarities with the EU AI Act. They are divided into "rights impacting use" and "safety impacting use" – similar to the EU AI Act's "high risk" uses. There are also a number of state laws and state executive orders regulating the government.

Apprentice: OK, that's different since the government is not subject to many of the existing laws that we discussed, and definitely not the U.S. State privacy laws.

Expert: That's right, but it doesn't end there. Another family of bills address specific aspects of using AI like AI transparency – requiring that the algorithm be explainable and not in a "black box." Others require "watermarking" to see when something has been generated by AI. And yet others prohibit deepfakes. There are even other bills that address the use of AI specifically in the workplace.

Apprentice: So are we coming full circle? Are we approaching a comprehensive AI law that would regulate AI as such?

Expert: Well, a recent bill from the Commonwealth of Virginia purports to regulate actions by "developers of high risk AI systems" and "developers of generative AI," as well as "deployers" before they use high risk AI systems for consequential decisions."

Apprentice: Wait a minute… where did we see those terms before? Law of the Horse indeed. ■

ABOUT THE AUTHOR:

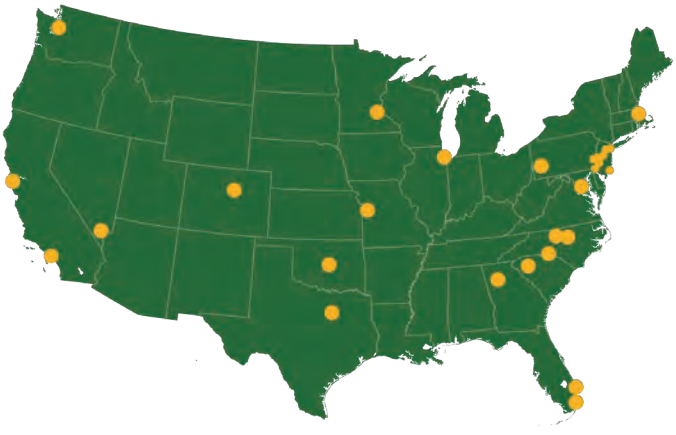
Odia Kagan is a Partner and leads data protection compliance at Fox Rothschild LLP, a U.S. national law firm. Odia advises companies of varying industries and sizes on compliance with data related regulation including: AI and biometrics regulation, GDPR, the California Consumer Privacy Act (CCPA) and other U.S. data protection laws. With an emphasis on assessing future trends and a pragmatic, risk based approach, Odia provides clients with practical advice on how to design and implement their products and services in a compliant manner. Odia holds 3 law degrees, 5 bar admissions and 7 privacy certifications (CIPP/US/E, CIPM, CDPO, C-GDPR/P, FIP, PLS). You can follow her on https://www.linkedin.com/in/odiakagan/ or X at @odiakagan.

[16] *https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-24283.pdf*

[17] *https://docs.google.com/document/d/1vKTiubShiLgcWLqQpKaXsGwMfoiJlP5wdMV5tIPU8ak/edit*

YOUR GATEWAY TO THE US

We provide innovative legal services that help growing Israeli companies convert on business opportunities and reach their goals.



Our Israel Group is one of the largest among US firms, consisting of more than 30 attorneys — including fluent Hebrew speakers who understand the nuances of Israeli culture — based in major US business hubs. We're well-positioned to assist Israel-based clients with a full range of local and international issues, including labor and employment, privacy and data security, intellectual property, arbitration, immigration and corporate law.

Michael A. Sweet
+1 415.364.5560
msweet@foxrothschild.com

Sarah B. Biser
+1 862.576.1354
sbiser@foxrothschild.com

Odia Kagan
+1 215.444.7313
okagan@foxrothschild.com

GNY GORNITZKY THERE IS ALWAYS A WAY

A Closer Look at 2023

Daniel Paserman takes a look at certain tax developments that transpired in Israel throughout 2023.

This article examines certain noteworthy developments that have shaped the Israeli tax sphere over the past year, with a particular focus on legal ramifications of notable court rulings, the implications of a new proposed international tax reform, and updates within the high-tech sector.

MEDTRONIC CASE: NEW JUDGMENT REGARDING "BUSINESS RESTRUCTURING"

In June 2023, the judgment in the matter of Medtronic Venture Technologies was published. The judgment addressed a claim of a "Business Restructuring", specifically, the sale of FAR (functions, assets, and risks), a claim commonly asserted by the Israel Tax Authority ("ITA") in cases involving the acquisition of Israeli companies by international groups. This ruling joins previous District Court judgments in the cases of Gteko (2017), Broadcom (2019), and Medingo (2022) (our firm represented the taxpayers in the Broadcom and Medingo cases).

Medtronic Inc., which heads an international group specializing in the development, manufacturing, and marketing of medical products, purchased all of the shares of an Israeli start-up. In keeping with standard practice, the Israeli target entered into a number of agreements with companies in the Medtronic Group following the acquisition, including R&D and license agreements. The Tax Assessor contended that, as a result of these inter-company agreements, the Israeli company had effectively transferred its FAR to entities within the Medtronic Group outside of Israel. Consequently, the interaction between the parties should be viewed as a transaction for the sale of FAR and should be taxed accordingly.

The ruling highlights... the impact of the tax assessment procedures on the subsequent litigation process in court

The Honorable Judge Borenstein, in his ruling, cited prominent case law on the issue of "Business Restructuring" and outlined a spectrum of cases. On one end, there are clear-cut cases of transferring functions and assets within a short period of time while leaving a corporate shell, as in the Gteko case. On the other end of the spectrum, there are cases involving active companies that continue to grow, maintain, and develop their intellectual property, as in the Broadcom case.

In this case, the judge determined that the circumstances paralleled those of the Gteko case, leading to the ruling that the FAR of the Israeli company had been sold.

The court's judgment emphasizes the importance of the international group's conduct following the acquisition of an Israeli company, particularly in the development and implementation of intercompany relationships and the set of contracts among the group's companies. For instance, the intellectual property that was owned by the company permeated to Medtronic Group over time, and it was not sold by the company, not even upon the closure of its activities. Moreover, the ruling highlights the importance of strategic planning for the transaction and its meticulous

DANIEL PASERMAN
ADV. (CPA), TEP,
HEAD OF TAX, GORNITZKY GNY

implementation, as well as the impact of the tax assessment procedures on the subsequent litigation process in court.

Following four District Court judgments regarding "Business Restructuring," the legal framework is becoming clearer, establishing guiding principles for the examination of such cases by the courts. The judges emphasize the importance of detailed factual analysis of each case, particularly focusing on factors such as the group's involvement, the company's independence, mechanisms for the registration and protection of its intellectual property; and other relevant considerations.

BEIT HOSEN CASE - NEW JUDGMENT REGARDING SHARE REPURCHASE

In February 2023, for the first time, the Supreme Court addressed the tax implications of a disproportionate share repurchase. The judgment involved two cases in which a company executed a share-repurchase, acquiring its own shares from some of its shareholders (selling shareholders), in a manner that was not proportionate with their ownership. This led to an increase in the percentage of ownership held by the remaining shareholders in the company.

The panel of judges was divided on the matter. The minority opinion held that the "dominant purpose" of the share-repurchase must be examined, determining whether the transaction resulted from a conflict among shareholders and whether its primary objective was to benefit the company rather than the individual shareholders. Based on this approach, if the share-repurchase is intended to benefit the company, it should not be taxed as a dividend. However, if the share-repurchase is intended to benefit the shareholders, it should be treated as a taxable dividend for all shareholders at the time of the transaction - unless there was a conflict among shareholders, in which case the entire dividend should be allocated to the remaining shareholder (and the seller would be liable for capital gain tax).

In contrast, the majority opinion asserted that when dealing with a share-repurchase within a private company operating as a quasi-partnership, it is inappropriate to attempt to pinpoint the dominant purpose behind the share-repurchase, as this determination is challenging to make and apply. A quasi-partnership company is a private entity with a limited number of shareholders who share personal relationships based on mutual trust, often engaging in joint management. In such entities, it is difficult to identify the dominant purpose, and it is questionable whether one exists. It can be presumed that the separation of shareholders benefits both individuals and the company, and their considerations are intertwined. Adopting the "dominant purpose" test may open the door to manipulation by shareholders in order to reduce taxes. Tax law should adopt a clear and straightforward test to ensure clarity and stability.

In light of the above, it was concluded that the "dominant purpose" test should not be adopted. Rather, the remaining shareholders should be obligated to include a portion of the share-repurchase sum in their taxable income, proportionate to their

respective ownership shares as of the purchase date. In other words, the transaction should be viewed as a two-stage process: In the first stage, a dividend is distributed to each shareholder based on their proportionate share of the total share-repurchase amount; and in the second stage, the remaining shareholders acquire from the selling shareholders their shares for the amount of the dividend they received.

The majority judges emphasized that their ruling only applies to private companies functioning as quasi-partnerships, and it is not establishing rules for other types of companies, including private companies not operating as quasi-partnerships as well as public companies.

GOTTEX CASE - NEW JUDGMENT REGARDING NON-COMPETE UNDERTAKING

In March 2023, the District Court issued a judgment on the Gottex case, which was represented by our office. The ruling addressed several complex tax issues, including the question of whether payment for a non-compete undertaking, in the context of share acquisition, could be recognized as a separate deductible expense.

The case involved two companies, each holding a 50% stake in Gottex Swimwear Brands. One shareholder acquired the shares of the other, and, in addition to the payment for the shares, the acquired company made a separate payment to the selling shareholder in consideration of its commitment not to compete with the company. The acquired company sought to classify this payment as a deductible expense. The ITA contended that the various elements of consideration should not be treated separately but should instead be viewed as a consolidated sum, representing the acquiring shareholder's comprehensive payment for the purchase of shares from the selling shareholder, and thus this payment cannot be deducted by the target company as a deductible expense

The court determined that it is possible to distinguish between the compensation paid for the shares and the compensation paid for the non-compete clause. Provided that the non-compete clause is authentic, and is not intended solely for tax reduction, and there is a legitimate risk of the selling shareholder competing with the acquired company, a separate payment can be designated for the seller's commitment not to compete in the acquired company's business. Just as it is possible to treat the compensation received for a non-compete clause separately from the sale of shares, treating it as taxable income, conversely, it is viable to separate the payment for non-competition from the payment for shares and recognize it as a deductible expense.

Another issue considered by the court was whether the expense associated with the non-compete clause should be assigned to the acquired company or to the acquiring shareholder. On the one hand, the non-compete clause is part of the stock acquisition transaction, intended to protect the interests of the shareholders and secure their investment. On the other hand, the activity subject to the non-compete clause occur within the acquired company, which is the entity wherein potential competition might transpire. The court ruled that it is necessary to assess who holds the primary interest in the non-compete clause based on the circumstances of each case.

In this instance, the court acknowledged the authenticity and value of the non-compete clause, affirming that, in principle, it could be deemed a deductible expense. However, the court concluded that, given the circumstances of this case, the expense should be attributed to the acquiring shareholder rather than the company that was sold.

NEW PROPOSED INTERNATIONAL TAX REFORM

In November 2021, The Committee for International Tax Reform published recommendations for revisions in the Israeli international tax regime. In 2023, the government took the first steps for the implementation of some of the Committee's recommendations, with the Israeli Ministry of Finance publishing proposed bills addressing individual's tax residency, controlled foreign corporations (CFC), and foreign tax credits.

Individual's Tax Residency: Under the current rules, Israeli residency for tax purposes is based on the "center of life" test, which examines various factors such as familial, economic, and social ties. In addition, the number of days spent in Israel is impor-

tant as the ITO provides two alternative residency presumptions that are rebuttable. An individual staying in Israel for more than 183 days in a tax year or more than 425 days over three consecutive tax years (with at least 30 days in the third tax year) is presumed to be an Israeli tax resident. The proposed legislation maintains the "center of life" test and the existing rebuttable presumptions, but also introduces stricter, irrefutable presumptions for determining tax residency. According to the proposed changes, an individual would be considered a tax resident of Israel if any of the following conditions are met, including inter alia: staying in Israel for more than 183 days for two consecutive tax years; exceeding 100 days in a tax year and 450 days over three consecutive tax years; or spending over 100 days in a tax year while their spouse is an Israeli resident.

At the same time, the proposed legislation introduces irrefutable presumptions to determine that an individual is a foreign tax resident, including: spending less than 30 days per tax year in Israel, during each of the recent 3-4 tax years; an individual and her/his spouse spend less than 60 days per tax year in Israel for each of the recent 3-4 tax years; an individual and her/his spouse spend less than 100 days per tax year in Israel for each of the recent 3-4 tax years, while spending over 183 days in a treaty country, and obtain a certificate of residency therefrom.

Controlled Foreign Company ("CFC"): CFC rules, as they apply in Israel today, stipulate that, under certain conditions, passive profits of a foreign corporation controlled by Israeli residents are considered a "deemed dividend" distributed to the Israeli shareholders. The proposed bill expands the definition of passive income to include certain business income, under certain circumstances, that is received from related parties. Additionally, it lowers the passive income threshold for classifying a company as a CFC to 1/3 of the total income or profits of the foreign company (instead of half). The proposed legislation also imposes stricter conditions on foreign companies that are residents of a country that is in the "black" or "gray" lists of the EU (excluding treaty countries) or residents of a country with which Israel does not have an agreement that allows for the exchange of information.

The purpose of this special legislation is to encourage the development of Israeli high-tech companies, particularly those in their initial stages.

Furthermore, as part of the proposed legislation, the holdings of new Israeli residents and veteran returning residents will be considered holdings of Israeli residents and will be taken into account while determining whether a foreign corporation is a CFC. This provision will apply only to assets purchased after their move/return to Israel.

Foreign Tax Credit: Currently, Israel uses the "Basket Method," for tax credit, where each income source on which tax was paid outside of Israel is treated as a separate "basket." The foreign tax is then credited only against the Israeli tax paid for that specific "basket". The proposed bill seeks to reduce the number of "baskets" used in the "Basket Method," denies credit for foreign tax paid in certain cases or in certain countries, and prevents the use of excess credit in subsequent years, except in specific cases.

NEW TAX BENEFITS FOR THE ISRAELI HIGH-TECH INDUSTRY

In July 2023, the Israeli Parliament (the Knesset) approved the Law for Encouragement of Knowledge-Intensive Industry (temporary order). The purpose of this special legislation is to encourage the development of Israeli high-tech companies, particularly those in their initial stages (start-up companies), whose intellectual property is registered in Israel and have their primary operations in the country. The law is designed to promote investment in these companies.

The new legislation grants five tax benefits:

1. Tax credit for individuals who invest in Israeli start-up companies, calculated as the investment amount multiplied by the investor's capital gains tax rate.
2. Deferral of capital gains tax on the sale of shares

of an Israeli technology company when the selling shareholder reinvests the proceeds from the sale in another Israeli start-up company.

3. Authorization for large Israeli technological companies acquiring other technological companies (Israeli or foreign) to deduct the amount of investment for tax purposes over a 5-year period.

4. Tax exemption to foreign financial institutions on interest income from loans extended to Israeli technology companies.

5. Extension of the validity (with certain conditions amended) of tax benefits related to investment in shares of public technology companies. This extension allows investors to recognize a capital loss equal to their investment amount, up to ILS 5 million.

These tax benefits have the potential to result in significant tax savings for certain investors, high-tech companies, and financial institutions. The new tax benefits will be in effect until the end of 2026, and their extension will be examined at that time.

ISRAEL TAX AUTHORITY PUBLISHES GUIDELINES REGARDING SAFE INVESTMENTS

In May 2023, ITA clarified its position on the tax issues applicable to investments made through a Simple Agreement for Future Equity (SAFE). The ITA addressed the issue after a time of uncertainty, providing much-needed clarity for companies seeking to attract investors and secure sources of financing.

In a SAFE transaction, the investor's capital injection doesn't immediately result in the allocation of shares; instead, shares are assigned at a later stage, generally during a broader and more substantial round of fundraising when the company's value is determined. At this point, the SAFE investor receives a discount relative to this value. The main issue addressed by the ITA in this context was the classification of the discount component in the SAFE investment. Specifically, the ITA examined whether the difference between the investment amount at the time of the SAFE transaction and the fair value of the shares allocated to the investor based on the value on the subsequent date of exercise would be classified as interest income.

The ITA issued a "Safe Harbor" letter, outlining that, under certain conditions, a SAFE investment will be considered an advance payment on account of shares. Consequently, no tax event will occur on the date of the exercise into shares, and the company will not be subject to any obligation to withhold tax in this regard. The ITA's guidance clarifies that if, on the exercise date, the outlined conditions are not met, it will not determine the classification of the SAFE investment for tax purposes, and this classification will be determined based on the overall circumstances of the transaction.

The ITA's guidance applies to Israeli-resident private companies operating in the high-tech industry which are at the stage where most of their expenses are classified as research and development, production, or marketing expenses related to their developed products. Additionally, the guidance is relevant to companies that have not conducted a fundraising round on a known share value during the three-month period prior to the SAFE Agreement's closing date. The ITA's guidance applies solely to SAFE investments which comply with a long and challenging list of specific conditions and which have been signed or will be signed between companies and SAFE investors by December 31, 2024, or in accordance with other guidance that will be issued by the ITA. ■

ABOUT THE AUTHOR

Adv. Paserman is the head of Gornitzky GNY's tax practice. Daniel is involved in intricate corporate tax planning - both domestic and cross-border. His experience includes negotiations vis-à-vis the Israel Tax Authority regarding tax regulatory issues, seeking and obtaining tax rulings for both Israeli and global companies operating in Israel, as well as handling complex, wide-scope tax assessments for both international and Israeli corporations.

Daniel also serves as the Co-Chair of STEP Israel. He advises private clients in matters concerning family wealth planning and preservation, specializing in taxation of trusts and estates and provides tax planning guidance for high-net-worth individuals.

Email: paserman@gornitzky.com | **Tel:** +972-3-7109191

GNY
GORNITZKY

THERE IS
ALWAYS
A WAY

Some see a conflict

We see Common ground

> The most professional firm with an excellent service.
>
> CHAMBERS GLOBAL

HERRICK

The U.S. Corporate Transparency Act – What Israeli Investors Need to Know

The Corporate Transparency Act ("CTA") requires any entity formed or registered to do business in the United States to disclose information about its ultimate beneficial ownership and control.

Most investment by Israeli persons and firms in United States real estate involve the implementation of customized ownership structures to minimize taxes and to ensure the investors' goals relating to their doing business (or avoiding doing business) in the United States are met. Sometimes those structures involve the formation of a few specialized entities. New U.S. federal reporting requirements, described below, will apply to those entities, and investors and their advisors should be aware of, and sensitive to those requirements.

The Corporate Transparency Act ("CTA") requires any entity formed or registered to do business in the United States to disclose information about its ultimate beneficial ownership and control to the U.S. Department of the Treasury (FinCEN), unless the entity can qualify for one of many exemptions. CTA reporting obligations have no cut-off date, applying to any entity regardless of when formed.

Substantial civil and criminal penalties may be imposed for failure to comply with CTA reporting obligations, with potential personal liability for officers, directors and other control persons.

Herrick has put together a "task force" to keep our clients and colleagues informed of these rules and to provide the advice needed to follow them. On March 1, 2024, the U.S. District Court for the Northern District of Alabama ruled that the Corporate Transparency Act is unconstitutional on narrow federalism grounds and permanently enjoined its enforcement against the plaintiffs in that action.

In response, The U.S. Department of the Treasury (FinCEN) announced that the U.S. government is not currently enforcing the Corporate Transparency Act against the plaintiffs in the action, including the National Small Business Association and members of the National Small Business Association. Thus, in FinCEN's view, the CTA remains fully in force for everyone other than a direct or indirect participant in the case.

This action, of course, puts the need to comply with these rules in doubt. Although at the moment many experts feel that there is no need to comply with the CTA, it is too early to assume that an appeal of this decision, or other actions (legislative or judicial), will not result in it continuing to apply in some form or another.

So, for the time being, we recommend that clients and colleagues continue to educate themselves about the rules of the CTA. This summary is intended to provide an overview of what you need to know.

LOUIS TUCHMAN
PARTNER AND CHAIR OF TAX;
CO-CHAIR ISRAEL PRACTICE

YARIV BEN-ARI
PARTNER AND CO-CHAIR, REAL ESTATE
HOSPITALITY; CO-CHAIR, ISRAEL PRACTICE

IS AN ENTITY A REPORTING COMPANY?

Unless an entity qualifies for a CTA exemption, the entity is a "Reporting Company" and must file a beneficial ownership information report (a "BOI Report") with FinCEN.

- Includes corporations, LLCs and partnerships.
- Applies to similar entities organized overseas if they register to do business in the US.
- Exemptions include:

    1. Entities that are otherwise subject to regulatory or other oversight, such as banks, broker/dealers, investment advisors.
    2. Tax-exempt entities.
    3. Large operating companies.
    4. More than 20 full time employees employed in the U.S.
    5. Has a physical presence in the U.S.
    6. More than $5 million in gross receipts from within the U.S.
    7. Some inactive entities.
    8. Certain subsidiaries of some exempt entities.

A single transaction, such a large real estate development, can generate multiple Reporting Companies. All entities in a chain of ownership have to file even if disregarded for tax purposes.

WHO ARE THE BENEFICIAL OWNERS?

To complete a BOI Report, a Reporting Company must report personal identifying information (e.g., name, DOB, residential address and passport/driver's license) of all individuals (natural persons only):

(i) Who directly or indirectly own 25 percent or more of the company.

a. The rules for calculating ownership percentages and determining "substantial control" are complex and must be applied through a multi-tier ownership structure up to the ultimate individual "heart beats."

(ii) Or who exercise "substantial control" over the Reporting Company.

a. Persons who have substantial control are included even if they do not own any economic interest in the entity, but the category generally does not include employees who are not "senior officers."

b. The rules for determining "substantial control" implicate parties with consent rights or major decision rights, or rights under loan documents or other transactional documents that are external to the entity's governance documents.

In the context of a complex organizational and transactional structure, this is where the most substantive legal advice will be needed.

WHEN DOES A REPORTING COMPANY HAVE TO FILE A BOI REPORT?

- Every Reporting Company in existence prior to 2024 must file an initial BOI Report before the end of 2024.
- Every Reporting Company formed in 2024 must file within 90 days of formation.
- Every Reporting Company formed after 2024 must file within 30 days of formation.
- Additional BOI Reports must be filed if and when any previously reported information changes.
- This can include hiring a new CEO or other senior officer who has substantial control.

Because ordinary business transactions (such as an equity raise) can trigger an obligation to file an updated BOI Report, Herrick can make sure you never miss a filing deadline.

WHAT ARE THE COMPANY APPLICANT RULES?

At formation of an entity after 2023, the initial BOI report must include personal information regarding the "Company Applicant," that is, the person who directly files the document creating the entity and, if applicable, the person who is primarily responsible for directing or controlling the filing. This can include a person at the agency that files the document and an attorney who oversees that process. These persons must provide the Reporting Company with their individual information so that the company can include it on their BOI reports. Information regarding Company Applicants does not have to be updated for changes.

Many persons involved in this practice (including a group of attorneys at Herrick) have registered with FinCen and have been provided with an identification number that can be reported by the Reporting Company in lieu of the required personal information. This can help smooth the process of formation of entities for you.

DO I NEED TO DEVELOP CTA-RELATED RISK MANAGEMENT?

As everyday events (some as simple as hiring or firing a C-suite officer) may require the filing of an updated BOI Report, a Reporting Company must be able to monitor its entire ownership, management, and organizational structure on an ongoing basis. ■

Herrick's CTA Team can assist you with all aspects of CTA compliance, both for new investments in U.S. real estate, and with respect to legacy structures used for past investments. Please reach out to us for more information and to explore how we can help: https://www.herrick.com/corporate-transparency-act-resource-center/

ABOUT THE AUTHOR

Louis Tuchman is a partner at Herrick and the chair of the Tax Department. He protects the strategic and financial interests of Herrick's clients around the world by clarifying and addressing the tax implications of transactions, financings, litigations, restructurings, contracts and other matters. Louis is known as a savvy navigator of intricate cross-border tax issues, counseling major foreign corporations in connection with their U.S. corporate acquisitions and joint venture transactions with European partners.
Email: ltuchman@herrick.com

ABOUT HERRICK

Founded in 1928, Herrick, Feinstein LLP is a prominent, full-service law firm, providing comprehensive legal services to businesses and individuals around the world doing business in the United States. From its offices in New York City; Newark, New Jersey; and Pittsburgh, Pennsylvania, Herrick maintains robust real estate, corporate, finance, litigation, bankruptcy, and financial restructuring capabilities, complemented by significant depth in the areas of employment, intellectual property, sports, tax law and private clients.
www.herrick.com

HERRICK

Herrick's Israel Practice Group

Delivering comprehensive legal services to Israeli clients who pursue investment and business opportunities in the U.S.

Our practice draws upon the collective strength of our corporate, tax, real estate, government relations and litigation lawyers, who use their extensive experience to guide clients through the complex legal issues and transaction structures inherent in cross-border investments.

For more information, please contact

Yariv C. Ben-Ari

Partner; Co-Chair, Israel Practice;
Co-Chair, Real Estate Hospitality

ybenari@herrick.com

(212) 592-1440

www.herrick.com

ליפא מאיר ושות'
LIPA MEIR & CO.
ADVOCATES עורכי-דין

Reflections on Gamified Technology in the Mental Health Sector

This article delves into the interplay of technology and mental health, with a particular focus on the transformative influence of gamified technology, shedding light on its potential, implications, and the legal terrain it traverses.

In an era marked by a need to address the escalating challenges within the mental health sector, combined with unprecedented advancements in technology, the fusion of well-being and innovation has become an area of particular interest to healthcare industry players. Recognizing its potential to offer innovative solutions with broad applicability, significant resources are being invested in this dynamic intersection.

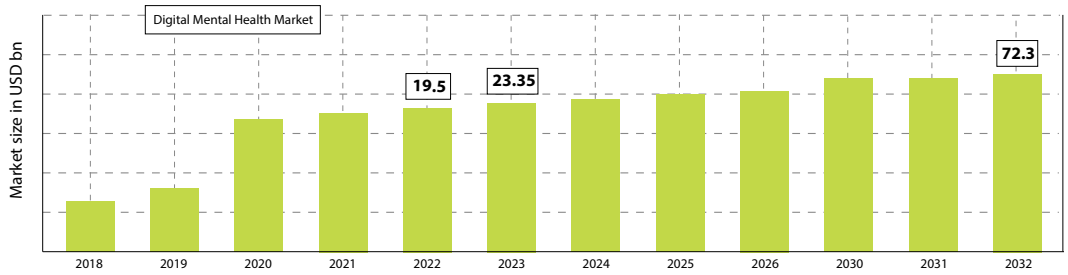
The global digital mental-health healthcare market has witnessed substantial growth in the last five years, reaching USD 23.45 billion in 2023 – and its future looks even more compelling. A study conducted in March 2024 by Market Research Future (MRFR), a global market research company, unveiled projections indicating a substantial escalation to approximately USD 72.3 billion by 2032, exhibiting an impressive compound annual growth rate (CAGR) of 20.6% between 2023 and 2032 (see Chart 1 below). This exponential rise is fueled by a convergence of factors and exacerbated by the COVID-19 pandemic.

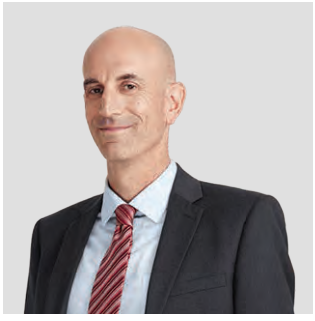
Market Research Future's report also identified the top 10 key trends and innovations shaping the landscape of mental-health technology. These include AI-powered therapy chatbots; the integration of virtual reality (VR) in therapy; expansion of telemedicine and remote care; utilization of social media data analytics for mental health insights; wearable devices for stress monitoring; and, notably, gamification.

GAMIFICATION IN HEALTHCARE AND IN MENTAL-HEALTH HEALTHCARE

Gamification is commonly defined as integrating game-design concepts into non-game settings

Chart 1: Market Research Future Report on Digital Mental Health Market/ Market Size in USD Billions





GARY COPELIVITZ
PARTNER, LIPA MEIR

NATALIE SHVA
ASSOCIATE, LIPA MEIR

in order to motivate, stimulate and influence (or manipulate) human behavior, fostering habits, or encouraging pattern-breaking. This concept has become increasingly popular across diverse sectors, such as education, sales/retail and HR.

In practice, a "gamified" product utilizes features such as points, levels, rewards, storytelling elements, immediate feedback and competitions. These features are strategically deployed to enhance user engagement, cultivate a sense of achievement, promote social interaction, and track progress and success.

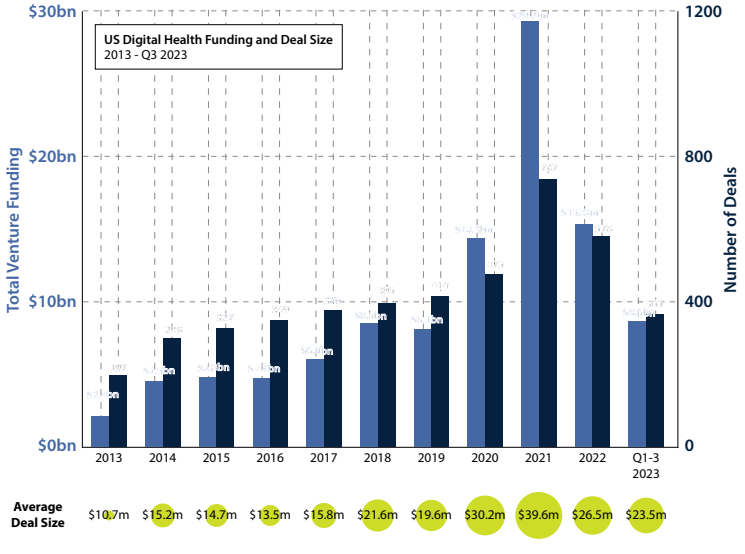
Potentially, a more sophisticated form of gamification could be achieved through the personalization and customization of gamified products, including gamified medical treatments, by leveraging patient data collected and processed within these frameworks.

In the context of the healthcare sector, gamified interventions have the potential to tailor medical treatments and interventions to specific patient needs. This has the transformative capacity to optimize healthcare delivery and overall outcomes, offering promising avenues for enhancing patient care on many different levels. Gamified apps such as MySugar exemplify this by gamifying the management of chronic diseases such as diabetes. Similarly, the integration of gamification in healthcare could help patients adhere to short-term treatments or medical regimes, either under virtual supervision or through self-supervision, hopefully increasing patient engagement and adherence. Additionally, these gamification platforms have the capability to provide pediatricians with continuous, high-quality health-data – facilitating more informed medical interventions ultimately leading to improved patient care. Gamified health and wellness products could also serve as educational tools, bridging the gap between information dissemination and comprehension, thus contributing to a more informed and engaged healthcare landscape.

THE MOMENTUM, OR: INVESTMENTS SURGE

Riding the wave of trends observed across diverse segments of the healthcare sector, global digital mental-health healthcare funding soared

Chart 2: Rock Health Q3 2023 Digital Health Funding Report findings regarding U.S. digital health funding and deal size (total venture funding in USD billions, number of deals)



Note: Includes US deals >$3m; data through September 30 2023.
Source: Rock Health Digital Health Venture Funding Database

to a pinnacle of USD 29.2 billion through 737 deals during 2021 (see Chart 2). The entrance of tech giants into the mental-health healthcare market further serves as another validation of its perceived potential. Notable investments include Amazon's USD $3.9 billion acquisition of One Medical in February 2023. One Medical is a "hybrid" healthcare service provider, currently offering services such as the "Stress and Anxiety Series" which comprises six 75-minute group sessions in a virtual community with a primary care physician and health coach. In the same month, Alphabet's venture capital arm, GV, invested USD 28.1 million in Firsthand, a startup employing a peer-support model to assist patients with serious mental illness to access care. Meanwhile, Apple has been actively experimenting with various mental healthcare products.

Despite these promising developments, mental healthcare investments witnessed a downturn in 2023, in line with the broader decline in healthcare funding, various sources/research methods suggest that startups in this sector secured between USD 8.6 billion to USD 10.7 billion across approximately 365 to 492 deals, marking the lowest capital influx into the digital health sector since 2019. Nevertheless, according to the Q3 2023 Digital Health Funding Report published (October 2023) by Rock Health, mental health retained its position as the most heavily funded area among digital health startups over the past four years (see Chart 3 below).

Despite the slowdown of funding in overall tech sectors, a recent review of investment inclinations in the digital healthcare sector, and particularly, in the digital mental-health healthcare sector, does show a growing recognition of the potential of gamification to revolutionize mental-health healthcare delivery. The (general) healthcare gamification market size was estimated by a recent (March 2024) Research and Market Report at USD 3.55 billion in 2024, a report which also expects this market to hit $15.9 billion by 2030, translating into a compound annual growth rate (CAGR) of 34.59% in six years.

THE POTENTIAL

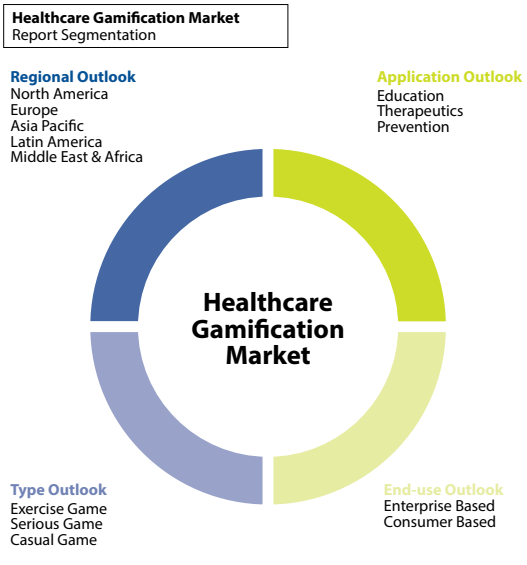
A report by Grand View Research, a market research and consulting company based in the U.S. and India, titled "Healthcare Gamification Market Size, Share & Trends Analysis Report By Type (Exercise Game, Serious Game, Casual Game), By Application (Education,

Chart 3: Q3 2023 Digital Health Funding Report by Rock Health / Mental Health as a top funded clinical indication among digital health startups across 2019-2023

Top Funded Clinical Indications
2019 - Q3 2023; integers equate to funding rank

	2019	2020	2021	2022	Q1-Q3 2023
Mental Health	$1.0bn 1	$2.4bn 1	$4.9bn 1	$2.1bn 1	$0.9bn 1
Nephrology	$0.1bn 20	$0.4bn 16	$0.5bn 18	$0.1bn 23	$0.7bn 2
Cardiovascular	$0.8bn 2	$1.2bn 4	$2.0bn 3	$1.2bn 2	$0.3bn 3
Oncology	$0.6bn 3	$1.3bn 3	$1.4bn 9	$1.2bn 3	$0.3bn 4
Neurology	$0.2bn 10	$0.3bn 17	$1.0bn 12	$0.5bn 10	$0.2bn 5
Gastrointestinal	$0.2bn 19	$0.5bn 14	$0.6bn 16	$0.7bn 8	$0.2bn 6

Chart 4: Grand View Research Report Segmentation of the Healthcare Gamification Market

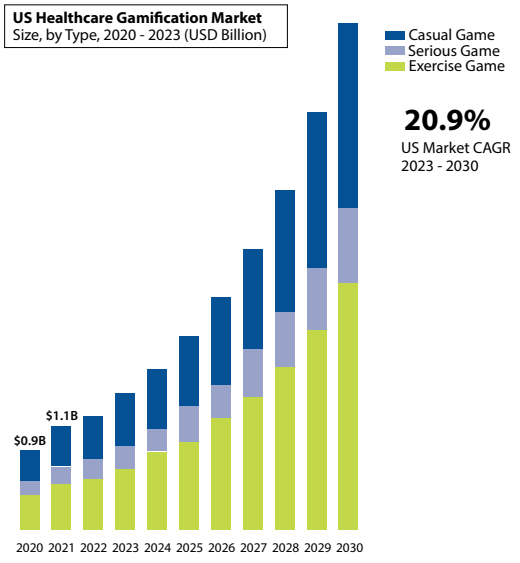


Source: www.grandviewresearch.com

Therapeutics), By End-use, By Region, And Segment Forecasts, 2023 – 2030", aimed to map and characterize the general healthcare gamification market potential. The report profiled key companies and products such as Fitbit, Inc.; Ayogo Health, Inc.; Evolv Rehabilitation Technology S.L.; BI Worldwide (Bunchball, Inc.); Akili Interactive Labs, Inc.; Cognifit, Inc.; Mango Health; and Nike, Inc., The report segmented the healthcare gamification market into four dimensions: (1) "Regional outlook", dividing its insights between North America, Europe, Asia Pacific, Latin America, and the Middle East and Africa; (2) "End-Use outlook", looking at either an enterprise-based market or a consumer-based market; (3) "Application outlook", applications targeting educational purposes, applications targeting therapeutic purposes, and applications targeting preventive purposes; and (4) "Type outlook", characterizing the gamification applications into exercise games, serious games and casual games (see Chart 4). The report's overall estimation of the global healthcare gamification market size in 2022 was valued at USD 3.15 billion, and, based on historic data for 2018 through 2021, forecasted its expansion at a CAGR of 22.6% over 2023 to 2030 worldwide, and at a CAGR of 20.9% by 2030 in the US alone (see Chart 5 below). This, according to Grand View Research, would translate into a revenue forecast of USD 15.9 billion in 2030.

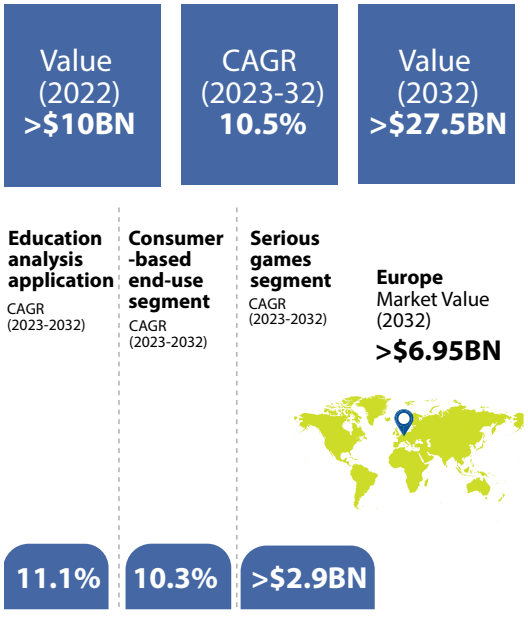
Even less optimistic analyses of the market still predict impressive growth. A report titled "Healthcare Gamification Market - By Game Type (Casual Games, Serious Games, Exercise Games), By Application (Prevention, Therapeutic, Education), By End-use (Enterprise Based, Consumer Based) & Forecast, 2023-2032", published in December 2022 by Global Market Insights, a US-based market research and consulting company, focused on the CAGR and attributes of the gamified healthcare market. Though its initial evaluation of the market for 2022 stands at USD 10 billion, the CAGR for 2023 through 2030 is estimated at 10.5% (see Chart 6 below). The report specifies the market's growth drivers, being: 1) increasing prevalence of chronic diseases, 2) the emergence of health consumerism, 3) an upsurge in social media and smartphone usage, 4) growing acceptance of gamified models in healthcare, 5) an increasing shift to business-to-consumer models and outcomes-based models, 6) significant influence from the millennial generation, and 7) the growing use of

Chart 5: Grand View Research Findings Regarding U.S. Healthcare Gamification Market CAGR 2023-2030



Source: www.grandviewresearch.com

Chart 6: Global Market Insights Healthcare Gamification Market Report Findings



gamification toward HIV awareness in countries in Africa.

THE ISRAELI ANGLE

On October 7th Hamas terrorists launched a unilateral attack on Israel, brutally killing over 1,200 civilians, including infants and children, taking 240 hostages, and injuring thousands. Many of those heinous acts were broadcasted live on social media meaning that hundreds of families learned of their loved ones' tragic fate from Telegraph and Tik Tok. These events resulted in not only personal trauma for those who lost family and friends, but also a collective national trauma for the loss of security and safety that had been virtually taken for granted. Due to the large numbers of people affected and seeking help, there has been a heightened focus on the local mental health technology sector.

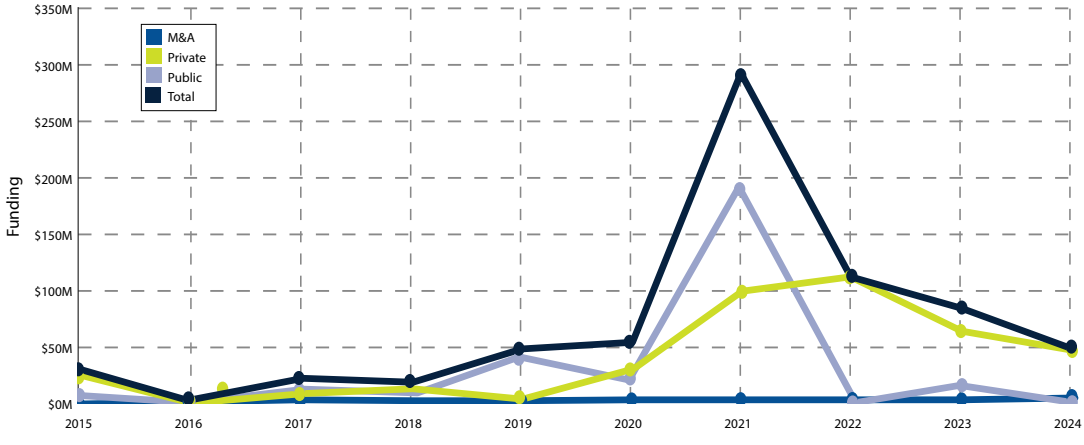
HealthIL data (in collaboration with Yoav Fisher, CTech), has classified circa. 63 Israeli startups in the mental health space. Insights from HealthIL and CTech indicate that these startups have collectively raised USD248 million in disclosed funding, while over 55% of these startups remain unfunded, either due to deliberate bootstrapping or an inability to attract investor interest. Moreover, nearly 90% of all startups are in their early stages, defined as Pre-A funding.

Similar observations were made by Startup Nation Central (SNC), a non-governmental organization studying the Israeli hi-tech landscape. SNC has identified approximately 85 Israeli "mental health startups", and its data pointed to a total private funding of USD450.43 million as of February 2024 . In its analysis publication from December 2023, SNC highlighted two significant findings: first, that over 55% of mental health startups remained unfunded, signaling a discerning investment landscape; and second, that managed-care startups, though fewer in number, have secured a significant portion of the funding, suggesting investor preference for solutions integrating patient-facing care.

Due to the large numbers of people affected there has been a heightened focus on the local mental health technology sector.

While none of the aforementioned studies specifically focused on gamified mental health, a brief review has identified notable examples of tech innovators utilizing gamification in mental health solutions, such as: Mood House, which develops VR games and interactive experiences

Chart 7: Selections from SNC's Mental Health Startups' Dataset (available online) last updated February 26, 2024)



to aid in the treatment of severe mental health disorders such as PTSD and bipolar disorder; Ggtude, which provides personalized therapeutic interventions for individuals while incorporating "game-like interactions", based on cognitive-behavioral therapy (CBT) principles; and Wellplay, which utilizes psychodrama "in a digital format" to provide emotional support, as a form of innovative therapy.

TRENDS, CONSIDERATIONS AND RISKS

A glance at prevailing trends within the gaming industry provides valuable insights into potential trajectories for the gamification of healthcare, particularly in the mental health domain. Numerous online commentators have underscored the prominence of immersive technologies such as Augmented Reality (AR), Virtual Reality (VR), and Mixed Reality (MR) within the gaming landscape. Additionally, the integration of Artificial Intelligence (AI) and synchronization with the Internet of Things (IoT), whether through wearable technology or smart home appliances, emerges as a central theme in contemporary gaming advancements.

Understanding these pivotal trends sheds light on the evolving possibilities for incorporating cutting-edge technologies into the realm of healthcare gamification. In one recent example from Israel, a reward-driven smartwatch-connected app deployed to more than 500,000 members of Clalit Health Services, Israel's largest HMO, has demonstrated substantial effectiveness in increasing physical activity and reducing chronic disease incidence.

Considering the popularity of gamification of broad healthcare practices and bearing in mind current trends in the commercial gaming industry, we must not underestimate that gamification of healthcare and especially of mental-health healthcare raises some increasingly burning ethical questions and risks.

Firstly, the integration of artificial intelligence (AI) into gamified healthcare, particularly through the rising prevalence of chatbots in mental health services, raises valid concerns surrounding the precision and appropriateness of responses.

The integration of Artificial Intelligence (AI) and synchronization with the Internet of Things (IoT), whether through wearable technology or smart home appliances, emerges as a central theme in contemporary gaming advancements.

Additionally, the incorporation of AI introduces the risk of healthcare professionals excessively relying on predictive analytics in their treatment decisions, especially given the widespread encouragement of remote care and telemedicine. As these AI-driven elements become integral to mental health care, careful consideration of their accuracy, appropriateness, and the potential legal implications is paramount for ensuring patient safety and effective healthcare delivery.

Another significant risk stems from concerns related to data privacy and security. The heightened sophistication of gamified healthcare, particularly as it infiltrates wearable devices and the Internet of Things (IoT), poses a potential breach that could lead to the collection and processing of increasingly substantial amounts of sensitive personal health information. This heightened integration of technology necessitates vigilant measures to safeguard individuals' privacy and protect against potential unauthorized access or misuse of sensitive health data. Addressing these concerns is crucial to maintaining the integrity of gamified healthcare systems and ensuring the trust and confidence of users in the protection of their personal information.

Additional considerations extend to the social context, giving rise to ethical and discrimination concerns. Questions emerge regarding equitable access to the advanced technologies essential for gamified healthcare interventions, including wearable devices and high-speed internet.

Unequal accessibility, particularly among older patient populations less familiar with such technologies, or people with mental disabilities, may exacerbate disparities in the quality of care. These disparities have the potential to lead to legal challenges concerning patient rights and preferences. Addressing these socio-technological gaps is essential to foster inclusivity, ensure fair healthcare access, and mitigate the risk of legal implications stemming from potential discrimination or inequitable care.

Finally, one cannot overlook additional challenges, prevalent in the general application of gaming in the healthcare industry, being patient-cheating as well as gradual loss of interest among users. These difficulties may also be manifested in the lack of long-term impact assessment of gamified mental health interventions on users' well-being. Patient-cheating may compromise the accuracy and reliability of the information gathered through gamified healthcare interventions. Simultaneously, the risk of users losing interest over time poses a challenge to sustained engagement, potentially diminishing the effectiveness of these gamified solutions. Continuous and long-term assessment will ensure that the intervention remains beneficial and does not inadvertently cause harm over time. Recognizing and addressing these challenges is crucial for maintaining the credibility of gamified healthcare interventions and ensuring enduring user engagement for optimal health outcomes.

One cannot overlook additional challenges, prevalent in the general application of gaming in the healthcare industry, being patient-cheating as well as gradual loss of interest among users.

FINAL OBSERVATIONS

The future of gamification in the mental health market looks promising and dynamic, with anticipated trends including continued growth, innovation, and diversification in interventions. Increased integration with technologies like AR, VR, and AI can be expected, along with increased strategic collaborations among technology companies, healthcare providers, and mental health professionals. User-centric design principles, a focus on mental health prevention, and ethical considerations, including privacy and data use, are also expected to be prioritized in the evolving landscape of gamified mental health interventions.

We would submit that this positive outlook aside, stronger emphasis must be placed on evidence-based practices, regulatory recognition, and efforts to enhance accessibility, in order to ensure wider reach and credibility.

In 2020, the Food and Drug Administration (FDA) approved EndeavorRX, a digital therapeutic prescription video game designed for kids aged 8 to 12 who have ADHD. The game challenges players to focus on multiple tasks, targeting the symptoms of ADHD in an engaging way. This was a breakthrough in the digital healthcare sector because traditionally, FDA approval has been primarily associated with pharmaceuticals and medical devices. The agency's recognition of gamified interventions marked a significant milestone in the evolving landscape of digital health.

While addressing privacy concerns, ethical considerations, and the need for rigorous evidence-based research remain critical, as submitted in this article, there seems little doubt that by harnessing the power and versatility of gamification, the healthcare industry has been equipped with a tool that can transform the landscape of mental health treatment. ■

ABOUT THE AUTHORS:

Gary Copelovitz co-heads Lipa Meir's Technology, Corporate and M&A Department and heads the firm's healthcare practice; Advocate **Natalie Shva** is an associate with the department.

ליפא מאיר ושות'
LIPA MEIR & CO.
ADVOCATES עורכי-דין

YOUR PARTNER IN ISRAEL

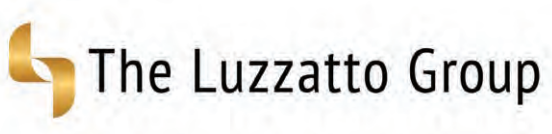
PERSONAL. PROFESSIONAL. CREATIVE



As one of the most reputable, professional and forward-thinking business law firms in Israel, Lipa Meir & Co. is a prime destination for domestic and multinational clients searching for personal, professional and creative legal services.

Lipa Meir & Co. Advocates | Lipa Meir & Co. Advocates | 052-349-9567 | law@lipameir.co.il

Lipa Meir & Co. | Amot Investment Tower, 2 Weizmann St., Tel-Aviv, 64239 Israel | T.+972.3.6070600



Intellectual Property Landscape in Israel 2023: Unveiling Developments and Challenges

In 2023, the intellectual property landscape in Israel had to deal with challenges created by the ongoing conflict. Despite these obstacles, interesting developments emerged, particularly in artificial intelligence and security, shaping a compelling trajectory for the year. Overall, it was an exceptionally intriguing year.

The year 2023 was remarkable for Israel in terms of economic development, with a positive outlook for normalization with Saudia. However, on the 7th of October, Hamas carried out a brutal attack on Israel's civilian population, causing a sudden and devastating halt to the country's progress. The attack resulted in the tragic loss of 1,400 lives, while hundreds were taken hostage. The conflict is a significant event that profoundly impacts the region's political and social landscape and will leave an enduring legacy that will continue to shape the area's future.

In today's global IP economy, in the absence of universal consensus in favor of effectively protecting AI inventions, Israel must and can lead the way.

The war that took place in Israel happened at a time when the country was making significant advancements in the field of artificial intelligence, whose contribution to the military efforts is substantial. This highlighted the technological accomplishments of Israel's military industries as well as many start-up companies in the field. The war, and before it, internal political turmoil that had been brewing for a while, took away the focus from everyday legislative efforts. The warfare also resulted in an almost standstill of the courts during the initial phases of the war. The courts could only hear urgent cases, which meant that the crop of rulings on intellectual property was limited.

The war has far-reaching and positive implications for Israel's AI industry because it sped up the development of AI tools for military purposes and highlighted to the world Israel's superior ability in this field. The military

DR. KFIR LUZZATTO
PRESIDENT AND SENIOR PATENT ATTORNEY,
THE LUZZATTO GROUP

HAIM CHECHIK
PARTNER AND PATENT ATTORNEY,
THE LUZZATTO GROUP

sector is expected to grow substantially due to the demonstration of its capabilities and the development of military products proven in the field.

PATENTS: THE FOCUS ON AI

Throughout the year, due to other legislative concerns, there was a lack of focus on intellectual property (IP) legislation. This included the much-anticipated creation of an Israeli provisional-type patent application, which patent practitioners have eagerly awaited. However, after an initial enthusiastic push for this legislation by the ILPTO, with the encouragement of most patent practitioners, its fate remains uncertain, leaving many in the industry wondering what the future holds.

Despite the slow-down in court rulings due to the war, one decision of the Registrar of Patents stands out. In March, the Israeli Patent Office (ILPTO) issued a long-awaited administrative decision regarding the eligibility of an Artificial Intelligence ("AI") computing system to serve as an "inventor" under the Israeli patent law.

The opinion ruled that AI is not eligible to be an inventor under the present legal framework. In this ruling, the ILPTO aligned itself with nearly all jurisdictions that have considered the question to date. The ILPTO's decision reflected its interest in applying a uniform policy on unsettled patent law matters. In addition, the rejection of AI-powered applications worldwide reflects the technological and legal reality that, at present, inventions generated with the assistance of AI are correctly attributed to human inventors.

The ruling addressed two Israeli patent applications filed in August 2019 by Dr. Stephen Thaler. The applications were purportedly invented by his AI software program, DABUS (widely known as the "DABUS" case in other countries, notably the US, the UK, the EPO, and Australia).

In analyzing the legal issues presented by the designation of DABUS as the inventor, the ILPTO considered two intertwined issues: 1) Can artificial intelligence be considered an "inventor" under the patent statute? 2) Can a party acquire rights to file a patent application from an artificial intelligence?

Concerning the first question, the ILPTO determined that, under the Israeli patent statute, the term "inventor" is limited to human beings. The ILPTO based this conclusion on its analysis of the statute's plain language, informed by dictionary definitions and everyday usage.

Regarding the second question, the ILPTO determined that an Applicant's right to file a patent application must derive from an "inventor," and there is no legal way to acquire the rights to file a patent application from an entity that is not an "inventor."

The United States, the United Kingdom, the European Patent Office, and Australia all had concluded that the patents could not be granted

for the above reasons. The ILPTO's refusal to break with the rest of the world was wholly expected and is indeed typical of its general approach to the development of patent law. Indeed, the ILPTO's relative delay in issuing this decision on a case that has been pending for nearly four years allowed it to present the issue as settled in international practice.

While perhaps, as the Israeli Patent Office decision notes, the time may come in which courts will have to address the question of "what human involvement is required for a person to be considered as an inventor in an invention made with the aid of a machine," we do not foresee that time arriving in the near future. Until then, we will continue to celebrate and promote inventions made by our clients, human inventors, utilizing all tools and resources at their disposal.

ISRAEL'S PATENT LANDSCAPE IN 2023

Throughout 2023, Israel's patent landscape remained relatively stable with no significant changes, among other things, for the above reasons. However, the growth in AI-powered inventions observed in the previous year continued and even accelerated, fueling innovation in the country. This growth is attributed to the increased investment in AI research and development by both the public and private sectors.

In addition to AI, local start-ups and established companies continued to emphasize innovation in foodtech, agritech, and environmentally friendly inventions. This focus on these sectors is due to the rapidly changing global landscape, with more consumers looking to adopt sustainable, eco-friendly solutions and the various governmental and other programs that incentivize research in the field.

Despite the lack of notable changes, the patent landscape in Israel remains highly competitive, with companies and start-ups constantly seeking to differentiate themselves and protect their intellectual property. As such, the country continues to attract significant investment in research and innovation, solidifying its position as a leader in technology and innovation.

The swift pace of technological advancements in the military sector has created unique challenges for protecting intellectual property rights.

COPYRIGHT MATTERS DURING WARTIME

Much attention is paid nowadays in Israel to copyright issues arising from the extended use of social networks (such as WhatsApp, Facebook, Twitter, TikTok, etc.). The general public in Israel is not sufficiently aware of the legal consequences of using copyrighted material such as photographs, video clips, illustrations, and other content. The present-day conflict has led to a situation where many individuals feel justified in using online content for purposes they consider just and righteous, such as fighting against disinformation during wartime. This has caused a significant amount of confusion among the general public. While some may believe this is an acceptable course of action, it has resulted in a surge of copyright infringement disputes. These disputes are often resolved at the warning letter phase, wherein the individuals involved are cautioned against using copyrighted material without permission and sometimes agree to a small payment. In many cases, this is a sufficient deterrent, and the matter is resolved amicably. However, there are some instances where the issue escalates, and legal action is taken to protect the rights of the copyright holder.

In Israel, the concept of fair use is taken seriously and given due attention. The country's legal system strives to strike a balance between protecting the rights of copyright owners and allowing for the use of copyrighted material when it is necessary for public interest and

freedom of expression. This means that it may be permissible under Israeli law in situations where the use of copyrighted material serves the greater good, such as in educational, research, or journalistic contexts. Nonetheless, this does not mean that individuals have a free pass to use copyrighted material without seeking permission or adhering to the relevant legal provisions. Instead, the Israeli legal system aims to ensure that fair use is implemented in a responsible and reasonable manner that benefits all parties involved.

The patentability of inventions made by AI systems is a major issue for both Israeli companies and patent attorneys because AI has become a significant active sector.

IMPACT OF TECHNOLOGICAL INNOVATION ON INTELLECTUAL PROPERTY

The swift pace of technological advancements in the military sector has created unique challenges for protecting intellectual property rights. The need to quickly integrate new inventions into military operations has led to frequent conflicts between the desire for prompt implementation and the necessity of providing adequate patent protection. Finding a balance between these two objectives requires creative and innovative solutions.

The issue of intellectual property rights in the military sector has become increasingly important in recent years. It is particularly challenging because of the need to maintain a competitive advantage in the face of constantly evolving technology. Rapid advancements in fields such as artificial intelligence, robotics, and cybersecurity have made it essential for military organizations to stay ahead of the curve. Israeli patent practitioners have grappled with many such situations in 2023.

CHALLENGES AND CONTROVERSIES

We discussed the Israeli ruling regarding DABUS above. This ruling highlights the pressing challenges the patent system faces currently and in the future. It is worth noting that the ILPTO's delay in issuing a decision on this case, which had been pending for almost four years, allowed them to present the issue as settled in international practice. However, it is essential to understand that this decision does not necessarily settle the debate, as various questions remain unanswered regarding the patentability of inventions made by AI systems. This is a major issue for both Israeli companies and patent attorneys because AI has become a significant active sector, such that Israel is a recognized leader in the field. It can be expected that much pressure will be applied to the Israeli Patent Office and the courts in the near future to lead the development of doctrines in AI patents instead of aligning themselves with rulings rendered in other countries.

In the present context, there is indeed a legal lacuna for the protection of inventions generated by AI. Still, we do not doubt that patent law would adapt with time in a reasoned and appropriate manner to meet the challenge.

IP SERVICES IN ISRAEL DURING WARTIME

Amid the current situation, it is worth noting that while some firms are managing to function normally by providing Intellectual Property (IP) services with no significant disruptions, many others are grappling with an array of challenges that are impeding their ability to carry out their work effectively. For instance, some employees have been summoned to serve in the army, while others have been forced to vacate their homes due to the areas where they reside being located in war zones. These unforeseen developments have profoundly impacted their workflow and

productivity, making it difficult for them to deliver their IP services on time.

Fortunately, some firms like us have already established remote working infrastructure since 2020, which has allowed their employees to work from home, complying with the movement restrictions imposed due to the COVID-19 pandemic. This has helped them to continue providing services without any significant disruptions. Remote working has become the norm, and many companies embrace it as a long-term solution. However, it has also presented new challenges that must be addressed to ensure that employees can work efficiently from home.

Overall, the situation has been challenging for many businesses, and they have had to adapt rapidly to keep up with the changes. Firms that established remote working infrastructures have been better equipped to deal with the challenges and have continued providing their services without significant disruptions.

The Israeli Patent and Trademark Office (ILPTO) has taken a proactive and commendable approach to ensure that all applicants can file and examine patent, trademark, and PCT applications without any interruption or delay. Despite the unprecedented challenges posed by the COVID-19 pandemic and the subsequent war, the ILPTO has successfully adapted to the situation and upgraded its systems to meet the needs of the applicants. As a result, the Patent and Trademark Office now operates in a modernized way. The examiners, who previously had to work at the office in Jerusalem, can now work from home and only need to visit the ILPTO building occasionally. This change has not only ensured the safety and well-being of the staff but has also made the entire process more efficient and convenient for the applicants. Hearings are now routinely held via Zoom link, which has become the staple meeting method. However, in cases where witnesses must be cross-examined, hearings are still conducted in person. By implementing the necessary adjustments, the ILPTO has made it possible for all applicants to receive the required services without any delays or disruptions. The ILPTO is a critical element in the development of the country's IP, and its flexible operation has been a crucial step in facilitating and promoting innovation and creativity in Israel and supporting the country's economic growth and development in difficult times such as the COVID-19 pandemic and wartime.

Thanks to the ILPTO's efforts, applicants can now easily and conveniently file and receive examinations for their patent, trademark, and PCT applications, ensuring that their intellectual property rights are protected and upheld. The ILPTO continues to monitor the situation and update its procedures accordingly to ensure applicants receive the best possible service.

DEVELOPMENTS AND FUTURE DIRECTIONS IN ISRAELI IP FOR 2024

The battlefield is a critical testing ground for advanced ammunition and defense systems, which offers unique opportunities to assess their effectiveness and identify necessary improvements. It allows military forces to evaluate the performance of weapons and systems in real-world situations and learn from their experiences to enhance their capabilities. In this regard, we anticipate significant innovation efforts in 2024, focusing on developing AI-based systems, defense, and surveillance technologies. AI-based systems are expected to play a crucial role in the future of warfare, as they can augment human decision-making and provide real-time insights into the battlefield. These systems can analyze vast amounts of data, detect patterns, and make predictions to support commanders in making informed decisions. They can also learn from past experiences and adapt to changing situations, which makes them invaluable assets in modern warfare.

Defense and surveillance systems are also likely to see significant innovation in 2024, with the development of more advanced technologies, as well as unmanned aerial vehicles (UAVs) and ground-based robots. These systems can provide situational awareness and help identify potential threats before they become real dangers. They can also assist in gathering intelligence and

conducting reconnaissance missions, which are critical aspects of modern warfare. Examples of these developments are already known, such as the use of small tactical drones to precede ground forces and detect dangers such as booby-trapped buildings.

Furthermore, cyber security is expected to remain a significant area of innovation in the coming years, focusing on defensive and offensive capabilities. Defensive cyber security systems are designed to protect military networks and systems from cyber attacks, while offensive cyber capabilities are used to disrupt or disable enemy networks and systems.

Also, in this area, much like in the AI arena, Israel is at the forefront of technology. As such, we can expect to see significant investment in developing advanced cybersecurity technologies to support military operations and protect civilian infrastructures in the future.

The foodtech and agritech industries in Israel are mainly concentrated in the periphery zones, which include the northern and southern areas. These regions have experienced a temporary decline in population due to various factors, particularly security concerns.

Consequently, the emerging fields of food technology and agrotechnology will likely face challenges when it comes to research and development in 2024.

To mitigate these challenges, industry stakeholders need to develop innovative solutions to support R&D in these regions. This could involve attracting talent, investing in infrastructure, and incentivizing companies to establish their operations in these areas. By doing so, Israel's foodtech and agritech industries can continue to grow and thrive despite the mentioned challenges.

LOOKING TO THE FUTURE

In 2023, Israel experienced a tumultuous year marked by several significant challenges. One of the most pressing issues was the internal political turmoil that arose due to proposed changes in the legal system. This created a great deal of tension and uncertainty, as people were unsure how these changes would affect their lives and the country's future. Fortunately, that tension is behind us for now and has left no long-term damage. At the same time, Israel is also engaged in an ongoing war against terror, which greatly unified the country.

Despite these challenges, Israeli entrepreneurs and inventors remained undaunted. They continued to be creative and innovative, coming up with new ideas and solutions to their problems. This resilience is a hallmark of the Israeli spirit and has been evident since the very first day the state of Israel was established.

Looking to the future, Israel will undoubtedly continue to be a leading startup nation. The country has a long history of fostering innovation and entrepreneurship, and a wealth of talent and expertise will continue to drive its success in the years to come. While there may be more challenges ahead, Israelis can take comfort in the fact that they have proven time and time again that they have what it takes to overcome them. ■

ABOUT THE LUZZATTO GROUP

The Luzzatto Group is the leading IP group in Israel, celebrating 155 years of practice. The Group's unwavering dedication to clients has carried it into its second century and fifth generation.

The Group includes the patent law firm Luzzatto and Luzzatto and the Luzzatto Law Firm, specializing in IP and commercial law, along with other business companies. Entrepreneurs, inventors, start-up companies, scientists, artists, and developers seek The Group's services to enjoy a personalized approach with a global outlook that helps clients protect their intellectual property and commercialize research, inventions, and products.

Email: mail@luzzatto.co.il
https://www.theluzzattogroup.com

Representations and Warranties Insurance: Are Israeli Public Company Deals The Next Step?

With the expedited rise in the use of RWI in Israeli-nexus M&A, the building blocks are now in place for using this tool in Israeli public company transactions.

In the mergers and acquisitions (M&A) world, representations are included in purchase agreements for risk allocation, disclosure, and informational gathering purposes. One party, usually the selling shareholders of the target, bears financial responsibility in the event that one of the representations is inaccurate or untrue, whether partially or as a whole. In this context, the use of representations and warranties insurance (RWI) has significantly increased in the Israeli M&A realm as a risk allocation tool, with growing numbers of policies used on various types of Israeli M&A and investment transactions. Over the past few years, RWI has evolved from being a niche solution available on the Israeli market to an increasingly commonplace tool. This has resulted in several "side effects," including the insurance markets becoming better acquainted with Israeli companies and the way that Israeli M&A deals are done. There is also more insurer appetite to support less standard structures of Israeli M&A or investment transactions.

With these trends as background, the foundation has been laid for RWI to support additional structures of Israeli M&A, namely Israeli public company transactions. In the past few years, Marsh has seen much more interest in the use of RWI on deals involving "public" elements across multiple jurisdictions. Further, recent innovations in coverage mean that RWI is now equally applicable to Israeli public transactions, such as those involving listed target businesses, as to private ones. Consequently, various players in Israeli public deals seek greater deal protection than afforded through commercial negotiations; RWI can be used to grant that protection.

RWI OVERVIEW

Generally, RWI is designed to protect against financial loss arising from a breach of any of the sellers' representations given in the underlying purchase agreement. RWI benefits both the buyer and the seller as it allows losses to be shifted from the deal parties to third-party insurance providers.

Benefits and drivers of RWI:

- Provides an alternative risk allocation solution to escrows, price adjustments, guarantees, and holdbacks.
- Facilitates clean exits for sellers.
- Expedites and eases the negotiation of the representations package between the parties.
- Protects key relationships where management or former shareholders remain involved in the business or retain holdings in the company post-closing.
- Ensures adequate protection in the event of a breach of representations.
- Provides additional financial security behind

PETER TEISHEV, ADV.
HEAD OF PRIVATE EQUITY AND M&A, ISRAEL

representations, particularly where there is a large, varied, or disparate group of sellers.

RWI IN ISRAELI PUBLIC TRANSACTIONS

Under a traditional sale and purchase structure for public transactions, buyers often face difficulties in obtaining adequate warranty protection, if any protection at all.

Parties on the selling side are rarely willing to assume post-closing liability. Often, no entity remains for a buyer to claim against in the case of a breach of representations.

Even if sellers from the public were theoretically willing to stand behind the representations, claims management would be difficult or impossible, as they are usually a highly disparate group of people.

Consequently, public transactions usually involve a very limited set of representations, if any, and these most commonly expire at the closing of the transaction. This usually leaves buyers vulnerable, with little or no recourse available to protect their purchase price in the event of issues being discovered at the target level following the closing of the deal.

To cater to this market need, insurers have increased their willingness to provide RWI for such transactions.

As a result, Marsh has seen in recent years a significant uptick globally in the interest in, and the placement of, RWI policies customized for public company transactions. The Israeli M&A market is poised to follow suit.

BENEFITS OF RWI IN PUBLIC DEALS

The use of RWI in public transactions provides a mechanism for addressing the practical limitations associated with obtaining warranty protection under the transaction documents. RWI can facilitate the inclusion of a robust suite of representations in the transaction documentation, and, in lieu of seeking recourse against the (former) shareholders, management, or the company itself, the buyer can seek recourse for breaches of representations under the RWI policy.

Recent innovations in coverage mean that RWI is now equally applicable to Israeli public transactions as to private ones.

This gives the buyer a new way to obtain financial security to support the purchase price and the transaction, which was not afforded to buyers in similar situations prior to the use of

RWI. Simultaneously, deal risk is transferred to reputable insurers and sellers are released from any direct liability, thereby simulating the non-RWI scenario.

This also allows for potential buyers to explore a wider range of transactions involving public companies, while giving themselves protection against downside deal risk. RWI in public transactions facilitates a move away from limited or no representations, and provides enhanced risk management of the transaction.

Using RWI in public deals gives the buyer a new way to obtain financial security to support the purchase price and the transaction, which was not afforded to buyers in similar situations prior to the use of RWI.

SPECIFICS FOR RWI IN ISRAELI PUBLIC TRANSACTIONS

While providing a solution to the question of recourse for buyers, the use of RWI in public transactions does involve some threshold queries from insurers for buyers to consider and resolve.

What is the motivation for using RWI?

In most deals involving a public target, the buyer relies upon information that is publicly available through securities filings. As such, insurers will want to understand the buyer's motivation to seek warranty protection. Recent trends indicate that typical motivations include the fact that RWI provides additional financial security or recourse in excess of what the counterparty is willing or able to offer, if anything at all, thereby also aiding a buyer's internal approval processes for the transaction.

Who gives the representations?

One of the key challenges of using RWI in a deal involving a public target is that the structure of the shareholdings means that no public shareholders are willing, or able, to provide a meaningful set of representations regarding the target company and its business.

In terms of transaction documentation and relevant warrantor(s) in public transactions, Marsh has seen different structures where representations have been given in a purchase agreement, merger agreement, or a separate warranty agreement by either:

(i) A majority shareholder
(ii) The management
(iii) The target entity

Any of these structures would provide a viable option, as they would facilitate a more or less standard RWI solution in respect of the extent of the list of representations and coverage thereof, as well as premium pricing and the overall process. The result would be an RWI solution that is akin to the one offered for private company transactions.

Alternatively, the parties may also consider a so-called "synthetic" RWI solution. Under a synthetic solution, no representations are given in the transaction documents by either of the parties listed above.

Instead of having the representations in the transaction documents, a stand-alone list of representations is incorporated as an appendix to the RWI policy. While not technically given or signed off on by any of the above parties, it is advisable in order to attract insurers' interest and ensure their comfort that (a) the relevant list of representations is (at least) thoroughly reviewed by the target's management for amendments to any clear inaccuracies, and (b) the target's management carries out a proper disclosure exercise in relation to the list of representations. Comfort is important for

insurers since a synthetic RWI policy will not provide for a contractual subrogation right for the insurer in case of fraud by any warrantor, which is otherwise the case in a non-synthetic RWI solution.

Notably, the current appetite for synthetic RWI solutions is limited to certain insurers, but may be a viable option on a case-by-case basis. In our experience, this solution generally entails a narrower set of representations and coverage, as well as increased premium pricing.

What scope of representations will be granted?
As a baseline, there needs to be a suite of representations given in the transaction documents, similar to a private company transaction. Under a purchase agreement structure, typically, the representations would be recorded in the agreement itself, but there is no specific requirement from insurers in this regard.

The representations in a public transaction that are made subject to RWI are of the same general scope and nature as those that parties would expect for a common Israeli-nexus private transaction. The warranty protection through the use of RWI would go well beyond the typical scope of representations for uninsured public transactions, but it should be noted that insurers may be uncomfortable covering a particularly buyer-friendly set of representations, as would usually be the case with a private transaction.

Is there a fully populated data room?
A key requirement for RWI-insured transactions is a well-populated data room available for the buyer's scrutiny and due diligence. The scope and breadth of the data room in public transactions is of key interest to insurers in order for them to make sure that a proper disclosure exercise has been done, as disclosures tend to be more limited than in private M&A deals (as the target already discloses under its securities filings). As with Israeli private transactions and to aid in demonstrating the due diligence exercise, insurers rely upon a well-populated data room in order to underwrite the transaction.

What due diligence is being carried out?
It should be remembered that RWI should not be viewed as a substitute for carrying out due diligence. As is customary, insurers expect to see robust due diligence carried out by the buyer, preferably through third-party advisors. If it becomes apparent that the insurance is being sought as a means of covering a lack of available information, this would typically be an issue for potential insurers, which, at the very least, will lead to the addition of applicable exclusions in the policy.

Insurers will wish to understand that, similar to a private transaction, there has been sufficient due diligence conducted to confirm the accuracy of the representations provided to the buyer. In the event that the due diligence exercise is limited, this will result in correspondingly narrow coverage for the representations. However, it should be noted that certain buyers would actually aim for such a result, i.e. they will look for the policy to cover only specific areas of the representations.

In this respect, there are a few key questions to consider when examining the suitability of RWI for a public transaction:

- Have buyer-commissioned due diligence reports been prepared? Will these reports be prepared by third-party advisors?
- Is there a fully populated data room and how freely has the target, or the sellers, provided access to the relevant information?
- How does access to information compare to a standard private company deal?

COVERAGE SPECIFICATIONS

RWI policies for Israeli public transactions are similar to those for Israeli private deals. In the event of a breach of a representation, and once the retention has been eroded by the insured loss, the buyer (being the insured party) will claim directly under the RWI policy to recover loss resulting from the breach.

The representations would need to be negotiated and made subject to disclosure

and customary qualifications and limitations expected of any common M&A transaction. If such aspects are not captured in the transaction documentation, insurers will most likely seek to overlay these features in the RWI policy.

As with an ordinary private transaction, the common features of an RWI policy for a public transaction are as follows:

Representations
At a bare minimum, the following categories of representations should be coverable by RWI for an Israeli public transaction: title and authority, financial statements, compliance with laws, material contracts, tax, litigation, employment, insurance, assets, real estate and leases, and IP and IT.

Limit of liability
The RWI policy will be subject to an aggregate limit of liability, which is typically the equivalent of the liability cap under a purchase agreement in an uninsured transaction, and the maximum amount that the insurer will pay out for insured loss under the RWI policy.

Retention/deductible
The RWI policy will be subject to an aggregate claims threshold (or "retention," sometimes also described as an "excess" or "deductible"). The retention under the RWI policy will need to be eroded before the insurance will respond to a claim for a breach of an insured representation.

The retention level in the RWI policy for a public transaction will typically be in line with that in an Israeli private transaction. However, in a synthetic RWI solution, as described above, the retention will likely be higher than what is typically offered by insurers in non-synthetic RWI policies.

Premium rates
Premium pricing for RWI on Israeli public transactions largely depends on the structure, target industry, and size of the transaction, as well as the desired limit of liability. Generally, RWI pricing for Israeli public transactions is similar to RWI solutions utilized in Israeli private transactions, which makes it a compelling risk allocation tool. The synthetic RWI solutions described above will most likely entail increased premium rates.

THE NEXT STEP

With the growing use of RWI on Israeli-nexus deals in recent years, this solution is now well positioned to support Israeli public company transactions. When applied correctly, RWI is able to offer buyers on Israeli public transactions something that was not there before – a recourse in case representations are found after closing to be inaccurate. The Israeli M&A market is now poised to follow the global trend and to extend the use of RWI to such transactions, thereby reducing risks for buyers and increasing financial security when dealing with public companies. ■

ABOUT THE AUTHOR

Peter Teishev heads the Private Equity and M&A practice at Marsh Israel, and is a member of Marsh's global Private Equity and M&A group. Prior to joining Marsh, Peter was a senior M&A attorney at a leading Israeli law firm, advising on Israeli cross-border M&A and working with leading private equity players.

Marsh has developed over recent years a specialization in Israeli-nexus M&A and investments, and is continuously playing a key role in obtaining and maintaining carrier support for Israeli transactions, as well as creating creative and innovative insurance solutions for complex Israeli deals.

Peter's clients include US, Israeli and European private equity firms, multinationals and other financial and strategic sponsors.

Mobile: +972 54 6840818
Email: peter.teishev@marsh.com

Marsh

Transforming risks into opportunities

For more than 25 years, Marsh has partnered with clients across the globe to create value and enhance returns on M&A transactions.

Supporting **6000+** M&A transactions and **2000+** portfolio companies around the world annually, our specialist expertise provides data-driven solutions across the investment lifecycle.

marsh.com

Marsh is the world's leading insurance broker and risk advisor. With more than 45,000 colleagues advising clients in over 130 countries, Marsh serves commercial and individual clients with data-driven risk solutions and advisory services. Marsh is a business of Marsh McLennan (NYSE: MMC), the world's leading professional services firm in the areas of risk, strategy and people. With annual revenue of $23 billion, Marsh McLennan helps clients navigate an increasingly dynamic and complex environment through four market-leading businesses: Marsh, Guy Carpenter, Mercer and Oliver Wyman. For more information, visit marsh.com, and follow us on LinkedIn and X.

A business of Marsh McLennan

Your contact at Marsh

SHIBOLET
LAW FIRM

The Revolution of Financial Information & Payments in Israel: Challenges and Opportunities for Local and Non-Local Fintech

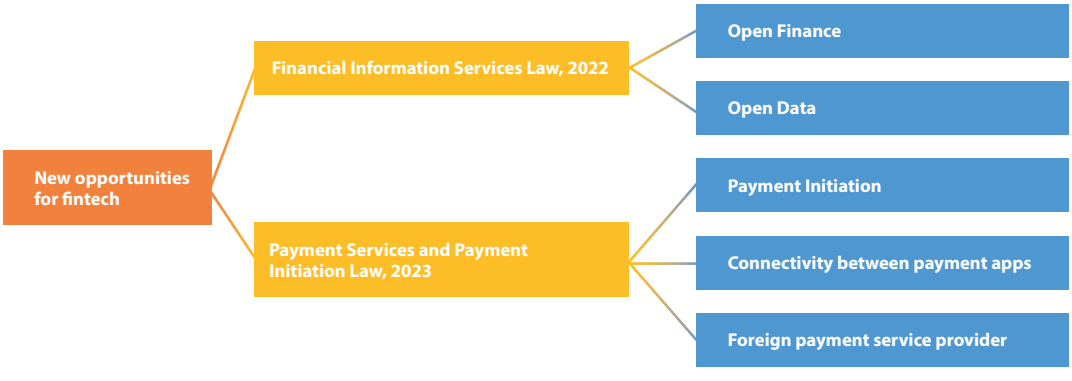
The Fintech industry has dramatically reshaped certain areas of our financial services, bringing new, innovative, agile and customer-oriented products into our lives.

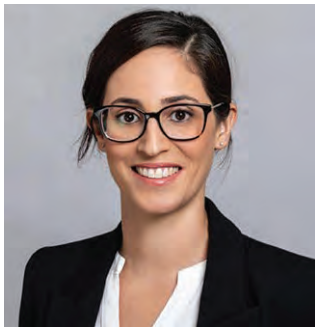
As of July 2023, publicly traded fintech represented a market capitalization of $550 billion, a two-times increase versus 2019; in addition, as of the same period, there were more than 272 fintech unicorns, with a combined valuation of $936 billion, a sevenfold increase from 39 firms valued at $1 billion or more five years ago.[1] But we will not stop here; McKinsey's research shows that revenue in the fintech industry is expected to grow almost three times faster than in the traditional banking sector between 2023 and 2028.[2]

So, after understanding the inherent potential in the fintech industry, we would like to briefly review the financial legislation in Israel and the many possibilities it brings to the industry, especially in this period of revolutions in many fields such as Financial Information and Payments.

[1] *Fintechs: A New Paradigm of Growth*, McKinsey & Company, October 2023, page 1.

[2] *Fintechs: A New Paradigm of Growth*, McKinsey & Company, October 2023, page 3.





MICHAL OHANA
PARTNER, SHIBOLET

FINANCIAL INFORMATION SERVICES LAW, 2022

Open banking, or in its official name – Financial Information Service Law, 2022 ("Law"), entered into force in June 2022, when it is one of the flagship programs of the Ministry of Finance and the Bank of Israel to increase competition in the financial market. The reform proposed a paradigm shift in which the financial information belongs to the customer, not the financial entity in which his finance is managed. It was determined the financial entities would be obliged to allow customers to share information about them with a third party. In this way, third parties can receive information about the customers' financial behavior, compare it, and help reduce costs.

Currently, there are 15 financial information service providers in Israel supervised by the Israel Securities Authority ("ISA"), 3 by the Capital Market Authority, and 10 by the Banking Supervisor.

Below is a list of possible services that information service providers can provide under the law and the open banking reform –

PFM – Personal financial management – private banking services for all customers / the public. Under the extensive sharing of information, the financial entities will be able to provide advanced and personalized services to customers so that in the customer's experience, each service is a personal service tailored to his needs and based on the information received. The financial entity can give the customer personal recommendations for wiser financial conduct. Apps in Israel – "Family Biz" "Rise Up".

Digital underwriting – the reform exposes non-bank credit to information, allowing them to improve the underwriting process in providing loans and grant loans to populations that, with the information available to them, do not exceed the threshold of the fixed risk level. This information will allow those entities to produce a more accurate algorithm and help more comprehensive sections of the population more efficiently since the information received will be ongoing, real-time, and not "one-time."

Aggregation of services to adjust the value proposition to the customer – a marketplace that offers the customer personalized products for his use. For example, it allows a credit score examination before applying for a loan to examine how to improve it and increase the possibility of receiving it.

Financial services for small and medium-sized businesses – the open banking reform shall create information sharing for small and medium-sized businesses according to the law's milestones. Information that is currently missing from the financial system in Israel. Thanks to this, it will be possible to use information

that was not visible before and to optimize the value proposition for those businesses, such as comparing costs, transferring information quickly to receive favorable financial offers, and more.

Payment Initiation – immediate payments directly from the bank account. Account-to-account transfer of funds. For more information, see the Payment Services Law below.

TSP – Technical service providers – those entities will not necessarily work with the end customer but are in the middle between the source of the information (bank, credit company, etc.) and another service provider. For example, many worldwide technological entities provide B2B services that aggregate customer information for other entities in the financial field, such as Yodlee, Plaid, and Adyen.

After reviewing the various services under the law, we will examine the milestones for implementing the law, referring to which "Information baskets" will be opened for those financial information service providers, divided between individuals and businesses.

IS INFORMATION SHARING DUE TO THE OPEN BANKING REFORM A TRIGGER FOR BROADER INFORMATION SHARING?

Absolutely Yes. The trend in the world of information is expanding when the next steps go beyond the boundaries of the financial to other areas. The customer can grant access to existing information beyond his banking or financial information.

This trend is expanding in light of the concept that the information about the customer belongs to the customer. Hence, the customer must be allowed to share information about him in many other areas, such as infrastructure (gas, electricity, water companies), communication (cellular, network, television services), and local authorities.

Accordingly, a large number of countries in the world have begun to operate in the world of information sharing, whether it is focused only on the sharing of limited banking information (open banking but only on payment accounts and debit/credit cards) or whether it is a question of sharing more extensive information such as open financial information.

Even in Israel, this did not disappear from the

The "Information baskets" under the implementation of the law's milestones:

Date	Individuals	Corporation
April 21- January 23	Banking (payment accounts, deposits, credit, and liabilities) & Credit card companies	Banking (payment accounts, deposits, credit, and liabilities) & Credit card companies – for companies with a turnover of up to 5 million NIS and a sole authorized signatory right
09/2023	Securities	
11/2023	Pension funds, Insurance companies	
04/2024		Banking & Credit card companies – for companies with a turnover higher than 5 million NIS
05/2024	Deposit and credit unions	Insurance companies and Deposit and credit unions
11/2024	Non-bank entities – credit and P2P	Non-bank entities – credit and P2P

regulator's attention. See, for example, a speech by the former bank supervisor, Mr. Yair Avidan:[3]

"The world of information has brought with it real news to the business world in general and the financial world in particular, thanks to the technological developments in the field of information storage and information processing. These developments enable the accumulation of a lot of information (big data) at relatively low costs and enable the translation of this enormous information into an asset of economic value—products, performance, activities, risks, consumer preferences, and the relationships between them. Technological innovation allows the financial system to integrate its information and insights into the work processes and daily decision-making processes, thereby obtaining an up-to-date and reliable picture of the financial reality of the bank and its customers. This picture allows us to adjust the strategy and business policy and provide better response and service to customers by redesigning the existing financial products and processes and making them better, cheaper, more accessible, and better adapted to their needs and characteristics."

Therefore, using information for business activities such as marketing, underwriting, control, monitoring, and tracking is not new for the banking system and other financial entities. On the contrary, this has been the accepted practice for a long time. However, systems and models that use artificial intelligence and machine learning are expected to enhance and refine these activities significantly and create a wide range of opportunities and possibilities: faster and more intelligent decision-making processes, Identifying patterns, connections, and anomalies that enable proactive activity towards customers; and automation of operational processes and decision-making processes that previously required human involvement. These options, and many more, should be reflected in the improvement of the service and the customer service experience, in the ability to respond more quickly, in the adaptation and improvement of the financial products, in the strengthening of risk management capabilities, in the strengthening of the business model, in the streamlining of the decision-making process and in operational efficiency. All of these are expected to strengthen and speed up the process of unloading products and services, introducing new players, increasing competition, and improving the situation of the customer and the economy in Israel.

THE PAYMENT SERVICES AND PAYMENT INITIATION, 2023 ("PAYMENT LAW")

The Payment law was approved in May 2023 and will enter into force in June 2024. There are three main subjects in which the Payments Law renewed and brought to Israel:

The first subject is, of course, the payment service. The Payment law has brought for the first time a complete and comprehensive regulatory framework for payment services – applying a comprehensive regulatory regime concerning licensing, supervision, and enforcement of all payment service providers and payment initiation service providers in Israel. This regime will apply to various financial entities, including existing regulated financial entities, such as clearing companies, financial asset service providers, and more.

The Payment law is based on principles from the European Directive PSD2 (Payment Service Directive) and the European directive regarding electronic money, the EMD (Electronic Money Directive). These directives are distinctly pro-consumer, and their adoption in Israel is very positive news for the Israeli consumer.

The second subject is a Payment Initiation service – today, to use a payment method based on writing a payment order in a payment account, or its simple name "bank transfer," the transferring customer, that is, the payer, is required to log into the online channels of his payment account manager, that is, to his bank's website, to identify himself as needed, type the details of the payment order or some of them,

[3] Mr. Yair Avidan – Companies Forum Conference: Opportunities and Challenges. Central Bank of Israel (boi.org.il), 29.1.2023.

such as the name of the beneficiary, his account number, the bank and account details of the beneficiary, transfer date and more, and finally after entering all the details he is required to confirm the execution of the payment order.

In addition to that, as of today, there is no way in which the beneficiary can receive an immediate indication that the payer has given the payment order. All of these made the bank transfer payment method prone to human errors.

Now, thanks to the Payment Initiation service, it is here to simplify and make the processes more convenient. The Payment Initiation services will not only make the writing of Payment instructions easier for customers, but it will also create a natural alternative to the existing means of Payment commonly used in the market, such as credit/debit cards and checks, thus helping to diversify the means of Payment and promote competition in this field in Israel.

In addition, the Payment Law (chapter 5) ordered that the payer's payment account managers have to give initiation service providers access to the payer's payment account. This is to streamline the process of writing payment instructions, requests for debit authorization, or notices to cancel them in a payer's payment account, thus helping customers avoid possible human errors. After the payment initiator writes the payment order details for the payer automatically, using the same access to the account as the payment account manager, it will be forwarded for execution by the payment account manager.

If we summarize the topic of Payment Initiation, there are two advantages – 1. Simplifying and streamlining the payment process by automating the process, as well as preventing human errors. 2. Reducing dependence on credit card companies and direct activity with the account manager for payment.

The third subject is connectivity between payment apps. Within the framework of Payment Law (section 33), there are obligations for those who provide a service for money transfer between individuals. In recent years, several applications have been launched in Israel to transfer money between individuals using identification details (phone number, e-mail address, etc.), such as "Bit" and "Paybox." On the one hand, the activity of these apps is more than welcome. It brings many benefits to the public of users in that it provides a means of payment for transferring money between individuals simply and conveniently. On the other hand, the current dynamics in the market may raise concerns about the development of a centralized market that does not optimally serve the interests of consumers.

As you know, when there is a centralized market, this may ultimately harm the consumer. Indeed, the Israeli Competition Authority was required to address the issue, and a study conducted by it found that there is a significant network effect in the transfer of payments between individuals: that is, the value each customer receives from the app is directly affected by the number of additional customers registered for that app.

The network effect, as described, means that the applications operate as a closed system, meaning that a customer can only transfer funds to another customer of the same application, and the field tends towards a single winner, thus raising the fear of a lack of competition.

To deal with this network effect, the Payment law requires service providers (who have a broad scope of activity) to allow their customers to receive funds from a payer who is a customer of another service provider as well as to transfer funds to a beneficiary who is a customer of another service provider. In this way, it will be possible for customers to choose their preferred service according to the value proposition it offers without being bound to one service that holds the large customer pool.

How will this happen? After all, these are different companies that have no interface between them.

In the appendix to the Payment law, there is a characterization of the payment system, while the intention is that there will be a central system that all players will connect to and thus

be able to transfer funds between them. There is no need to interface between entities; a new company will not have to connect to the entities but only to the system. If the companies do not want to use the system, they will have the option to connect directly (with an agreement).

FOREIGN PAYMENT SERVICE PROVIDER

We cannot finish the article without referring to foreign payment service providers. Indeed, the Payment Law specifically refers to foreign payment service providers and expands the scope so that foreign entities can provide payment services more efficiently than has existed until now in Israel.

"Foreign service provider" – a corporation engaged in providing a payment service or in giving a basic initiation service outside of Israel under a foreign law that regulates the practice of offering such services;

Unlike the exemption regulations for financial services that adhere to OECD countries, the Payment Law has no restrictions on any foreign law. There are no attachments to specific legislation, and every foreign payment service provider must show the source of the regulation under which he operates when this is subject to the examination and discretion of the ISA as the entity that supervises the activity.

This is another step in the chain of steps of the financial regulator in Israel, which is to promote competition in Israel. The first step was in the exemption regulations, the connection of the payment systems to foreign companies – See from the words of the supervisor of banks in Israel regarding the opening of payment systems in Israel to foreign service providers:

"The Bank of Israel allows the opening of controlled payment systems in Israel for the activity of international payment service providers. This step will enable these entities to operate immediately in the systems, thus offering services and value propositions to the public in Israel based on a license from a foreign country. This step is expected to promote innovation in the field of payments and the entry of players new to the market.

This move will allow these entities to prepare for the technological connection to the systems. For some of them, it will allow total activity in the systems, based on a foreign license, without waiting for the legislation and entry into force of the law regulating the practice of payment services." [4]

In conclusion, the financial legislation in Israel creates many exciting and innovative opportunities for various new and existing fintech while bringing value to consumers and promoting innovative technologies in the financial and information world. ■

[4] *Opening the payment systems in Israel for the activity of international payment service providers*, Bank of Israel – the Central Bank of Israel (boi.org.il), February 2023.

THE AUTHOR

Michal Ohana is a partner and head of Financial Regulation at the Shibolet & Co. law firm.
Email: M.Ohana@Shibolet.com

WHITE & CASE

Unlocking Opportunities: While Dealmakers Face Uncertainties in 2024, There Are Still Many Signs of Optimism in the Israeli Market

Despite a globally challenging tech market and the geopolitical backdrop, the resilience of the Israeli start-up economy and continued deal activity over the last quarter reflects the ongoing optimism in the Israeli market.

Global M&A activity continued to make slow progress in 2023, with stubbornly high interest rates and stringent financing conditions stifling market confidence. Nearly US$3.2 trillion of M&A deals were announced last year—a ten-year low in aggregate annual value terms—while deal volume, with 36,640 announcements, sank to its lowest annual figure since 2018, when the figure stood at 34,130.

The drop-in private equity activity was even steeper. Just 9,572 PE deals worth a combined US$955 billion were announced over the year, the first time since 2016 that annual aggregate deal value dropped below US$1 trillion.

There were, however, signs of resurgence in M&A toward the end of the year, with half of the top ten deals of 2023 announced in Q4. Some of it may be attributable to the continued pressure sellers experience due to the continuous difficulties in raising funds and lack of alternative liquidity channels and limited availability of the IPO market. Combined with an anticipated cut to interest rates, there is a growing sense of optimism in the deal market. In PE particularly, financial sponsors are under pressure to put dry powder to work in 2024.

TECH DEALMAKERS LOOK SET FOR A COMEBACK ON A GLOBAL SCALE

The technology sector has endured a challenging few years as stock market volatility, expensive financing and a tough antitrust environment put large deals on ice. Yet there are signs of a turnaround this year, with some significant PE deals having taken place in the second half of 2023.

The largest of these saw Cisco acquire Splunk, a cybersecurity and data analytics firm, from US buyout firm Hellman & Friedman for US$28 billion. The transaction, Cisco's largest to date, signals the software giant's objective to expand its AI-enabled cybersecurity solutions.

While global tech players mostly shied away from big-ticket acquisitions amid challenging market conditions, the stage is set for tech companies to return to the deal table in 2024.

DANIEL TURGEL
PARTNER, WHITE & CASE

TALI SEALMAN
PARTNER, WHITE & CASE

JOEL RUBINSTEIN
PARTNER, WHITE & CASE

Rallying share prices and slowly improving macroeconomic conditions will lift confidence and make transformational M&A a more appealing prospect.

The US$14 billion takeover of AI networking firm Juniper Networks by US computing giant Hewlett Packard, announced on January 9, is a sign of rising corporate confidence. The growing need to boost AI offerings will continue to be a key deal driver in the global market over the coming year.

Israel's tech ecosystem shows considerable resilience. When it comes to Israel, the tech sector remains core for economic growth and it has faced a number of challenges over the last 18 months. At the start of 2023, local political uncertainty around the contentious judicial overhaul resulted in a more cautious approach from foreign investors and dealmakers. The war has followed the judicial reforms crisis, alongside an ongoing challenging global economy and tech downturn.

However, there is still great cause for optimism – and despite the many challenges, the tech market remained strong in 2023. We also saw strong performance in the pharmaceutical, medical and biotech markets with large-valued deals.

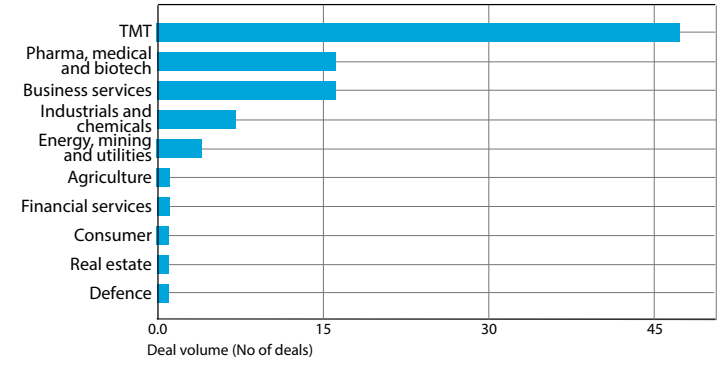
Israel remains a leading hub of innovation: "Israel's start-up ecosystem stands out due to its innovative and resilient culture. There have already been a number of fantastic funding rounds and M&A transactions executed in 2024 that buck the global trends" said Daniel Turgel, the Firm's Global Co-Head of Technology and Head of its Israel Country Practice.

Israel's start-up ecosystem stands out due to its innovative and resilient culture. There have already been a number of fantastic funding rounds and M&A transactions executed in 2024 that buck the global trends.

"In terms of technologies we are seeing emerging from the region, Artificial Intelligence and Cybersecurity stand out, alongside Fintech start-ups developing AI focused solutions. Healthtech is another particularly exciting area, as well as Climatetech which is a huge area of opportunity on the growth market more broadly."

While many challenges lie ahead, there

M&A activity: top sectors by volume Q1 2023 - Q4 2023



Source: White & Case's M&A Explorer powered by Mergermarket

remains every reason to stay optimistic and positive about the future, with lots of growing and innovative companies emerging and providing exciting opportunities for global investors, especially those already familiar with the Israeli market.

PE PLAYERS GET CREATIVE IN THE GLOBAL MARKET

Global PE firms will look to redraw their strategies as they attempt to change their fortunes in 2024. A total of US$533.8 billion of buyouts were recorded in 2023—a four-year low that barely eclipsed 2019's US$522.7 billion—as the industry grappled with high interest rates, restrictive financing and escalating geopolitical tensions.

PE firms have amassed a record amount of cash to spend on buyouts—an estimated US$2.1 trillion of dry powder as of December 2023, according to Preqin. The pressure to put this money to work will only intensify as the new year progresses.

There are signs that PE dealmakers are becoming more creative in order to push transactions over the line. Performance-based earn-outs have gained in popularity as a means to bridge the gap in buyer-seller price expectations in the current high interest rate environment.

Deal structures such as carve-outs look set to become more popular in 2024. This trend gained momentum last year, as seen in Chicago-based buyout firm GTCR's US$11.7 billion carve-out of merchant payments business Worldpay, from US fintech company FIS. The transaction, the largest in the firm's history, includes US$8.4 billion of debt finance, indicating a recovery in confidence among bank lenders.

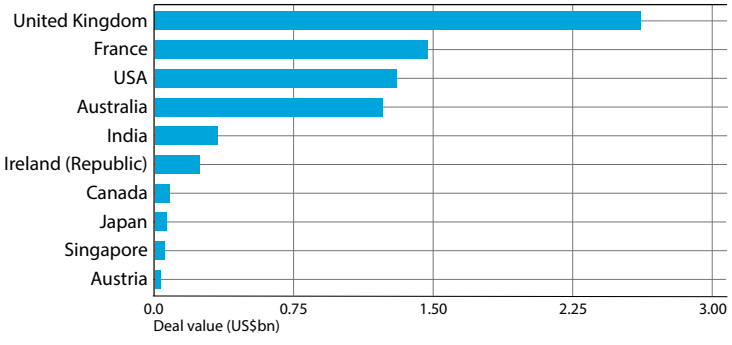
The challenging IPO market has served to push carve-outs up the agenda, with FIS reportedly abandoning a plan to spin off Worldpay on the public markets. PE players will look to capitalize on this market dynamic in 2024.

THE STATE OF THE ISRAELI MARKET IN 2023 AND INTO 2024

On the backdrop of this global outlook, the Israeli market remained consistent with global activity in 2023. Inbound international merger and acquisition deals into Israel decreased in volume from 125 deals in 2022 to 96 deals in 2023. In terms of deal value, in 2022 there was US$11.9 billion in deal value and this fell to US$7.66 billion in 2023. Excluding 2020 as an outlier due to the pandemic, this was the lowest figure since 2015.

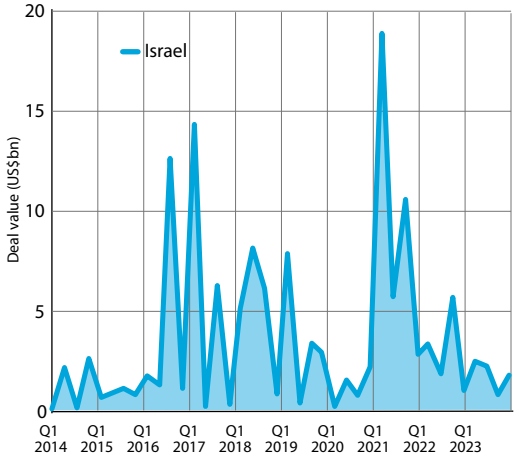
In terms of where investment is coming from, the UK was the leading investor into Israel for the first time in 2023, with a deal value of US$2.62 billion. The US accounted for just US$1.31 billion, which is a significant decrease from US$8.59 billion in 2022.

M&A activity: top bidders by value Q1 2023 - Q4 2023



Source: White & Case's M&A Explorer powered by Mergermarket

M&A activity by value Q1 2014 - Q4 2023



Source: White & Case's M&A Explorer powered by Mergermarket

However, deal volume from the US remained significantly above all other countries, with 46 deals in 2023, compared to just 8 deals by the UK last year. This reflects that there is still great investment in the region from the US, just for smaller transactions.

Notwithstanding Israel's challenges, deal flow remained active throughout 2023 and even into Q4 (however, most transactions that closed in Q4 were already at advanced stages in Q3). Public M&A proved key to Israel's resilience over the course of 2023. Nevertheless, private equity deals fell by value over the course of the year, largely owing to a sharp decrease in Q4.

PROJECTED RATE CUTS SPARK OPTIMISM

There is a growing sense of positivity among dealmakers that the current interest rate cycle has peaked, and that systemically important central banks in the US and Europe will loosen monetary policy this year. The news that the Federal Reserve is expected to cut interest rates at least three times in 2024 has been welcomed by markets, with the Dow Jones Industrial Average jumping more than 500 points following the mid-December announcement.

This shift in sentiment comes on the back of relatively positive growth forecasts, with the US economy in 2023 exceeding pre-pandemic forecasts. With signs that inflation is trending down in most countries—notwithstanding a small uptick in December in the US and eurozone—policymakers at the European Central Bank and Bank of England may also look to cut rates in 2024, albeit slowly and gradually.

The predicted rate cuts will bring welcome relief for dealmakers battling spiraling finance costs and help to bridge buyer-seller valuation gaps.

Investors will be buoyed by the potential rate cuts, but progress is unlikely to be linear. Dealmakers should continue to anticipate bumps in the road, such as December's small inflation spike, as central banks, investors and markets adjust to their "new normal."

Despite all the unknowns, dealmakers will be hoping that improving economic conditions and an enduring appetite for deals—made all the more sharp over the past two sluggish years—will result in a busier, more upbeat M&A market in 2024. This is also true within the Israeli market itself.

IN SUMMARY: A NEW ERA OF UNCERTAINTY

Dealmakers also face a host of fresh uncertainties in 2024. The Red Sea crisis and ongoing Israel-Gaza conflict could damage the global economic recovery, with the security of major supply chains hanging in the balance. Dealmakers will closely follow how events unfold in this crucial trading route over the coming weeks and months.

At the same time, regulatory scrutiny will continue to cast doubt on many deals at the top end of the market, particularly in the sensitive technology, healthcare and critical infrastructure sectors. President Biden's antitrust team will maintain its tough stance against certain technology deals and is also closely scrutinizing PE roll-up strategies, in which firms make multiple small acquisitions in a single market, which the Federal Trade Commission may deem anticompetitive.

Upcoming elections in the US and the UK could also moderate investor confidence over the coming year. M&A has historically slowed in the run-up to major elections, according to LSE Group data, with political uncertainty inconducive to robust dealmaking.

Despite all the unknowns, dealmakers will be hoping that improving economic conditions

and an enduring appetite for deals—made all the more sharp over the past two sluggish years—will result in a busier, more upbeat M&A market in 2024. This is also true within the Israeli market itself, notwithstanding the challenging circumstances. ■

ABOUT THE AUTHORS

Daniel Turgel is a partner in White & Case's Global Mergers & Acquisitions Practice, as well as the Head of the firm's Israel Practice. He is widely recognized as a leading practitioner on Israel-related matters, having been ranked by Chambers Legal Directory for several years. He spends a significant portion of his time in Tel Aviv and has advised on some of the largest and most complex matters in the Israeli market.

Email: daniel.turgel@whitecase.com
Mobile: +972 544 236896

Tali Sealman is a partner in White & Case's Global Mergers & Acquisitions Practice. Sealman's practice focuses on private and public M&A and general corporate representation of emerging technology and life sciences companies and venture capital investors. Sealman represents strategic and financial buyers and sellers in public and private acquisitions, and also represents companies at all stages of their lifecycle and across a broad range of industries, including software, enterprise, security, digital health, fintech, gaming and blockchain.

Email: tali.sealman@whitecase.com
Tel: +1 650 213 0315

Joel Rubinstein is a partner in White & Case's Capital Markets Practice. Joel has particular expertise in advising issuers, underwriters and investors on the IPOs of special purpose acquisition companies (SPACs), as well as SPACs, target companies and investors in de-SPAC business combination transactions. He has been advising clients on SPAC transactions since 2005. Since 2020, Joel has represented clients in more than 100 SPAC IPOs, raising aggregate gross proceeds of more than US$35 billion, and in more than 30 business combination transactions with an aggregate enterprise value of more than US$60 billion. Joel also represents public companies in initial public offerings and follow-on offerings, as well as offerings of convertible notes and PIPEs, and in mergers and acquisitions.

Email: joel.rubinstein@whitecase.com
Tel: +1 212 819 7642

White & Case's commitment to the Israel market spans several decades and is widely recognized as a stellar practice, ranked Band One in Chambers Global: Israel 2024. The firm offers a regular on-the-ground presence, advising on transactions across a broad range of industries, including high-tech, healthcare and medical devices, cleantech, agriculture, real estate, energy and oil and gas, chemicals, consumer products and financial services. White & Case has deep roots in M&A, capital markets and project finance and leverages this experience into other areas, notably litigation.

IsraelDesks
by NÍSHLÍS | LEGAL MARKETING | SETTING THE BENCHMARK

YOUR FIRST DESTINATION IN ISRAEL

Israel Desks is the largest multimedia platform for international law firms to network with Israeli law firms and raise their profile in Israel's legal market.

LAW FIRM DIRECTORY
Featuring international law firms with an Israel desk

LEGALLY ISRAEL100
IsraelDesks league tables

MEDIA CENTER
News, Updates and Events

LEGALLY ISRAEL
Weekly news roundup from leading Israeli and international law firms

IsraelDesks MAGAZINE
Bi-monthly digital magazine

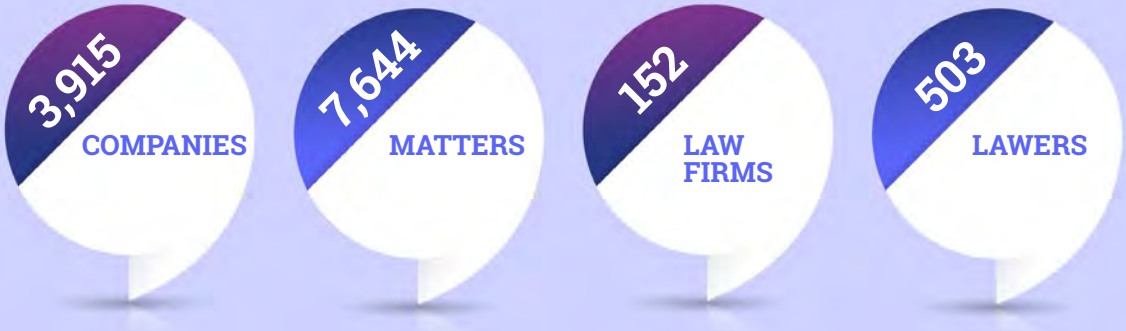
LEGAL NETWORK
Highly targeted distribution

WEBINARS
Hosting webinars through IsraelDesks platform

IsraelDesks.com

Legal BI
YOUR COMPETITIVE ADVANTAGE

Data Coverage



Key Benefits

Market data for informed decision-making and business development. Discover which companies work with which law firms and in which practices.

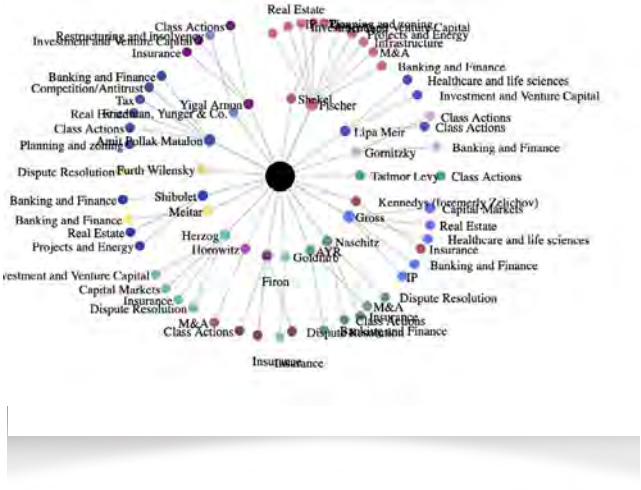
Business development opportunities through examining potential clients, sectors and practices.

Positioning and benchmarking a law firm - based on comparative analysis of client base, rankings, panels, sectors and more.

Marketing efficiency with respect to collecting legal ranking results, analysis and comparison to other law firms and individuals.

Gain insights into competing law firms, by viewing filtered information into their client base, panels, deal flow, sector strength and more.

Legal BI is a dynamic and flexible tool that gives you actionable information, never previously available, and vital for any legal professional interested in legal business, in general, and in legal marketing and business development, in particular.



Visit **http:www://legal-bi.co** to learn more
To schedule a demo and to receive a quote email: **nishlis@legalmarketing.co.il.**

BRINGING YOUR GLOBAL FIRM TO ISRAEL

Israel is a hotbed for innovation. Over 130 international law firms with an Israel desk are competing for clients in a country the size of New Jersey. We know the market and we know how to make you succeed.

We work with you closely to drill down to your specific objectives, draft and implement a strategy that produces results, in order to build a long-term strategic plan that positions you prominently in the eyes of buyers of legal services.

SERVICES TO INTERNATIONAL FIRMS LOOKING TO INCREASE THEIR PRESENCE AND BRAND AWARENESS IN ISRAEL:

- Strategy and Business Development
- On the ground marketing
- Highly targeted round tables
- Road Show Planning
- Event Planning
- Increase Brand Awareness
- Email Marketing
- PR and Media
- Hebrew Content Writing

NÍSHLÍS
GLOBAL LEGAL MARKETING

NISHLIS@LEGALMARKETING.CO.IL
T. + 972-72-338-7595
WWW.LEGALMARKETING.CO.IL


www.NEIBC.org
Dan.Trajman@NEIBC.org
+1.617.320.1862
New England Israel Business Council
NEIBC
home away from home, your launch pad
to the North American market

GLOBAL LEGAL MEDIA

Helping Law Firms Grow Their Cross-Border Business

- Custom publications
- Social media programmes
- Global meeting scheduling with prospective clients
- Seminar and conference marketing
- Lead generation
- Legal marketing and media consultancy

For more information, please visit: www.globallegalmedia.com

Contact:
Danny Collins, Director
dc@globallegalmedia.com
+44 (0) 7889 366340

GLOBAL LEGAL MEDIA

STRATEGIC LAW FIRM MARKETING