

Country Guide

Israel

Prepared by

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A GUIDE TO DOING BUSINESS IN ISRAEL



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FIRM OVERVIEW

Founded in 1921, S. Horowitz & Co. is one of Israel's leading and largest corporate and commercial law practices. It is a full-range law firm, comprising of over 160 fee-earners, many of whom are multilingual and have qualified and practised as lawyers in the United States, England, Australia and South Africa. The firm is widely known for the breadth and depth of its expertise and experience, including in mergers and acquisitions, joint ventures, banking, dispute resolution, venture capital, commercial law, intellectual property, information technology, project and asset financing, energy and infrastructure, capital markets, financial services, telecommunications, biotechnology, antitrust, tax, real estate, labour law and environmental law. S. Horowitz & Co. has been recognised as being a leader or first in its field in Israel by all the leading directories.

LIMITATIONS ON SCOPE OF THIS GUIDE

By its nature, this Guide is merely an overview and is intended to highlight issues for general information purposes only.

Because of the many issues discussed and the frequent changes in laws, regulations and procedures, this Guide should neither be construed as offering legal advice nor as a substitute for obtaining proper legal advice. This Guide cannot be relied on for legal advice and use of this Guide does not create an attorney–client relationship. Anyone wishing to do business in Israel or wishing to obtain particular information regarding any aspects of Israeli law or other commercial considerations, should first consult with a qualified Israeli lawyer for specific updated advice and/or information.

Accordingly, the information contained herein is not comprehensive and should be used for guidance purposes only. No liability whatsoever with respect to the inaccuracy or otherwise of any information contained in this Guide is accepted by S. Horowitz & Co.

This Guide was prepared during 2018 and, with the exception of all matters concerning and references herein to tax, which have not yet been updated and do not necessarily reflect current law, and unless specifically stated to the contrary, this Guide is intended to be accurate as of December 2018. For more updated information on any of the topics discussed in this Guide, or with regard to any other information on Israeli law, please contact the following individuals:

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Glossary of Terms

Acquisition Tax Law	the Acquisition Tax Law (Goods and Services), 1952
Advance Notice for Dismissal and Resignation Law	the Advance Notice for Dismissal and Resignation Law, 2001
Advisory Committee	the Advisory Committee for Exemptions and Mergers established under the RTP Law which is authorised to review the Antitrust Authority's recommendation and give advice
Antitrust Authority	the Israeli Antitrust Authority
Antitrust Controller	the Controller of Restrictive Trade Practices who heads the Antitrust Authority
Antitrust Tribunal	the Restrictive Trade Practice Court established under the RTP Law
Appellations of Origin and Geographical Indications Protection Law	the Appellations of Origin and Geographical Indications (Protection) Law, 1965
Bank of Israel Order	the Bank of Israel Order (Information Regarding Developments in the Foreign Currency Market in Israel), 2010
Banking Law	the Banking (Licensing) Law, 1981
Banking Ordinance	the Banking Ordinance, 1941
Bank of Israel Law	the Bank of Israel Law, 2010
Capital Investments Law	the Encouragement of Capital Investments Law, 1959
Civil Wrongs Ordinance	the Civil Wrongs Ordinance [New Version], 1968
Commercial Civil Wrongs Law	the Commercial Civil Wrongs Law, 1999
Companies Law	the Companies Law, 1999
Companies Ordinance	the Companies Ordinance [New Version], 1983, many of the provisions of which have subsequently been repealed by the Companies Law
Consumer Goods and Services Supervision Law	the Consumer Goods and Services Supervision Law, 1957

Glossary of Terms

(continued)

Consumer Protection Law	the Consumer Protection Law, 1981
Consumer Protection Order	the Consumer Protection Order (Marking of Goods), 1983
Consumer Protection Order (Food Products)	the Consumer Protection Order (Marking and Packaging of Food Products), 1998
Controller of Foreign Currency	the officer appointed by the Minister of Finance to be responsible for currency control policies in Israel
Copyright Act	the Copyright Act, 1911
Copyright Law	the Copyright Law, 2007
Copyright Ordinance	the Copyright Ordinance
Customs Order	the Customs Order (Prohibition of Imports), 2005
Customs Ordinance	the Customs Ordinance
Defective Products Law	the Defective Products (Liability) Law, 1980
Entry into Israel Law	the Entry into Israel Law, 1952
Entry into Israel Regulations	the Entry into Israel Regulations, 1974
Equal Opportunities at Work Law	the Equal Opportunities at Work Law, 1988
Foreign Workers Law	the Foreign Workers (Prohibition against Unlawful Employment and Securing Fair Conditions) Law, 1991
Free Export Order	the Free Export Order, 2006
Free Import Order	the Free Import Order, 2004
Government Companies Law	the Government Companies Law, 1975
Hazardous Substances Law	the Hazardous Substances Law, 1993
Health Ordinance	the Health Ordinance, 1940
Hours of Work and Rest Law	the Hours of Work and Rest Law, 1951
Import and Export Ordinance	the Import and Export Ordinance [New Version], 1979

Glossary of Terms

(continued)

Income Tax Ordinance	the Income Tax Ordinance [New Version], 1961
Inflationary Adjustments Law	the Income Tax (Taxation in terms of Inflation) Law, 1982
Integrated Circuit Topography Law	the Integrated Circuit Topography Law, 1999
Investment Authority	a vehicle specifically established by the Ministry of Industry, Trade and Labour to regulate investments under the Capital Investments Law
IIA	Israel Innovation Authority at the Ministry of Economy (an authority, formerly known as the Office of the Chief Scientist, established under the R&D Law which is responsible for implementing governmental policy regarding the support and encouragement of industrial research and development (“ R&D ”) in Israel)
ITA	the Israel Tax Authority
Knesset	the Israeli Parliament whose members are democratically elected and comprises 120 in number
Knesset Finance Committee	a special committee established by the Knesset to deal with finance issues on a parliamentary level, including, <i>inter alia</i> , the State budget, all types of taxation, matters relating to foreign currency and banking
Law and Administration Ordinance	the Law and Administration Ordinance, 1948
Law of Return	the Law of Return, 1950
Licensing of Businesses Law	the Licensing of Businesses Law, 1968
Merchandise Marks Ordinance	the Merchandise Marks Ordinance, 1929
Minimum Wage Law	the Minimum Wage Law, 1987
National Health Insurance Law	the National Health Insurance Law, 1994
National Parks and Nature Reserves Law	the National Parks and Nature Reserves Law, 1963
NIS	New Israel Shekels, the lawful currency of Israel

Glossary of Terms

(continued)

Nuisances Claims Law	the Abatement of Environmental Nuisances Law (Civil Claims), 1992
Nuisances Law	the Abatement of Nuisances Law, 1961
Paid Leave Law	the Paid Leave Law, 1951
Partnership Ordinance	the Partnership Ordinance, 1975
Patents and Designs Ordinance	the Patents and Designs Ordinance, 1924
Patents Law	the Patents Law, 1967
Penal Law	the Penal Law, 1977
Performers and Broadcasters Rights Law	the Performers and Broadcasters Rights Law, 1984
Planning and Building Law	the Planning and Building Law, 1965
Planning and Building Regulations	the Planning and Building Regulations, (Application for Permit, its Conditions and Fees), 1970
Plant Breeders' Rights Law	the Plant Breeders' Rights Law, 1973
Precautionary Principle	the principle to be applied where there are threats of serious or irreversible environmental damage: in such cases the lack of full scientific certainty may not be used as a reason for postponing cost-effective measures to prevent environmental degradation (principle 15 of the 1992 Rio Declaration on Environment and Development)£
Prevention of Sea Pollution Law	the Prevention of Sea Pollution (Dumping of Waste) Law, 1983
Prohibition on Money Laundering Law	the Prohibition on Money Laundering Law, 2000
Prohibition on Money Laundering Regulations	the Prohibition on Money Laundering Regulations, 2000
R&D Law	the Encouragement of Industrial Research and Development Law, 1984
Research Committee	an authority within the Industrial Research and Development Administration at the Ministry of Industry, Trade and Labour established under the R&D Law for the

Glossary of Terms

(continued)

	purposes of, <i>inter alia</i> , determining which R&D projects should be approved for support and setting the conditions under which the relevant benefits are to be granted
RTP Law	the Restrictive Trade Practices Law, 1988
Seawater Oil Pollution Law	the Seawater Pollution by Oil (Prevention) Ordinance [New Version], 1980
Securities Law	the Securities Law, 1968
Sick Pay Law	the Sick Pay Law, 1976
Stamp Duty Law	the Stamp Duties on Documents Law, 1961
Standard Contracts Law	the Standard Contracts Law, 1982
Standard Contracts Tribunal	a body established pursuant to the Standard Contracts Law, with the power to approve standard contracts and/or to declare certain provisions thereof void under the Standard Contracts Law
Standards Law	the Standards Law, 1953
Streams and Springs Authorities Law	the Streams and Springs Authorities Law, 1965
TASE	the Tel Aviv Stock Exchange
Trade Marks Ordinance	the Trade Marks Ordinance [New Version], 1972
Traffic Ordinance	the Traffic Ordinance, [New Version], 1961
Trust Law	the Trust Law, 1979
Unjust Enrichment Law	the Unjust Enrichment Law, 1979
VAT	Value Added Tax
VAT Law	the Value Added Tax Law, 1975
Water Law	the Water Law, 1959
Work Safety Ordinance	the Work Safety Ordinance [New Version], 1970
WTO	the World Trade Organisation

1. THE COUNTRY AT A GLANCE

1.1. Languages

What languages are spoken?

The official language of Israel is Hebrew. Although not an official language Arabic has a special status. However, English, Russian and French are also widely spoken.

Most students in Israel study English as a primary foreign language and French or Arabic as a secondary foreign language. The major language commonly used for business culture purposes is English.

1.2. Rate of Exchange

What is the exchange rate for the US dollar and the Euro?

The official currency used in Israel is New Israel Shekels (NIS). As at 3 December 2018, such rates were stated to be US \$1 = NIS 3.77 and €1 = NIS 4.26, respectively.

1.3. Geography, Neighbouring Countries and Climate

Describe your country's geography, proximity to other countries and climate.

Israel is located in the Middle East, along the eastern coastline of the Mediterranean Sea and is bordered by Lebanon and Syria in the north, Jordan in the east, and Egypt and Gaza in the south. Israel lies at the intersection of three continents: Europe, Asia and Africa.

Long and narrow in shape, the country is about 470 km (290 miles) in length and 135 km (85 miles) in width at its widest point. The country's area (including the Golan Heights but excluding the Gaza Strip and the West Bank) is 22,020 sq km/12,878 sq mi.

Israel's population (excluding the Gaza Strip and the West Bank—whose population numbers approximately 5.3 million Palestinians), comprises approximately 8.68 million residents, divided as follows: Jews—75.4%; Muslims—16.9%, Christians'—2.10% Druze—1.7% and the remaining percentage of the population having no religious affiliation comprises 3.9%.

The capital city of Israel is Jerusalem, having a population of approximately 866,000.

Israel encompasses varied topographical features, ranging from forested highlands and fertile green valleys in the north to mountainous deserts in the south; from the coastal plain in the west

to the semitropical Jordan Valley and the Dead Sea in the east. Approximately half of the country's land area is semi-arid.

The dominant geographical feature of Israel is the Rift Valley, which originates in Turkey and extends through Israel and further south into Africa. The Rift Valley includes among its natural resources the Dead Sea, the Jordan, Arava and Hula Valleys as well as Israel's major lake, Lake Kinneret (also known as the Sea of Galilee). Israel is not a wet country (the Jordan River is Israel's major river) and the north sustains most of the country's agriculture. The country's only inland sea is the Dead Sea which has an inordinate salt content and is the lowest point on earth. The Dead Sea is flanked by the Judean Desert which extends further south into the Negev.

Israel's climate is characterised by constant sunshine, with a rainy season from November until April. Total annual precipitation ranges from 700 mm (27.5 inches) in the north to less than 30 mm (1.1 inches) in the far south. Regional climatic conditions vary considerably: hot, humid summers and mild, wet winters on the coastal plain; dry warm summers and moderately cold winters, with rain and occasional light snow, in the hilly regions; and semi-arid conditions, with warm to hot days and cool nights, in the south.

1.4. Cultural Influences/Prohibitions

Are there cultural influences or prohibitions on the way business is conducted?

No.

1.5. Religious Influences/Prohibitions

Are there religious influences or prohibitions on the way business is conducted?

The major religious influence affecting transaction of business in Israel relates to prohibitions on conducting work on specified days of rest. Most businesses in Israel may not be conducted on the prescribed days of rest as defined in the Law and Administration Ordinance (which include, *inter alia*, the Sabbath, the Day of Atonement,¹ Passover, *etc.*). The Hours of Work and Rest Law expressly provides that on the prescribed days of rest—

“the owner of a workshop or industrial undertaking shall not work in his workshop or undertaking and

¹ Yom Kippur (the Day of Atonement) is a *dies non* (a legal holiday) under Jewish law and customs. For a period of twenty-five hours, commencing one hour before sunset on the eve of Yom Kippur until sunset on the following day, no Jewish businesses or establishments are allowed to operate. In addition, in the later hours of the afternoon on the eve of Yom Kippur, all Israeli television and radio broadcasts are terminated and all public transportation operating throughout Israel ceases to function, including Israel's airports, which similarly cease to operate and are closed.

the owner of a shop shall not do business in his shop.”

Many businesses may be found operating despite the enforcement of the above prohibition as it is, to a certain extent, influenced by the policy of the serving government.

In addition, an employee is not obligated to work on the relevant days of rest, as determined according to his religious beliefs. In this regard, employees of all religious beliefs are treated equally. However, with regard to certain types of employment (e.g., jobs in the security field, crucial jobs for the State, etc.) a special permit may be sought and obtained from the Minister of Labour permitting that work be conducted on days of rest. Nevertheless, an employee has the discretion to inform his employer that he will not work on days of rest due to his religious convictions, even if such a permit was obtained.

The business week commences on a Sunday and ends early on Friday afternoon. The Jewish Sabbath begins an hour before sunset on Friday and ends after sunset on Saturday evening. Most Jewish businesses are closed on Friday afternoons and all day Saturday. In practice, most businesses (other than shops, restaurants and the like) have adopted a five-day working week and are closed on Fridays.

Islamic-owned and Christian-owned organisations will be closed on Fridays and Sundays respectively, in accordance with the religion's day of rest.

The Equal Opportunities at Work Law prohibits discriminating against an employee on account of his religious belief.

All in all, religion does not interfere with, or significantly impact, doing business in Israel.

1.6. Infrastructure

Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports and public transportation.

Automobiles, buses, trains and trucks are the main mode of transportation in Israel. In recent years, major expansions were made to the road network (including the introduction of toll systems on major highways in Israel) in order to accommodate and regulate the rapid increase in the number of vehicles, as well as to connect and provide easy access to remote areas, towns, and major cities.

The Israeli railway system has undergone substantial expansion. Currently, Israel Railways operates passenger services between Tel-Aviv, Carmiel, Haifa, Nahariya and Beer Sheva as well as between other major cities and Ben Gurion International Airport. The high-

speed connection between the two major cities, Tel Aviv and Jerusalem, is set to open in 2018. Freight services operate mainly in the south, serving the port of Ashdod, the cities of Ashkelon and Beer Sheva, and the mineral quarries south of Dimona. Over recent years, both freight and passenger usage has increased.

Currently, several light rail lines in the Gush Dan area (Tel-Aviv and the surroundings), central Israel and Jerusalem are being constructed or expanded. According to the governmental work plan, the first light rail line is expected to be operating in Tel-Aviv by the year 2021. Jerusalem already has a light rail line and it is currently in the process of extending and expanding it.

The ancient ports of Jaffa, Caesarea and Acre have been replaced by three modern deep-water harbours located in Haifa, Ashdod and Eilat, all of which serve to accommodate international shipping. Today, Haifa is one of the largest container ports on the Mediterranean Sea as well as a busy passenger terminal. The Ashdod port is used mainly for shipping goods and the port of Eilat on the Red Sea links Israel to the southern hemisphere and the Far East.

Ben-Gurion International Airport, located near Lod, is Israel's main and largest international and domestic air terminal. Short distance international flights and charter flights, mainly from Europe, are also served by the Eilat and Ovda airports in the south and the Haifa airport in the northern part of Israel. Domestic air travel is also served by smaller airports throughout the country, mainly Sde Dov airport in Tel-Aviv.

1.7. Communication

Explain the communication system.

The Israeli telecommunications sector has, in recent years, developed at a revolutionary rate. The substantial changes in the sector are due, in large part, to a fundamental change in policy on the part of the Ministry of Communications (the primary sector regulator).

Today, Israel is connected to the world's major commercial, financial, and academic data networks and is fully integrated into international communications systems by means of underwater, fibre-optic lines and satellite link-ups. The country's communications infrastructure is highly developed, offering telephone, facsimile services, internet and sophisticated databases as well as cable network to users throughout the country. In addition, a well-integrated postal service network operates throughout Israel. International postal and courier services deliver to and from most overseas countries.

As a result of the liberalisation and deregulation of the telecommunications market, the cellular telephony and internet penetration rates have enjoyed substantial increases. As of 2017, there were approximately 126 mobile cellular telephone subscriptions per 100 inhabitants and the internet usage rate of individuals was approximately 81%.²

Israel is a world leader in developing internet and smartphone technologies and applications and Israeli companies operating in the field have marked several international successes. This international reputation is also recognised on the domestic market and has had a substantial impact on local interest and use.

There is a wide selection of state-owned and commercial television channels and radio stations which broadcast mainly in Hebrew, Arabic or Russian.

Israel has also designed and manufactured a number of civilian communication satellites, which is an indication of its advanced scientific and technological expertise.

1.8. Public Services

Describe the public services—i.e., water, electricity, gas. Are they publicly or privately owned?

The Israeli government, in principle, favours privatisation of state-owned companies and public services.

Consequently, privatisation has extended to a significant portion of Israel's public services—particularly, the education (largely affecting higher education) and health sectors—and to many formerly State-owned companies (such as banks, etc.).

Notwithstanding the enormous advances in privatisation, the electricity and water services in Israel remain largely nationalised and state-regulated.

- *Electricity and Natural Gas*

The State owned Israel Electric Corporation is the largest supplier of electrical power in Israel, and is the sole integrated electric utility in the Israel. In 2016, the IEC's market share in the electricity market was 71%.

The electricity market is a “closed market” (i.e., Israel does not purchase electricity from other countries) and the prices of

² Source: <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

electricity in Israel are determined by the Israel Public Utility Authority for Electricity.

Recently Israel has separated the manufacturing, delivery, and distribution operations of electricity, and issued licenses for each operation in each specific geographic area. This process is expected to promote competition in the electricity sector in Israel. There is some possibility for a number of more far reaching reforms to the electricity industry and market.

- Water

Mekorot Ltd., Israel's national water company, is responsible for managing the country's water resources, developing new sources, ensuring regular delivery of water to all localities for all purposes, maintaining water quality through laboratory testing and biological control, and constructing and operating desalination and fluoridation plants (certain of the desalination plants are PPP projects).

Several other water suppliers are responsible for distributing water to certain restricted areas in Israel.

Israel is found in a largely semi-arid environment. Rainfall is not uniformly distributed throughout the country and the rainy season is short. Water consumption that stretches the basic supply to the limit has necessitated construction of an elaborate system of water storage and distribution and the search for additional water sources. Today Israel is at the forefront of solving the global water crisis, and has pioneered solutions such as drip irrigation and has established water desalination plants. Israel has become a global leader in water recycling, and has a water surplus.

2. GENERAL CONSIDERATIONS³

2.1. Investment Policies

2.1.1. *Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?*

Foreign investments are welcome by both the private sector and the public sector in Israel.

The Investment Authority (see Chapter 3—*Investment Incentives* below) is responsible for encouraging the development of industry and tourism in Israel.

³ Some of the information contained in this Chapter 2 was obtained from the respective internet sites of the Israeli Ministry of Foreign Affairs (www.mfa.gov.il) and of the Israeli Ministry of Communications (www.moc.gov.il)

The Investment Authority's main goal is to attract investors (whether local or foreign) and offer financial assistance to potential companies by means of, *inter alia*, subsidised, long-term loans (having low interest rates), direct grants (constituting a percentage of the total investment and R&D financing), or through tax reliefs and/or tax rebates. The scope of such benefits is determined by the Investment Authority according to how much the specific investor's contribution relates to certain geographical and economic factors (such as population dispersion, promotion of exports, the area in which the company is situated and the like). The granting of the said benefits (see section 3.2.1(a) below) to foreign investors requires the consent of the Investment Authority.

The Israeli government also encourages nascent companies in developing their innovative technological ideas and forming new business ventures by providing R&D grants in accordance with the provisions of the R&D Law in various different incentive programs (as there are several incentive programs, each focused on specific aspects of technological innovations (e.g., incentive programs for biotechnology or clean-tech). R&D grants are available from the IIA for a wide range of projects. The grants are contingent on:

- the innovative nature of the project;
- the technological and business risk involved in the project;
- the project's manufacture being conducted in Israel and the IP and know-how remaining in Israel; and
- the anticipated contribution of the project to the Israeli economy.

If saleable products are developed as a result of programs which received R&D grants, repayment of the grant is generally required by way of royalties (see in this regard section 3.2.1(b) below).

With respect to Israel's credit rating, it was recently upgraded by Standard and Poor's from A+ to AA- (stable).

2.1.2. *What is the rate of inflation?*

The average rate of inflation for 2017 was 0.40%. The Bank of Israel's inflation target range is 1% to 3%.

During the global recession, the inflation rate was allowed to rise as the Bank of Israel lowered interest rates to stimulate the economy. However, by being the first in the West to raise interest rates, the central bank has shown a willingness to resume combating inflation as the global economic situation changes.

2.1.3. *Explain any sector exceptions, incentives or restrictions on foreign investment.*

Israel has a liberal investment system and most activities are open to both private national and foreign investors. There are generally no limitations on foreign ownership of Israeli companies and assets with the exception of foreign entities that have connections with certain hostile nations, and target corporations that hold certain control permits that must be issued by the government. The government also issues benefits to investors in certain markets such as industry, tourism, and real estate as outlined in the Law for the Encouragement of Capital Investment.

2.1.4. *Describe de facto restrictions on investment, if any, such as bureaucratic discretion.*

Investment of capital in Israel is not subject to bureaucratic discretion. However, the granting of "Approved Enterprise" status is granted by the Investment Authority and R&D finance is granted by the IIA..

2.1.5. *What is the size of the different markets?*

As stated in Chapter 4—*Financial Facilities*—all public companies whose shares are listed for trade in Israel are listed on the TASE.

More than 50 TASE-listed companies are also listed on stock exchanges in other countries, most notably those of the USA (e.g., the Nasdaq and New York Stock Exchange). As a consequence of such dual listings, there has been a considerable increase in such companies' investor base which has resulted in a vast improvement in the overall volume of shares being traded on the TASE.

In 2017, the average daily: (i) equity trading volume (including convertibles and ETNs) on the TASE was in the amount of US \$390 million; (ii) government bonds' trading volume was in the amount of US \$726 million; and (iii) corporate bonds' (including ETNs) trading volume was in the amount of US \$285 million. Total market cap at the end of 2017 for shares and convertibles was in the amount of US \$231 billion, for government bonds in the amount of US \$141.9 billion, and for corporate bonds in the amount of US \$94.8 billion.⁴

2.1.6. *What types of businesses are conducted in the country?*

The major types of businesses conducted in Israel fall under the categories of industry, construction, transportation, telecommunications, agriculture, and tourism.

⁴ Data obtained from the Tel Aviv Stock Exchange's 2017 Annual Review, available at: https://info.tase.co.il/Eng/Lists/gen_res/0133_annual_review/2017_annual_review_eng.pdf

Israeli industry concentrates on manufacturing sophisticated, high quality products based on technological innovations including mobile technology, medical electronics, agro-technology, biotechnology, genetic engineering, telecommunications, computer hardware and software, solar energy, food processing, pharmaceutical products, and fine chemicals.

In 2017, Israel's GDP was approximately US \$350.6 billion and foreign direct investment amounted to US \$18.95 billion with total exports (goods and services) of US \$102.3 billion.

2.2. Diplomatic Relations

2.2.1. *Explain any established diplomatic relations your country may have.*

The State of Israel, a member of the United Nations, maintains diplomatic relations with approximately 160 countries worldwide.

The relationship Israel has with the United States encompasses mutual economic, political, strategic, and diplomatic concerns. The continued strength and "unbreakable bond" of the U.S.-Israel alliance is rooted in the shared values of the two nations.

Similar systems of government and shared values, as well as the long and sometimes tragic history of Jewish communities in Europe, form the foundation of relations between Israel and the European countries.

2.2.2. *Give addresses, telephone numbers for the embassies or consulates in your country⁵*

In Israel:

- the US embassy is located at 14 David Flusser Street, Jerusalem (tel: +972 (0) 2 630-4000). The Tel Aviv Branch Office of the US embassy is located at 71 Hayarkon Street, Tel-Aviv (tel: +972 (0) 3 519-7575);
- the British Embassy is located at 192 Hayarkon Street, Tel-Aviv (tel: +972 (0) 3 725-1222);
- the Canadian Embassy is located at 3/5 Nirim Street, Tel-Aviv (tel: +972 (0) 3 636-3300);
- the French Embassy is located at 112 Herbert Samuel Promenade, Tel-Aviv (tel: +972 (0) 3 520-8300);

⁵ The details listed below apply in respect of the G8 countries only. You may contact our office should you wish to obtain further details and/or information with respect to other embassies or consulates in Israel.

- the German Embassy is located at 3 Daniel Frisch Street, Tel-Aviv (tel: +972 (0) 3 693-1313);
- the Italian Embassy is located at the Trade Tower Building, 25 Hamered Street, Tel-Aviv (tel: +972 (0) 3 510-4004);
- the Japanese Embassy is located at 4 Berkovitz Street, Tel-Aviv (tel: +972 (0) 3 695-7292);
- the Russian Embassy is located at 120 Hayarkon Street, Tel-Aviv (tel: +972 (0) 3 522-6736).

2.2.3. *Are there prohibitions or restrictions on certain business dealings with the country?*

Apart from prohibitions ordinarily imposed on illegal businesses in western countries (such as dealing in drugs, slavery, prostitution and engaging in the trafficking of women, etc.), there are very few prohibitions on conducting business dealings in the country.

For illustration purposes only, engaging, *inter alia*, in the following activities is restricted:

- *Pornography*

Presentation of pornography is permitted as part of the right to free speech. The scope in which pornography may be portrayed in Israel is restricted.

The broadcast or publication of pornography in Israel is limited: in advertisements, television shows, day-time broadcasting, etc.

Needless to say, Israeli penal laws restrict the publication of any profane advertisement involving a minor.

- *Trade with enemy countries*

It is restricted to enter into commercial and/or financial transactions or dealings with any country which is defined as being an "enemy" of Israel (whether or not war is being waged between Israel and any such country at a given time), or with any country with which Israel does not maintain diplomatic relations, or into which country the import of Israeli goods is prohibited (such prohibition also extends to citizens of, and companies incorporated in, any such country or where the supervision of a company is performed by a person resident of any such country).

You may also refer in this regard to sections 1.4—*Cultural Influences/Prohibitions* and 1.5—*Religious Influences/Prohibitions*, above.

2.2.4. *Explain any travel restrictions to or within the country.*

Tourist visa requirements for entry into Israel vary depending on the tourist's country of origin. An updated list of countries from which citizens are required to obtain a visa is published in Israel by the Ministry of Interior (see section 13.1.3 below). Individuals wishing to stay in Israel for longer than three months must apply for a tourist visa. Individuals travelling to Israel as students are required to obtain a student visa, which is valid for no more than one year. People visiting Israel for official or diplomatic reasons must obtain an official visa from the Embassy of Israel (applied for in person and not sent through the mail). Travel in Israel may be restricted on security grounds.

2.3. **Government**

2.3.1. *Explain your country's election system and schedule.*

Israel is the only democracy in the Middle East. The electoral system of Israel is based on nationwide proportional representation and the number of seats which each party receives in the Knesset (Israel's parliament) is proportional to the number of votes cast in favour of that party. The entire country constitutes a single electoral constituency and all citizens, age 18 and over, are eligible to vote. The Knesset elections take place once every four years, or earlier if the Knesset so directs.

2.3.2. *Briefly explain your country's political history in the last decade.*

Over recent years, no single political party has been able to secure a majority in the Knesset. Accordingly, the government has been comprised of a coalition of political parties. The party that received the largest number of votes in the most recent 2015 elections was Likud, a right wing party. The coalition consists of other right wing parties as well as ultra-Orthodox Jewish parties.

Although there are left wing and centrist political parties in the Knesset, they have been unable to secure a sufficient number of seats to form a coalition government. The Joint List, a political alliance of four Arab parties, won 13 seats in the most recent election.

Prime Minister Benjamin Netanyahu was appointed Prime Minister after the 2009, 2013 and 2015 elections.

2.3.3. *The country's judicial system.*

2.3.3.1. *General Overview*

The judicial system in Israel is divided into two main categories:

- the general law courts;
- the tribunals and other judicial authorities.

Israel employs a single system of general law courts. The Basic Law: The Judiciary, establishes a three-tier court system, as follows: first, the Supreme Court; second, the District Courts; and third, the Magistrates' Courts.

The Supreme Court is an appellate court which also functions as the High Court of Justice. Israel does not employ a jury system.

Other types of tribunals which have been established in Israel to regulate issues and/or disputes in a specific area of law, include Family Courts, Labour Courts, Antitrust Tribunal, Religious Courts and the Patents, Designs and Trade Marks Office.

2.3.3.2. *Is the judicial system generally perceived to be impartial?*

The Israeli judicial system is independent and impartial.

2.3.3.3. *Must disputes be resolved in the country?*

Israeli courts have territorial jurisdiction and the authority of the courts is not contingent upon the parties' consent.

However, where an agreement contains an exclusive jurisdiction clause designating a foreign jurisdiction, then the Israeli courts will generally decline to exercise jurisdiction, based on the principle that the parties' agreement is controlling.

The Israeli courts may decline to exercise jurisdiction based on the existence of a choice of forum clause only if such clause is exclusive. The courts generally give significant weight to the wording of the clause: preferably, it is explicit and clear, drafted in active language rather than in the passive form, mentions the designated jurisdiction, and states, specifically, the denial of the jurisdiction of any other forum.

Even where an exclusive jurisdiction clause exists, the Israeli courts are still competent to exercise their powers and to try the matter in exceptional cases *i.e.*, where the Israeli court is convinced that the agreed forum constitutes *forum non*

conveniens or where it is convinced that trying the matter in the agreed forum would cause grave injustice to one of the parties.

2.3.3.4. *Is there a political method of resolving disputes?*

No.

2.3.3.5. *Are alternative methods of dispute resolution permitted?*

Alternative methods of dispute resolution include primarily arbitration and mediation and such methods are becoming increasingly acceptable. Furthermore, the courts are now more inclined to propose mediation to resolve a dispute and to encourage parties to agree that the court rule without giving full reasons (namely, by way of compromise).

2.3.3.6. *How long does it take to resolve disputes?*

Litigation in Israel tends to be slow, due to a considerable backlog and frequent delays. Nevertheless, applications for provisional orders, including provisional injunctions, are heard and determined on an urgent basis.

2.3.3.7. *Can foreign judicial decisions be enforced in the country?*

Foreign judgments in a civil matter (including a judgment for the payment of compensation or damages to an injured party even though it may not have been given in a civil matter) may be enforced in Israel provided that: (a) the court which rendered the judgment was competent to render the judgment according to the laws of the state of the court and the judgment is enforceable in the country in which it was given; (b) the judgment is final, and no longer subject to appeal (in exceptional cases, interim judgments can also be enforced); (c) the obligation pursuant to the judgment is enforceable according to the general laws of enforcement in Israel and its content is not contrary to public policy; and (d) the requirement of reciprocity between the courts is met, in other words, that judgments granted by Israeli courts are enforceable in the country in which the foreign judgment was granted.

The foreign judgement will not be declared enforceable in certain instances (*e.g.*, the foreign judgment was obtained by fraud, that the defendant was not afforded a reasonable opportunity to present arguments and produce evidence before the judgment was given, *etc.*).

There is also a five year statute of limitation which commences to run the day after the foreign judgement was given unless a different period has been agreed upon between Israel and the

state in which the foreign judgment was given, or unless the court considers that there are special circumstances justifying the delay.

Israel has entered into bilateral enforcement conventions with four countries: the U.K., Germany, Spain, and Austria which specifically deal with enforcement of judgements granted in those countries.

2.3.3.8. *Can decisions from the country be enforced outside the country?*

Enforcement of decisions of the Israeli courts outside of Israel depends on the local law of the jurisdiction where enforcement is sought.

2.3.3.9. *Are there separate tribunals depending upon the subject-matter of the case?*

See section 2.3.3.1 above.

2.3.3.10. *Are there different legal systems within the country or its political subdivisions?*

No.

2.3.3.11. *Can the investor choose to be subject to the country's jurisdiction or not?*

Only to a certain extent—see section 2.3.3.3 above.

2.3.4. *Explain your country's legislative system.*

The legislative body in Israel is the unicameral Knesset. The initiative for a bill may come from the Israeli government, Knesset members or its committees. In order to be adopted, a bill must be supported by a majority vote in three readings. Israel has enacted thirteen basic laws concerning the President of the State, the Knesset, the Government, the Judiciary, the Israel Defence Forces, Jerusalem, Israel Lands, the State Comptroller, Referendums, the Nation State of the Jewish People, the State Economy, Human Dignity and Liberty, and Freedom of Occupation. Legislation and administrative decisions may be set aside by the courts on the grounds that they do not comply with the basic laws.

2.4. Environmental Considerations

2.4.1. *What is the public/government attitude towards environmental regulation?*

Israel has wide-ranging legislation designed to promote protection of the environment, including laws, regulations, administrative orders and by-laws.

Israel's environmental legislation encompasses, *inter alia*, laws for the protection of air and water, laws for the safe treatment of hazardous substances, magnetic and electronic fields and solid waste, laws for encouraging recycling and the reduction of solid waste disposal and laws for the prevention of environmental nuisances such as noise and smell.

The main goals of the Ministry of Environmental Protection are, *inter alia*, to minimise air pollutant emissions, to reduce solid waste disposal, to rehabilitate natural resources, to prevent and reduce population exposure to environmental nuisances, to reinforce the country's ability to confront and adequately deal with climate changes and pest outbreaks and to promote environmental education and awareness.

The Ministry of Environmental Protection has also implemented various initiatives with respect to environmental matters, including:

- Israel Standard 5281 published by the Standards Institution of Israel, which is Israel's "green" building standard for office and residential buildings with reduced environmental impact.
- In January 2010, a vehicle scrapping program was initiated which is aimed at encouraging the scrapping of old and fuel inefficient vehicles, thereby reducing air pollution in Israel. Pursuant to the program, owners of old cars with a valid car registration, are able to deliver their vehicles to one of six authorised scrapping sites that have been opened in Israel, and receive compensation for parts that are transferred for recycling.
- The Clean Coast Program which aims to assist local authorities with cleaning unspoilt beaches within their jurisdiction.

Israeli law takes the violation of environmental laws seriously.

Breach of environmental laws and regulations, in most cases, constitutes a criminal offence and several sections of the Penal Law are devoted solely to environmental offences, such as water and air pollution.

The Polluter Pays Law imposes heavy penalties on environmental offenders, in addition to the imprisonment sanction that exists for many environmental offences. In addition to penal sanctions, the Polluter Pays Law empowers the authorities to impose pecuniary

sanctions on environmental offenders, without requiring any legal proceedings.

In the case of companies, liability is imposed on the actual company as well as on its responsible office holders.

Furthermore, many environmental laws provide citizens and non-governmental bodies with the power to initiate proceedings against environmental offenders, by filing private criminal complaints.

It should also be noted that with regard to many environmental criminal offences, an accused having taken all the appropriate measures in his power to prevent the environmental harm being caused is a good defence to possible criminal liability.

The defences available to an accused are either expressly set forth in the relevant environmental law, unless the offence is classified as a strict liability offence, as are most environmental offences. Examples of the available defences are set out in the Water Law, the Maintenance of Cleanliness Law, the Nuisances Law and the Clean Air Law.

Companies whose shares are listed for trading on an approved stock exchange (*i.e.*, public companies) are obligated to disclose in their annual reports to the Israeli Securities Authority, their activities that have or may have an environmental effect, and the environmental risks to which the company may be exposed. The rationale underlying such disclosure is that it will result in greater management and responsibility being taken by companies with respect to environmental issues, *inter alia*, the obligation to disclose a company's risk management policy.

2.4.2. *Explain any environmental regulations; is the business of the investor subject to environmental regulation?*

The Nuisances Law largely permits plaintiffs to file lawsuits on matters pertaining to air pollution, noise and smell.

The Knesset enacted the Nuisances Claims Law, which deals largely with issues not expressly included in the Nuisances Law, such as water, radiation, waste and hazardous substances.

The Water Law establishes the framework for the control and protection of Israel's water resources, deals with the prevention of sewage and effluent discharge into water sources and, indirectly, regulates the issue of ground pollution.

In addition to these fundamental laws, comprehensive legislation and regulations on various aspects of environmental protection have also been adopted and incorporated into the relevant Israeli legislation.

Environmental considerations have also been incorporated into the Planning and Building Law and the Licensing of Businesses Law, both of which may impact potential business in Israel at their early planning and building stages.

Other examples of significant laws and regulations enacted to ensure environmental protection and sustainability:

- *Air Pollution*

The Clean Air Law, which entered into force in January 2011, described as one of the most complex and innovative environmental laws passed in Israel, is intended to bring about an improvement of air quality and decrease air pollution, *inter alia*, by setting prohibitions and duties in accordance with the Precautionary Principle. According to the Clean Air Law, industrial plants with high air pollution potential, including, *inter alia*, large-scale energy industries, metal production and processing industries, mineral and chemical industries and waste management businesses, as specified in the Appendix to the Clean Air Law, require an emission permit from the Ministry of Environmental Protection.

The Clean Air Law sets stringent means of enforcement against plants violating its provisions, including injunctions against air pollution, administrative financial sanctions amounting to hundreds of thousands of NIS, and in some cases, imprisonment.

- *Renewable Energy*

Broadly, the government has provided that electricity production from renewable energy sources such as solar, biomass and wind energies shall constitute 10% of the electricity consumption in Israel by 2020. Following the resolution, in December 2010 the Israeli government approved a national land planning program, designed to prescribe directives for the installation of photovoltaic devices in order to encourage the use of solar energy for electricity production.

Another means of encouraging the use of renewable energy is through the grant of financial benefits. An example of this is an amendment made in 2009 to the Capital Investments Law, which provides certain financial benefits to plants whose main area of activity is renewable energy.

- *Solid Waste*

As part of the efforts to reduce solid waste disposal, Israel enacted regulations designed to prevent air and olfactory pollution. Indictments issued to operators of improperly run solid waste sites have resulted in court sentences carrying stiff fines and, in many cases, legal proceedings have led to the closure of polluting or illegal landfills.

Israel's current policy calls for a shift from landfilling to an integrated treatment of solid waste based on re-use, recycling, incineration and landfilling.

The Packaging Law imposes direct responsibility on manufacturers or importers for the collection and recycling of packaging that they produce or import, including requiring them to bear the full costs of such collection and recycling activities. It was enacted to reduce the waste transferred for landfilling and increase the re-using and recycling of packaging. Under this Law, local authorities are required to make arrangements for the separation of waste into two streams (wet and dry) and the Ministry of Environmental Protection will finance the establishment of waste sorting and recycling infrastructure in all localities. Failure to comply with the Packaging Law will result in the imposition of financial sanctions.

- *Non-Ionizing Radiation*

The Non-Ionizing Radiation Law is aimed at protecting the public and the environment from the effects of exposure to non-ionizing radiation. It regulates the installation and operation of all non-ionizing radiation sources, including cellular networks, radio and television antennas, and electricity networks, and determines duties and prohibitions in accordance with the Precautionary Principle. Penal and administrative sanctions are imposed on any person installing or operating a radiation source without the appropriate permit, and in the case of companies, both the company and its responsible office holders will be held accountable.

- *Hazardous Substances*

The Hazardous Substances Law is aimed at protecting the environment and public health from damage resulting from use of poisonous materials. The Hazardous Substances Law prohibits, *inter alia*, any commercial activity which involves poisonous materials, including the handling, marketing, transportation, import and export thereof, without possessing an appropriate poison permit.

- *Sea and Water*

Israel signed the Barcelona Treaty in 1976 and subsequently signed all of the relevant protocols relating thereto, all of which have been incorporated into Israeli law. In addition, many consequential laws were enacted to protect the quality of water and prevent pollution of the sea, such as: the Water Law, the Streams and Springs Authorities Law (appointing an authority to oversee and ensure the maintenance and preservation of Israel's rivers and springs), the Seawater Oil Pollution Law and the Prevention of Sea Pollution Law.

With regards to Preparedness and Response to Marine Oil Pollution, the Ministry of Environmental Protection has initiated legislation. It is designed to regulate the National Contingency Plan for the prevention of sea pollution by requiring various authorities to prepare themselves for dealing with sea pollution and by granting access and inspection powers to the sea and coast inspectors employed by the Ministry.

- *Nature Conservation*

The Israeli legislation contains several laws designed to protect nature reserves and open spaces including the National Parks and Nature Reserves Law, the Forests Ordinance and the Coastal Environment Protection Law.

- *Ground*

The aim of the Contaminated Lands Law is to protect, nurture and preserve the land as a resource for the benefit of the public, future generations and the environment and to prevent and minimise its contamination, *inter alia*, through the regulation of provisions on pollution prevention, the performance of tests and surveys, the nurturing and disposal of contaminated land as well as the imposition of criminal and administrative sanctions.

2.5. Intellectual Property

2.5.1. *Describe the law for the protection of intellectual property, including trade marks, copyrights, patents and know-how.*

2.5.1.1. *Patents*

(a) *Legislation*

The protection of patents is governed by the Patents Law, as well as by secondary legislation in the form of various Patent Regulations.

(b) *Nature of right*

A patent is granted for an invention, whether a product or a process, which is new, useful and appropriate for industrial use and which involves an inventive step (*i.e.*, non-obvious to a person skilled in the art). An invention is deemed new, in general, if, prior to the date of filing the relevant patent application therefor, it has not been published in any manner whatsoever, whether in Israel or abroad. Patents will not be granted for a method of therapeutic treatment of the human body and for varieties of plants or animals, except for microbiological organisms not derived from nature.

(c) *How protected*

Patents are protected by registration at the Israel Patents Office, based on examination.

(d) *Length of protection*

Generally, patents are granted for twenty years commencing from the date of filing the patent application. Patents of addition are granted for the period remaining in the main patent.

(e) *Patent term extension*

Subject to certain conditions being met (see paragraphs (i)–(ix) below), an extension beyond the statutory twenty-year patent term may be obtained for a Basic Patent (as defined below).

Type and number of patents, which can be extended—an extension order can be granted only with respect to a Basic Patent. In general, a “**Basic Patent**” protects a material (generally, the active component of a medical preparation) (both of which terms are defined in Section 64A of the Patents Law—“**Material**” and “**Medical Preparation**”, respectively), a process for the production of a Material, the use of a Material, a Medical Preparation that incorporates a Material or a process for the production of such Medical Preparation, or medical equipment for which licensing is required in Israel.

Deadline for submission of term extension application—the application for extension should be filed not later than ninety days after marketing approval for the Medical Preparation has been granted by the Ministry of Health.

Length of term extension and limits on term—An extension order of the Basic Patent shall be valid for a period equal to the extension afforded to the Reference Patent (as such term is defined below), in a country which is listed in the first annex to the Patents Law (“a

Recognised Country”⁶. A “Reference Patent” protects the same Material as that protected by a Basic Patent using any of the forms of protection conferred on a Basic Patent in respect of such Material (*i.e.*, the Material itself, use of the Material, any process for the production of the Material, *etc.*). If an extension has been granted in several Recognised Countries, the extension period granted in Israel will be the shortest of such extension periods. In the event the licence was applied for in Israel only, the term of the extension order shall be for a period equal to the period commencing on the date of filing the application for marketing approval until the date it is granted, provided that such application was submitted promptly and dealt with both expeditiously and in good faith.

In any event, the term of the extension order may not exceed five years beyond the twenty-year term. The Patents Law further provides that the overall period of the Basic Patent and the extension order pertaining thereto shall terminate no later than fourteen years from the date on which the first marketing approval for the Medical Preparation which includes the Material or the medical equipment, covered by such Basic Patent, was granted in a Recognised Country. Moreover, the extension order shall expire no later than the first date of expiry of the extension period granted to the Reference Patent in a Recognised Country.

Conditions for grant of an extension order—the Patents Law provides that the Registrar of Patents will grant an extension order only upon fulfilment of the following conditions:

- (1) The Material, the production process or use thereof, a Medical Preparation containing such Material or a process for the production of such Medical Preparation or the medical equipment, have been claimed in the Basic Patent and the Basic Patent is in force.
- (2) With respect to a Medical Preparation—a Medical Preparation containing the Material is registered in the Registry of Medical Preparations.
- (3) The registration according to (2) above is the first registration which allows use of the Material in Israel for medicinal purposes.

⁶ The United States of America (“the USA”).

- (4) No prior extension order has been granted in respect of the Basic Patent or the Material.
 - (5) In the event that marketing approval has been granted in the USA—if an extension order was issued in the USA for such Reference Patent and has not yet expired.
 - (6) In the event that marketing approval has been granted in one or more of the countries listed in part B of the first annex to the Patents Law⁷—if an extension order was issued in one of those countries for such Reference Patent and has not yet expired.
 - (7) In the event that marketing approval has been granted in the USA and in at least one of the countries listed in part B of the first annex to the Patents law- if an extension order was issued in both countries and has not yet expired.
 - (8) The application for an extension order has been filed in good faith.
 - (9) The scope of protection under the extension order will not exceed that granted in respect of the Basic Patent.
- (f) *Infringement*
- Any unlawful exploitation of an invention which is the subject-matter of a registered patent will be deemed to be an infringement. The term “exploitation of an invention” is defined in Section 1 of the Patents Law and includes the following:
- in relation to an invention which is a product—the production, use, offering for sale, selling or importing for the purpose of any of the foregoing acts;
 - in relation to an invention which is a process—use of the process; and
 - in relation to a direct product of a process—all activities deemed to be “exploitation of an invention” where the subject-matter of the relevant invention is a product.

⁷ The list of countries is currently: France, Germany, Italy, Spain, and the United Kingdom.

Section 1 of the Patents Law also provides that the following activities shall not be regarded as “exploitation of an invention”:

- (i) any activity not being on a commercial scale as well as devoid of a commercial nature;
- (ii) experimental acts with respect to an invention for the purpose of improving an invention or developing another invention; and
- (iii) experimental acts for the purpose of obtaining marketing approval for the product after expiration of the patent if the following two conditions are met: (1) the said use was made for the purpose of obtaining marketing approval in Israel or in any other country which permits preparatory steps to be taken for the purpose of obtaining marketing approval prior to expiration of the patent; and (2) all products manufactured within the framework of this exception will not be used for any purpose other than obtaining the aforesaid marketing approval, either during the patent’s term or thereafter.

(g) *Remedies*

Available remedies for patent infringement:

- (i) injunctive relief;
- (ii) financial compensation (damages/account of profits);
- (iii) in some circumstances, punitive damages;
- (iv) delivery-up; and
- (v) destruction of goods.

2.5.1.2.

Registered Trade Marks

(a) *Legislation*

The Trade Marks Ordinance and various secondary legislation in the form of Trade Mark Regulations govern the protection of registered trade marks (which protection also extends to unregistered well-known trade marks).

(b) *Nature of right*

Trade marks may be registered for marks comprising letters, numerals, words, devices or other signs or

combinations thereof, whether two or three-dimensional, which are used or intended to be used by an applicant in relation to goods manufactured or marketed by him. A mark must be distinctive, either inherently or through use, in order for it to be registered as a trade mark. Service marks, collective marks and certification marks are also registrable.

(c) *How protected*

Generally, trademarks are protected by registration at the Israel Trade Marks Office, based on examination. Recently, the State of Israel ratified the Madrid Agreement Concerning the International Registration of Marks (“**the Madrid Protocol**”). Accordingly, as of 1 September 2010, an Israeli citizen or national, or anyone having an industrial or commercial factory in Israel, may file an international trade mark application. Such request may be based on an application or registration of trade mark in Israel. Similarly, international applications filed by other members of the Madrid Protocol may designate Israel as a country in which the trade mark will be protected. In addition, trade mark applications may now be filed in multiple classes.

A well-known trade mark may also be afforded protection, even if it has not been duly registered. A “well-known trade mark” is defined in the Trade Marks Ordinance as a mark which is well-known in Israel and which is owned by a person who is a citizen of a member country of the WTO, or who has a permanent establishment there, even if the mark is neither registered nor used in Israel; in determining whether a trade mark is well-known in Israel, shall include consideration of, *inter alia*, the degree to which the mark is known in the pertinent public circles and the degree to which it is known as a result of marketing efforts. For the protection provided to unregistered trademarks, see section 2.5.1.3 below.

(d) *Registered users*

According to Section 50(b) of the Trade Marks Ordinance and based on relevant case law, authorisation to use a registered trade mark shall not be valid (against third parties) unless it has been registered with the Israel Trade Marks Office. Use of a trade mark by a person whose right of use has not been duly recorded, will not be considered use by the proprietor and, thus, may give rise to claims of non-use by a third party—entitling such third party to file an application for the cancellation of such trade mark on the ground of non-use—and also might lead to dilution of the relevant trade mark.

(e) *Length of protection*

Registration of a mark is effective for ten years from the date of filing the relevant trade mark application. As of 1 September 2010, following the expiry of the initial ten-year period, the trade mark may be renewed for further consecutive ten-year periods (rather than the previous renewal term of fourteen years). However, the expiry period of trade marks already registered on such date will not be shortened.

(f) *Use requirement*

In general, there is no requirement to use the trade mark prior to filing an application for its registration. However, a trade mark which is not used is vulnerable to cancellation. Section 41 of the Trade Marks Ordinance provides that any person may apply for the cancellation of a trade mark, if such trade mark was found not to have been used within a period of three years prior to the filing such application. As of 1 September 2010, such application may encompass all or portion of the classes of the trade mark for which cancellation is being sought. Nevertheless, in the event there was no *bona fide* intention to use the trade mark in connection with the goods in respect of which it was registered and that in fact no *bona fide* use was made of the mark in connection with the goods in respect of which it was registered, the mark may be cancelled (if an application to that effect is filed) at any given time.

(g) *Infringement*

The following constitute acts of infringement by a person not entitled thereto:

- (i) use of a registered trade mark, or of a mark similar to such trade mark, in relation to goods in respect of which such trade mark is registered or to goods of the same description;
- (ii) use of a registered trade mark in advertising goods of the class in respect of which the mark is registered, or in respect of goods of the same description;
- (iii) use of a well-known mark, even if not registered, or of a mark confusingly similar thereto, in relation to goods for which the mark is known, or in relation to goods of the same description; or

- (iv) use of a well-known mark which is registered, or of a mark similar thereto, in respect of goods which are not of the same description, provided that such use indicates a connection between those goods and the owner of the registered mark and the owner of the mark is likely to be harmed as a result of such use.

Generally, when a mark is claimed to be infringing a registered trade mark and such mark is not identical to the trade mark, it must be proven that use of the mark may mislead consumers with respect to the source of the product bearing the mark. On the other hand, it is accepted that when the mark is identical to the trade mark, such proof is not required. However, in certain comments (*obiter dictum*) in judgments, the Supreme Court questioned whether the likelihood of confusion due to the allegedly infringing use should be proven for identical marks as well. The Court suggested that in certain circumstances non-misleading use of a registered trade mark, not being an attempt to gain an unfair advantage, should not be considered as constituting an infringement.

Use of a registered trade mark may also lead to criminal sanction, if such use is done in a commercial manner and may mislead a person regarding the origin of the product.

It is also a criminal offence to make misrepresentations with respect to a registered trade mark or to claim that a trade mark is registered, when in fact it is not.

Criminal liability may also arise for trade mark infringement committed under the Merchandise Marks Ordinance. This Ordinance prohibits, *inter alia*, applying any false trade description (including, falsely applying a trade mark) to goods.

(h) *Remedies*

The following civil remedies are available for infringement of a registered trade mark:

- (i) injunctive relief;
- (ii) damages/account of profits;
- (iii) transfer of the goods that were produced by means of the infringement or that were used as part of the infringement activities, to the claimant's ownership,

in exchange for the product's value, as if the infringement had not occurred;

- (iv) destruction of goods; and
- (v) costs.

Criminal proceedings may be brought by the proprietor of the registered trade mark by filing a private criminal complaint, including, if required, a request for a search and seizure order. A conviction may well result in the destruction of the relevant goods, including their packaging materials.

2.5.1.3.

Unregistered Trade Marks

(a) *Legislation*

Unregistered trademarks are protected under the Commercial Civil Wrongs Law, which includes the tort of passing-off (see reference to passing-off in section 2.5.1.10 below). Unregistered well-known trademarks are also protected under the Trade Marks Ordinance (see section 2.5.1.2(c) above).

(b) *How protected*

As stated above, a well-known trademark may be afforded protection under the Trade Marks Ordinance, even if it has not been duly registered. Unregistered trademarks may be protected by the tort of passing-off.

(c) *Length of protection*

Unregistered trademarks are protected for so long as the proprietor thereof enjoys goodwill in the mark.

(d) *Infringement*

See section 2.5.1.10 below.

Criminal sanction may also be imposed under the Merchandise Marks Ordinance in circumstances that would give rise to a passing-off action. For infringement of well-known trademarks see section 2.5.1.2(g) above.

(e) *Remedies*

The remedies available for infringement of unregistered trademarks similarly apply for an action of passing-off (see section 2.5.1.10 below).

For infringement of unregistered well-known trademarks, the following civil remedies are available:

(i) injunctive relief; and

(ii) costs.

2.5.1.4. *Registered Designs*

(a) *Legislation*

Registered designs are governed by the Patents and Designs Ordinance.

(b) *Nature of right*

The term “design” refers to any shape, configuration, pattern or ornament applied to any article by an industrial process or other industrial means and whether manual, mechanical, chemical, separate or combined which, in the finished article, appeal to and are judged solely by the eye, does not include any mode or principle of construction, or anything which, in substance, constitutes a mere mechanical device. A design must be new or original. However, only local novelty is required.

(c) *How protected*

Registered designs are protected by registration at the Israel Patents and Designs Office, based on examination.

(d) *Length of protection*

Registered designs are protected for an initial period of five years, which may be extended by two additional periods of five years each, up to a maximum protection term of fifteen years.

(e) *Infringement*

The following constitute acts of infringement of the rights in a registered design:

(i) attaching the design or any deceitful imitation or blatant imitation thereof, for selling purposes, to any object included in the category of merchandise in which the design is registered, or doing anything that enables a person to attach the design as aforesaid, unless the registered owner has expressly consented thereto in writing; or

(ii) advertising merchandise or offering it for sale, knowing that the design or any imitation thereof—whether a deceitful or blatant imitation—was attached to merchandise without first obtaining the consent of the registered owner thereto.

It is a criminal offence to make a misrepresentation with respect to a design in the Register of Designs, and to allege that a design is registered, when in fact it has already expired, or has never been registered at all.

(f) *Remedies*

The following remedies are available for infringement of a registered design:

- (i) injunctive relief;
- (ii) financial compensation;
- (iii) liquidated damages (however, this remedy is not useful as the sum specified in the Patents and Designs Ordinance has not been updated for many years);
- (iv) delivery-up (no direct authority exists to claim this relief however it may be available in exceptional circumstances); and
- (v) costs.

2.5.1.5. *Unregistered Designs*

Generally, no protection is granted to unregistered designs. However, a design that cannot be registered may enjoy copyright protection. Unregistered designs may be protected by the tort of passing-off and under the Unjust Enrichment Law, subject to conditions (see the references to passing-off and unjust enrichment in sections 2.5.1.10 and 2.5.1.11, respectively, below).

2.5.1.6. *Copyright*

(a) *Legislation*

In general, the Copyright Law does not dramatically alter the law regulating copyrights *per se*. However, it has adapted certain aspects of the law in accordance with the legislator's view regarding the proper balance between the conflicting interests of the public and the author, for example, by expanding the definition of "fair use". The Copyright Law also adapts certain other aspects of the law so as to ensure the State of Israel's compliance with international treaties, for example by including the right of "making available to the public", to the bundle of rights associated with copyright (based on the WCT Treaty of 1996).

(b) *Nature of right*

Copyright protection is afforded to the author of any original literary, dramatic, musical and artistic work fixed in any form, and to the author of a sound recording (*i.e.*, an article that preserves sounds, by allowing them to be copied or played (*e.g.*, records, tapes, *etc.*)). The originality requirement for a work to be protected was interpreted to be limited in scope; the work should only be the result of, at least, minimal effort and bear some original creativity. "Literary works" include works expressed in writing, lectures, tables, compilations as well as computer programs. "Dramatic works" include plays, cinematographic works, musical-dramatic works, choreography, and pantomime. "Artistic works" include drawings, paintings, works of sculpture, engravings, lithography, maps, charts, architectural works, photographic works and works of applied art.

(c) *Moral right*

A moral right is afforded an author of a copyrighted work, other than computer programs. A moral right in relation to a work vests the author with the right: (i) to have his or her name identified with his or her work, to the extent and in the manner appropriate in the circumstances; and (ii) [to demand] that no distortion, mutilation or other modification shall be made to his or her work, nor shall any other derogatory act be committed in relation to the work, where any such act would be prejudicial to, or harm, his or her dignity or reputation.

(d) *How protected*

Copyright emanates from the creation as such and no registration or affirmative grant is required.

(e) *Length of protection*

Copyright protection generally exists from the date of the work's creation until seventy years after the death of the author. Copyright in sound recordings, save for sound recordings in a cinematic work, endures fifty years from their creation. The copyright in anonymous and pseudonymous works is protected for a period of seventy years from the date of first publication of such works, or for a period of seventy years from their creation, if such works were not published within seventy years of their creation.

(f) *Infringement*

The acts that are deemed infringing vary, depending on the type of work involved. Generally, copyright

infringement occurs by reproducing, broadcasting, making available to the public, making a derivative work, publishing an unpublished work or performing in public the work, or any substantial part thereof, including transferring it to a different medium. Whether the work has been copied is a qualitative, not quantitative, matter.

Indirect copying of a work, which is not protected by copyright, will not be considered an infringement, even if works used as an intermediate step in creating such work (e.g., drawings) are protected by copyright. Nonetheless, the aforesaid copying may amount to unjust enrichment (see section 2.5.1.11 below).

Dealing with infringing copies of a work constitutes an infringement of copyright, provided that the defendant knew, or should have known, that the copied work infringed upon the original work.

There are various "fair dealing" exceptions to copyright infringement, which include private study, research, criticism, review, etc. Other specific activities are allowed for defined purposes and in certain cases are subject to royalties.

Certain infringements are also considered criminal offences, including, *inter alia*, making an infringing copy of a work for commercial dealings, importing into Israel an infringing copy for commercial dealings, etc. The penalties for such offences range from fines to five years' imprisonment.

(g) *Remedies*

The following civil remedies are available for copyright infringement:

- (i) injunctive relief;
- (ii) damages/account of profit;
- (iii) liquidated damages;
- (iv) destruction of goods;
- (v) delivery-up. In the event the court finds that the plaintiff might use the infringing copies, it may order the plaintiff to pay the defendant a sum as shall be decided by the court; and
- (vi) costs.

2.5.1.7.

Trade Secrets

- (a) *Legislation*
Trade secrets are protected under the Commercial Civil Wrongs Law.
- (b) *Nature of right*
Trade secrets are protected, generally, provided that the information: (i) is not generally known or readily accessible; (ii) grants its owner a commercial advantage over its competitors, due to its secrecy; and (iii) reasonable measures have been taken to protect its secrecy.
- (c) *How protected*
Trade secrets are protected as such and no registration or positive action is required.
- (d) *Length of protection*
The protection will remain for so long as the trade secret continues to fall within the definition of such term in the law (see paragraph (b) above).
- (e) *Infringement*
Infringement upon a trade secret may occur if the trade secret is obtained by undue means or is improperly used or published. The Civil Wrongs Law provides that “reverse engineering” (as such term is defined in the law), in and of itself, shall not be considered an undue means. In addition, publication of a trade secret may, in certain circumstances, give rise to criminal liability.
- (f) *Remedies*
The following remedies are available for infringement upon trade secrets:
 - (i) injunctive relief;
 - (ii) damages/account of profits;
 - (iii) liquidated damages;
 - (iv) delivery-up;
 - (v) destruction of goods; and
 - (vi) costs.

2.5.1.8.

Appellations of Origin and Geographical Indications

-
- (a) *Legislation*
Appellations of origin and geographical indications are protected under the Appellations of Origin and Geographical Indications Protection Law.
- (b) *Nature of right*
A geographical indication refers to an indication which identifies, in Israel, a product as originating from a geographical area of a member country of the WTO or a region or part thereof, where a given quality, characteristic or the reputation of such product is essentially attributable to its geographical origin. An appellation of origin refers to the geographical indication as well as the nature and people of said origin.
- (c) *How protected*
Appellations of origin are protected by their registration with the Israel Trade Marks Office. A foreign appellation of origin should first be approved for registration in its country of origin and thereafter sent by the International Bureau to all members of the Lisbon Union (which may still refuse protection). Geographical indications are protected as such and no registration is available.
- (d) *Length of protection*
Local appellations of origin are protected for an initial term of ten years from the date of filing the relevant application therefor in Israel and may be extended for additional periods of ten years each, without limitation, if the Registrar of Trade Marks finds it is still being used as an appellation of origin. A foreign appellation of origin expires when it is no longer protected in its country of origin, or if found by the relevant court or the Registrar of Trade Marks that it is invalid. A registered local appellation of origin may be struck-off upon the application of an interested person or at the initiative of the Registrar of Trade Marks, if the appellation has become a mere indication of type or provenance or if the conditions which served as the basis for the registration have ceased to exist. Geographical indications are protected for so long as they are considered as such.
- (e) *Infringement*
Unlawful use of a registered appellation of origin constitutes an infringement even if the true origin is indicated beside the appellation of origin and even if the appellation of origin is translated or accompanied by expressions such as “kind”, “type”, “class”, “imitation” or the like.

Unlawful use of an appellation of origin will be considered in the same manner as applying a false commercial description under the Merchandise Marks Ordinance and, accordingly, will amount to a criminal offence.

Unlawful use of a geographical indication occurs where use of such indication with respect to a product not originating from the specified region is likely to deceive with respect to the true geographical origin of such product. With respect to spirits, wine and alcoholic beverages, liability arises, similarly as with respect to appellations of origin, except that no showing of a likelihood of deception is required.

(f) *Remedies*

The following remedies are available for infringement of an appellation of origin and/or a geographical indication:

- (i) injunctive relief; and
- (ii) costs.

2.5.1.9.

Performers' and Broadcasters' Rights

(a) *Legislation*

Performer's and broadcaster's rights are protected under the Performers and Broadcasters Rights Law.

(b) *Nature of right*

A performer is a person who by acting, singing, playing music, dancing or in any other way performs a literary, artistic, dramatic or musical work. A broadcaster is a person who, with lawful authority, makes broadcasts, either over the radio or on television. The rights conferred on performers and broadcasters prevent others from creating (without the consent of the performer or the broadcaster, as applicable) recordings of the performance or the broadcast, as applicable, copying such recordings, broadcasting the performance, making subsidiary broadcastings or dealing with infringing copies thereof.

Rights are also conferred on performances in a member country of the WTO, but only regarding recordings on phonograms and live broadcasts.

(c) *How protected*

The respective performers' and broadcasters' rights are protected as such and no registration is required. A

performer also has a moral right in his work (see reference to moral rights in section 2.5.1.6(c) above).

(d) *Length of protection*

Performers' rights are protected for fifty years from the end of the year in which the original performance was given. Broadcasters' rights are protected for twenty-five years from the end of the year in which the original broadcast was made.

(e) *Infringement*

Taping, recording, copying, broadcasting or dealing with infringing copies constitutes an infringement of the relevant performers' and/or broadcasters' rights. As with copyright, fair dealing exceptions exist, such as: use for the purpose of research, criticism, a review, *etc.*

It is a criminal offence to create an infringing copy of a performance or a broadcast for commercial dealings, to deal with infringing copies on a commercial scale or to hold an infringing copy of a performance for a commercial purpose. It is also a criminal offence to purport to give consent on behalf of a performer without being duly authorised to do so.

(f) *Remedies*

The civil remedies available under a copyright action apply, *mutatis mutandis*, to performers' and broadcasters' rights.

2.5.1.10.

Passing-Off

Goodwill may also be protected by the tort of passing-off (as such term is defined in the Commercial Civil Wrongs Law). In order to succeed in an action for passing-off, the plaintiff must establish: (i) the existence of goodwill in the goods or services which identify him as the source for the provision of the goods or the supply of the services (*e.g.*, in order to establish a claim of passing-off regarding a product's package, the plaintiff will need to prove that the public identifies the product in the package with a specific source of goods); and (ii) a likelihood of confusion, *i.e.*, that the consumer may assume that he is buying the goods of the plaintiff, when he is actually buying the goods of the defendant. There is no statutory period limiting such protection.

The following remedies are available for passing-off:

- (i) injunctive relief;

- (ii) liquidated damages;
- (iii) damages/accounts of profit;
- (iv) delivery-up, in exchange for the product's value, as if the infringement had not occurred;
- (v) destruction of goods; and
- (vi) costs.

2.5.1.11.

Unjust Enrichment

The Unjust Enrichment Law covers some aspects of unfair competition. Protection on the ground of unjust enrichment may be granted if the following three elements are established: (i) enrichment on the part of the defendant; (ii) the enrichment of the defendant emanates from the plaintiff; and (iii) the enrichment of the defendant is unlawful or unjust.

On 23 September 1998, the Israeli Supreme Court rendered its monumental judgment (Leaves to Civil Appeal 5768/94, *A.S.H.Y.R Import Manufacture & Distribution et al. vs. Forum Consumer Products Ltd. et al.*) ("**the Decision**") concerning the inter-relationships between the laws of intellectual property and the Unjust Enrichment Law.

In the Decision, the majority held that the specific laws establishing an intellectual property right do not preclude the possibility of obtaining relief based on the Unjust Enrichment Law, even where the plaintiff does not meet the criteria for the establishment of the specific intellectual property right, or where the plaintiff applies for a remedy where no recognised intellectual property right governs the subject matter.

The majority also held that the mere copying of a product does not, in itself, establish a claim under the Unjust Enrichment Law and that, in certain circumstances, where an "additional element" exists it may be so considered. An "additional element" exists where the copying amounts to "unfair competition". Without presuming to offer a comprehensive list of factors for establishing whether copying amounts to "unfair competition", the Decision mentions the following criteria: the novelty, uniqueness and importance of the copied work; the efforts invested by both the creator and the copier; the intensity of the copying; the mental state of the copier; the existence of alternative methods for copying; a breach of fiduciary relationship or commercial secret. Obviously, each case should be individually considered in light of all of the specific and relevant circumstances.

2.5.2. *Does the country subscribe to international treaties? Describe.*

Israel is party, *inter alia*, to the following intellectual property treaties:

- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (“**the TRIPS Agreement**”);
- Berne Convention for the Protection of Literary and Artistic Works;
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- Convention Establishing the World Intellectual Property Organization;
- Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms;
- International Convention for the Protection of New Varieties of Plants (UPOV Convention);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods;
- Madrid Protocol;
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- Paris Convention for the Protection of Industrial Property;
- Patent Cooperation Treaty (PCT);
- Patent Law Treaty;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;

- Strasbourg Agreement Concerning the International Patent Classification;
- Treaties entered into with the WTO; and
- Universal Copyright Convention.

The Conventions are not self-executing and rights are granted only on the basis of domestic legislation, which may be enacted to implement Israel's undertaking to comply with the relevant provisions thereof.

2.5.3. *Are there substantive prior approvals by national investment boards?*

For details of the R&D Law, see section 3.2 below.

2.5.4. *What are the notarisation requirements?*

No special notarisation requirements need to be complied with in the area of intellectual property.

2.5.5. *Are there regulatory guidelines for licences?*

- *General*

There is no statutory form of licence agreement. However, most licence agreements are drafted using a common form and contain the standard provisions which one would expect to be included in this type of agreement.

- *Patents*

The proprietor of a registered patent may grant an exclusive or non-exclusive licence to another to exploit the invention for which the patent was granted; the same holds true also with respect to the proprietor of an invention for which a patent application has been filed.

The licence shall not be effective against any third party, other than the parties to the licence, unless it has been duly registered in accordance with the provisions of the Patents Law.

A licence to exploit a jointly-owned patent may only be granted with the consent of all of the patent owners. However, under certain conditions and at the request of some of the patent owners, the court may grant a licence to exploit a jointly-owned patent.

- *Compulsory Licence (the Patents Law)*

In 1999, the provisions of the Patents Law were amended to comply with the TRIPS Agreement and, as a consequence, the factors justifying the grant of a compulsory licence were modified such that currently, only the supply of local demand for the particular product is relevant (which demand can also be met by the import of such product).

While there is no express legal obligation to exploit a patented invention through manufacture or in any other manner, a patentee who abuses his monopoly over his registered patent may be faced with a compulsory licence being granted to a third party for production of the invention.

A compulsory licence may be granted if the applicant is able to demonstrate that the demand for the product is not being fully satisfied in Israel on reasonable terms, or that conditions imposed by the patentee for the supply of the product or the grant of the licence for its manufacture or use are not fair in the circumstances of the case and do not take account of public interest, and arise essentially due to the existence of the patent.

Other circumstances giving rise to the grant of a compulsory licence and under specified conditions, relate to a later invention which cannot be exploited without infringing upon an earlier patent.

According to the Patents Law, as amended in 1999 as aforesaid, the Registrar of Patents shall also take the following factors into account when dealing with an application for a compulsory licence:

- ◆ the applicant's ability to remedy the fault—being the reason for requesting the compulsory licence;
- ◆ public interest, which generally requires that inventions that may be exploited in Israel either through their manufacture or their import could be so exploited to the greatest extent possible under existing circumstances and without delay;
- ◆ the right to reasonable remuneration, having regard to the nature of the invention, for exploitation of the patented invention;
- ◆ protection of the rights of any person who exploits, in Israel, the invention to which the application for the compulsory licence relates whether by means of manufacture or import, and of persons engaged in the development of such invention;

- ◆ the nature of the invention, the time elapsed since grant of the patent and the steps taken by the patent owner or his representative to exploit the invention in Israel either by way of manufacture or import.

The application for a compulsory licence may be submitted only after the later of: (a) three years from the date of grant of the relevant patent; or (b) four years from the date of filing the relevant patent application.

Compulsory licence proceedings are heard before the Registrar of Patents. A compulsory licence is non-exclusive and, when granting such licence, the Registrar of Patents shall determine its terms, including the rate of royalties to be paid by the licensor to the patentee.

- *Trade Marks*

Under the Trade Marks Ordinance, only the proprietor of a registered trade mark may license its use to a third party. To this end, the proprietor of a registered trade mark may authorise a third party to make use of such trade mark with respect to all or any of the goods for which the mark is registered. Any licensing agreement shall not be valid (against third parties) unless it has been duly registered with the Israel Trade Marks Office. Use of a trade mark by a person which right of use has not been duly recorded, will not be considered use by the proprietor and, thus, may give rise to claims of non-use by a third party and also might lead to dilution of the relevant trade mark (see section 2.5.1.2(d) above).

A trade mark licensing agreement must include, *inter alia*, details regarding the relationship between the licensor and the licensee, including the extent of control held by the proprietor of the trade mark over the use thereof by the licensee and the applicable conditions or limitations.

- *Copyright*

A licence granted by a copyright owner may be exclusive or non-exclusive, or subject to certain limitations; may be for the entire term of the copyright or for any part thereof; and may grant any right or interest in the copyright. According to one provision of the Copyright Law, no licence granted as aforesaid shall be valid unless it is in writing.

The Supreme Court has ruled that the above requirement is merely of probative value so that any licensing of rights in copyright may be done orally and even by conduct.

- *Compulsory Licence (the Plant Breeders' Rights Law)*

Under certain conditions, compulsory pharmaceutical licences and compulsory agricultural licences may be obtained under the Plant Breeders' Rights Law.

2.5.6. *Are there specific exceptions or requirements relating to a particular product(s)?*

Specific laws apply to Medical Preparations and medical devices. There are also specific laws regarding clinical trials. Thus, it is important to check this issue on a case-by-case basis; for example, under certain conditions, a patent's term may be extended with respect to Medical Preparations, Materials and medical devices (see section 2.5.1.1(e) above). In addition, a patent will not be granted for varieties of plants or animals, save for microbiological organisms not derived from nature.

2.5.7. *When are royalties from licences deemed to be excessive?*

Generally, the royalty rate is at the discretion of the parties and there are no limitations on the scope of royalty rates payable. However, again, this issue should be checked on a case-by-case basis. For example, as far as compulsory licences with respect to patents are concerned, the Registrar of Patents determines the rate of royalties payable having regard, *inter alia*, to the economic value of both the licence and the patent. Similarly, regarding licences of musical works, the Israeli courts have outlined general criteria for determining the scope of royalties that will be deemed reasonable, taking into consideration the fact that the body granting such licences is a monopoly.

2.5.8. *Do local antitrust or competition laws apply to licences?*

In principle, Israeli antitrust laws apply to licences granted in respect of intellectual property rights. Such licences may well be considered restrictive arrangements, if they contain restrictions regarding use of the relevant intellectual property rights, such as exclusivity, payment of royalties, *etc.* However, Israeli law provides for general exclusions and/or exemptions from which such licences may benefit.

Section 3(2) of the RTP Law provides that arrangements which only grant a licence with respect to the right to use certain intellectual property rights (*i.e.*, patents, copyright, trademarks, designs, performers' rights and plant breeders' rights), shall not be deemed "restrictive arrangements"—see in this regard section 8.2.1 below (including the conditions under which such exclusion is granted).

Licences which are not excluded, as aforesaid, may benefit from certain Block Exemptions—see in this regard, section 8.2.1 below.

Licences to use intellectual property rights which contain restrictions and are not excluded or exempt from being deemed a restrictive arrangement, as referred to above, may, upon an application being submitted to the Antitrust Authority and subject to the conditions specified in Section 14(A) of the RTP Law, be subsequently exempted.

For example, the Antitrust Tribunal ruled that arrangements between various Israeli recording companies and an umbrella body, regarding the right of public performance to the umbrella body and the enforcement of such rights by said body through licensing, constitute restrictive arrangements. The Antitrust Tribunal ruled that those arrangements do not fall within the exemption specified in Section 3(2) of the RTP Law since they do not confer a licence in an intellectual property right. Nonetheless, the Antitrust Tribunal has temporarily exempted the arrangements subject to several conditions, *inter alia*, that the licence be non-exclusive.

In addition, licences to use intellectual property rights (including licences not deemed restrictive arrangements) may be further scrutinised under the relevant provisions of the RTP Law applicable to monopolies. Thus, in appropriate circumstances, licences to use intellectual property rights, or undertakings included therein, may well be deemed abuse of a monopolistic position.

2.5.9. *What typical agreements do foreign corporations enter into with their wholly-owned subsidiaries?*

The answer to this question depends on the nature of the subsidiary's activities. It is common for foreign corporations to incorporate subsidiaries to carry out R&D activities in Israel—in such cases, the agreements would relate to the provision of R&D services by the subsidiary to the foreign corporation, typically on a cost plus basis. Under these circumstances, subsidiaries would also commonly carry out distribution or agency activities and, accordingly, the form of agreement would be either a distribution or agency agreement. Clearly, as mentioned above, other forms of agreements may be relevant depending on the nature of activities to be carried out by the subsidiary.

3. INVESTMENT INCENTIVES⁸

3.1. Export Incentives or Guarantees

3.1.1. *Are there tax incentives for exports*

See section 12.12 below.

⁸ For more information, available in English, on investing in Israel see: www.investinisrael.gov.il

3.1.2. *If so, are they limited to certain types of products?*

See section 12.12 below.

3.1.3. *Is export financing available from government or private sources?*

Export financing is available from both governmental and private sources. For example, the Ministry of Economy and Industry has set up several funds known as “Encouragement of Export Funds” specifically for the purpose of providing export financing.

3.1.4. *If so, what forms of financing or guarantees are available?*

Export financing is provided by the commercial banks in various forms, each of which offers financing on terms and conditions applicable to the purpose for which such financing is requested. In addition, export financing may be obtained from a government fund, as referred to in section 3.1.3 above.

The Ministry of Industry and Economy supports exporters by offering several grant programs and professional consultancy services in order to assist companies in expanding their exporting activities.

3.1.5. *Is there any governmental insurance for exports?*

Exports may be insured by private insurance companies or by the Israeli Foreign Trade Risks Insurance Corporation Ltd (“**ASHRA**”). It is a wholly-owned Government Company (as such term is defined in the Government Companies Law) and, thus, serves as the Israeli government’s official credit insurance institution. ASHRA assists in the financing of the Israeli exporters’ export of goods and services, insuring medium and long-term credit transactions and investments abroad. ASHRA offers Israeli exporters a range of advanced insurance solutions protecting against political and commercial risks, enabling those exporters to minimize risks and raise financing. ASHRA also provides Israeli exporters with updated reliable information on macro-economic and political events in the various countries in which such exporters’ respective customers are located.⁹

3.1.6. *Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?*

Generally, in order to qualify for “Approved Enterprise” status under the Capital Investments Law, the enterprise must be owned by a company registered in Israel (including a company registered in Israel as a foreign company), or by an Israeli joint venture company, or by a foreign limited partnership registered in Israel the Israeli partners of which are bodies of persons, or by other types of partnerships. The

⁹ The information contained in section 3.1.5 was obtained from the website of ASHRA (www.ashra.gov.il).

Investment Authority may, in its discretion, approve other forms of legal bodies.

In general, the shareholders of such entities may be foreign residents.

3.1.7. *Other Restrictions?*

Restrictions exist with respect to the export of certain types of products, including, *inter alia*, weapons and ammunition, live animals, plants and antiques as well as technological knowledge or know-how developed with grants provided by the IIA or the Israeli government.

3.2. **Grants, Subsidies or Funds**

3.2.1. *Are grants and subsidies restricted by the type of activity?*

- (a) Government grants and/or tax benefits may be granted under the Capital Investments Law. Since an amendment to the Capital Investments Law in 2011, it is now possible to qualify for both grants and tax benefits provided that the requirements for both forms of benefit are satisfied. These requirements and the process of obtaining the forms of benefit differ significantly. For a discussion of the tax benefits under the Capital Investments Law see section 12.12 below (*Tax—Encouragement of Capital Investments Law*).

Grants are provided under the Capital Investments Law to entities with an "Approved Enterprise" status. An "Approved Enterprise" may be an industrial enterprise, equipment rental enterprise, building enterprise (for leasing industrial buildings), refurbished building enterprise (for leasing refurbished industrial buildings) or a tourism enterprise (which may be a tourist facility for overnight stays or a tourist attraction), all subject to such enterprises complying with the criteria of the Investment Authority. The term "Approved Enterprise" and what type of enterprises may qualify as such are defined quite comprehensively in the Capital Investments Law.

In addition to the requirements mentioned in section 3.1.6 above, to be eligible for "Approved Enterprise" status the entity must also: (i) in respect of an industrial enterprise only, be located in development area A (being a local authority in Jerusalem, the South, the North, the sub-district of Haifa, Sderot and the Gaza Envelope) which meets a minimum of two further requirements relating to: socio-economic level, unemployment rate, in respect of Jerusalem the "Approved Enterprise" is a technology intensive enterprise, located within Israel's regional industrial zones in the above areas, and/or minority settlements (where 80% of the settlement are non-

Jews)), (ii) contribute to the independence of Israel's economy, (iii) be competitive and contribute to gross local production, and (iv) not be part of the service, agricultural, mineral or natural gas industries. Development area B is geographically identical to development area A but has less stringent requirements in respect of socio-economic level and unemployment rate.

- (b) Benefits may also be granted to Israeli companies which engage in R&D activities under the R&D Law. The R&D Law provides an incentive for obtaining grants for R&D programs. These grants, offered by the IIA, usually cover up to 50% of an approved program. The recipient of a grant is obliged to pay royalties on all income accruing from the product developed under an approved program. The royalties are payable up to a cumulative amount of 100% of the grant received (plus interest); however, where a permit has been given to transfer production rights abroad, the ceiling of royalties payable may increase to up to 300% of the grant.

The R&D Law imposes conditions on the transfer of know-how developed in the framework of approved programs, particularly, where such know-how is to be transferred abroad. In general, such transfer shall require the transferee to undertake to fulfil the obligations to the IIA in connection with the grant relating to the transferred knowledge. If the know-how is transferred abroad, the approval of the IIA is required and, normally, a payment of a lump sum, in an amount between the amount of the grant and six times such amount.

In May 2017, the IIA published rules specifically dealing with the licensing of IIA-funded technology outside of Israel (prior thereto, no distinction was made between licensing and outright transfer). The new rules enabled companies, in particular circumstances, to license IIA-funded technology to entities outside of Israel while continuing to develop the know-how in Israel with the IIA's support, and set out the royalty repayment mechanisms that would be applicable.

In addition, in September 2018, the IIA issued further rules regarding the licensing of IIA-funded technology for use by multinational corporations outside of Israel. Such further rules would enable Israeli and non-Israeli multinational corporations to license their IIA-funded technology within their group entities outside of Israel, subject to IIA approval, with lower payments to the IIA as compared to the standard IIA licence fees that would apply (pursuant to the May 2017 rules) to other licensing of IIA-funded technology outside of Israel.

- (c) Alternative R&D grants may be obtained through numerous funds established expressly for bi-national cooperation. For

example, the Israel-United States Binational Research and Development Foundation participates in the financing of R&D projects undertaken on a joint basis by Israeli and US companies. Israel is also a member of the European Union's Horizon 2020 Program promoting joint Israeli-EU R&D ventures.

3.2.2. *What is the process for obtaining approval for these grants or subsidies?*

An entity seeking "Approved Enterprise" status, must submit the relevant application to the Investment Authority, together with a business plan as well as explanations regarding its proposed investment. Following receipt of the application and after conducting the necessary analysis based on certain criteria, such as the location of the enterprise, the investment per employee, technological innovation, etc., if the application is approved, the Investment Authority shall issue an Approved Enterprise certificate and detailed instructions and terms for the receipt of the grant.

In order to receive grants under the R&D Law, a company is required to submit to the IIA, *inter alia*, an application form together with a duly completed questionnaire and a proposed budget for the contemplated program.

Following receipt of the application together with the ancillary documentation, the Research Committee of the IIA shall prepare its professional opinion and recommendation, as well as conduct a financial examination for the purpose of considering the applicant's ability to finance the R&D project. The Research Committee shall then examine the application and determine whether to approve or reject it. If the Research Committee approves the application, it shall issue a confirmation certificate specifying, *inter alia*, the R&D expenses approved for the project, the approved grant and the period for performance of the approved project. The Research Committee shall also prepare an approved budget.

Upon receipt of approval from the Research Committee as aforesaid, the applicant shall sign a letter of undertaking in accordance with the confirmation certificate and which it must submit, together with the approved budget and a report of its expenditures, to the research fund established under the R&D Law. The manager of the research fund shall then sign the confirmation certificate and pay the grant to the applicant.

3.2.3. *How long does it take to receive approval?*

Under the Encouragement of Capital Investments Law and under the R&D Law, the procedure may take several months, depending on the relevant circumstances.

- 3.2.4. *Can the investor receive loans from the government or governmental agencies?*

The R&D Law provides that the IIA may elect to support R&D by way of extending a loan (rather than providing a grant), under certain incentive programs, to the applicant. This route is less common than the grant route.

- 3.2.5. *Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?*

With respect to qualifying for benefits under the Capital Investments Law, see sections 3.1.6 and 3.2.1(a) above.

With respect to qualifying for benefits under the R&D Law, see section 3.2.1(b) above.

4. FINANCIAL FACILITIES

4.1. Banking/Financial Facilities

- 4.1.1. *What kind of financial institutions exist?*

As will be described below, various types of banking corporations exist in Israel: *viz.*, banks; mortgage banks; investment banks; merchant banks; financial institutions; and joint services companies.

Israel has twenty one commercial banks, the five largest of which are: Bank Hapoalim B.M., Bank Leumi le-Israel B.M., Israel Discount Bank Ltd., Mizrahi-Tefahot Bank Ltd and The First International Bank of Israel Ltd. In addition, there are branches of foreign banks.¹⁰

In addition to the above-referenced banking corporations, the following sources provide, *inter alia*, alternative financial, investment and asset-management services and loans to investors: insurance companies, pension funds, severance pay funds, mutual funds and leasing companies.

- 4.1.2. *Must the investor maintain a bank account in the country?*

- *Local Bank Account*

In general, an investor is not obliged to open a local bank account. The decision to open a local bank account would depend upon the nature of the investment being made and the proposed activities to be performed in Israel.

¹⁰ Some of the information contained in this section 4.1.1 was obtained from the Bank of Israel website (www.boi.gov.il)

- *Investment in the TASE*

Foreign investors wishing to trade in Israeli securities do so through local brokers. Foreign individual investors may open an account with an Israeli bank, which is a member of the TASE, or with a brokerage firm, enabling such foreign investors to have direct access to local market research and analyses as well as to asset-management services. Currently, the members of the TASE comprise twelve Israeli banks, seven brokerage firms including two international investment houses, three foreign banks and one foreign corporation recognised as a remote member. Upon a foreign investor's purchase of securities through a TASE member firm, the foreign currency is converted to NIS and the local bank account debited accordingly. Upon the sale by such foreign investor of such securities, the proceeds thereof are credited to the local bank account in NIS. The foreign investor may elect to maintain the proceeds which he receives from a sale of securities either in NIS or to have them reconverted into foreign currency.¹¹

4.1.3. *What are the requirements for opening a bank account?*

- *In the case of an individual*

In order to open an account at a commercial bank, the applicant is required to furnish certain identifying details such as: name, address, identity card number or passport number, date of birth, names of parents, sex and citizenship (if not Israeli). U.S. citizens are generally required to provide their Social Security Number. In addition, a photocopy of the applicant's identity card or, if the applicant is not Israeli, the first page of the applicant's passport, will also need to be furnished. Some banks accept only bank account opening documents signed before an officer of such bank.

According to the Prohibition on Money Laundering Regulations, every bank is required to identify, in person, the holder of the relevant bank account with such bank as well as the authorised signatories of such account. When opening a bank account, the customer is required to declare whether such bank account will be operated for themselves or whether they will be acting as a trustee on behalf of another with respect to such bank account and if acting as a trustee, to provide necessary information about such other person (the beneficiary).

Additional documentation may be required by the bank in order for it to comply with anti-money laundering legislation and its obligations under FATCA and the OECD's Common Reporting

¹¹ Some of the information contained in section 4.1.2 was obtained from the TASE website (www.tase.co.il).

Standard. The Applicant will also need to complete and sign a declaration of his/her being non-resident for the purposes of the Income Tax Ordinance.

- *In the case of a body corporate*

The management of a company (usually its board of directors) is the organ authorised to open a bank account on behalf of a company. Accordingly, the decision to open a bank account must first be adopted in a resolution duly passed by the board of directors of the company. The bank at which the account is to be opened may supply its own form which includes the necessary decision and details for managing the account as well as a lawyer's certification regarding the company, including with respect to its controlling shareholders. In addition to a board resolution, the following documents should be furnished to the bank:

- (a) a photocopy of the company's incorporation documents together with its certificate of registration (as obtained from the Registrar of Companies, if a company is registered in Israel) as well as a lawyer's certification; and
- (b) a list of the company's shareholders and directors as well as the names of those persons who will have signatory rights with respect to the account to be opened on behalf of the company, all as certified by a lawyer.

The second and third paragraphs of section 4.1.3 above—*In the case of an individual*—apply equally to a body corporate.

4.1.4. *What are the restrictions, if any, on the investor's use of the account?*

In general, there are no restrictions on the investor making use of funds being maintained in the bank account in Israel.

However, the Prohibition on Money Laundering Law requires financial institutions, *inter alia*, to comply with disclosure and reporting obligations. In short, a financial institution is required to disclose the identity of an applicant seeking to receive financial services from it and to report to the relevant authority specified in the Prohibition on Money Laundering Law regarding any transaction that falls into either of the following categories:

- a transaction the value of which exceeds the amount specified in the Prohibition on Money Laundering Law; and
- transactions deemed to be unusual.

In addition, the Prohibition on Money Laundering Law imposes certain reporting and disclosure duties on all persons located in Israel who, other than through a recognised Israeli banking corporation, ordinarily and/or from time to time receive funds from abroad or withdraw funds from Israel.

- 4.1.5.
- *What is the type of financial system in the country?*
 - *How is the banking system structured?*

Israel has a well-developed financial system that provides a wide range of banking, financial and credit services. After the establishment of the State of Israel in 1948, legislation was enacted regulating the establishment of the banking system and its overall supervision by a central bank—the Bank of Israel.

The Banking Law, the Banking Ordinance, and the Bank of Israel Law establish the banking system's basic structure and function.

- *The Banking Law*

The Banking Law embraces a model of “universal banking” according to which banks are permitted to participate in diverse and varied financial activities, including dealing in securities.

The Banking Law distinguishes between the different types of banking corporations which exist in Israel, namely, banks; mortgage banks; investment finance banks; merchant banks; financial institutions; and joint services companies. Each of these banking corporations engages in a specific area of financial activity.

- *The Bank of Israel Law*

The Bank of Israel is the country's central bank. Under the provisions of the Bank of Israel Law, the Banking Law and the Currency Control Law, the Bank of Israel has wide-ranging responsibilities including, *inter alia*: regulating and directing monetary policy with an emphasis on inflation stability, acting as economic advisor to the Israeli government, regulating and overseeing the foreign currency market and managing the foreign exchange reserves, monitoring and analysing foreign exchange activity, providing overall banking supervisory activities, promoting financial stability, issuing currency, acting as banker to the Israeli government and to all banking corporations and representing Israel in international institutions on a monetary scale.

The Bank of Israel Law emphasises the importance of the independence of the Bank of Israel with respect to the regulation and direction of the monetary policy.

Financial facilities may also be provided from alternative sources, such as insurance companies, pension funds, severance pay funds, mutual funds and leasing companies.

4.1.6. *Is there a stock market?*

There is only one stock exchange in Israel—the TASE (Tel Aviv Stock Exchange). The Securities Law creates a uniform regulatory framework for the TASE's activities and operations. The TASE derivatives market improved the investment community's ability to manage risk. The fully automated Tel-Aviv Continuous Trading system (or TACT) allows all listed securities as well as derivatives to be traded on the newly-integrated trading platform.

The TASE has become a focus of interest for international investors. The relative stability of the Israeli market during the 2008 economic crisis and the prospects of Israel's growing, technology-driven economy have attracted some of the world's most distinguished investment houses to the region. In turn, these investors have become active and influential participants in the Israeli stock market.

The Securities Law's provisions are far-reaching and enforceable by the Securities Authority, thus providing investors with the highest level of protection. The TASE's high regulatory and technological standards have been recognised by the U.S. Securities and Exchange Commission, which has designated the TASE as a competent offshore securities market.

As of 2017, 457 companies were listed on the TASE which engage in all sectors of the economy, thus offering broad opportunity for international investors. Of these companies, 61 are also listed on stock exchanges in other countries, most notably those of the USA (e.g., the Nasdaq and New York Stock Exchange). There has been a considerable increase in such companies' investor base which has resulted in a vast improvement in the overall volume of shares being traded on the TASE.¹²

4.1.7. *Can the investor receive bank loans?*

Local banks grant loans to investors in the ordinary course of business. The terms of the loan depend upon the financial strength of the investor/borrower.

5. EXCHANGE CONTROLS¹³

¹² Some of the information contained in section 4.1.6 was obtained from the internet site of the TASE (www.tase.co.il).

¹³ Some of the information contained in Chapter 4 was obtained from the following internet sites: www.justice.gov.il; www.mof.gov.il.

5.1. Business Transactions with Nationals, Residents or Non-Residents

5.1.1. *How are nationals, residents and non-residents defined?*

“Israeli residents” are defined in the Bank of Israel Order as comprising any of the following:

- (a) an Israeli citizen, or a person located in Israel (including Judea and Samaria, “**the Area**”) under an immigrant’s visa, immigrant’s permit or a permit for permanent residence (see, in this regard, Chapter 13—*Immigration Requirements*), provided that during the previous twelve months such person spent at least 180 days, whether consecutively or on an interrupted basis, in Israel or in the Area; or
- (b) a corporation registered or required to be registered in a register maintained under any law enacted in Israel or in the Area, or a person, other than an individual, whose core activity is in Israel or in the Area.

A “foreign resident” is defined in the Bank of Israel Order as anyone who is not an Israeli resident.

5.1.2. *Are there restrictions on conducting business with nationals, residents, or non-residents?*

At present, transactions may be made among and between Israeli residents and foreign residents. All transactions in foreign currency as well as in foreign securities are permissible.

5.1.3. *Are there reporting requirements?*

The obligation to report to the Governor of the Bank of Israel extends to Israeli residents, financial brokers (including, *inter alia*, banks, providers of currency exchange services and investment portfolio managers), pension funds, and benefit funds. Disclosure of information and reporting obligations extend to performance of certain transactions (including the transfer of money into and out of Israel and the possession of money) involving Israeli residents and foreign currency or between Israeli residents and foreign residents or involving foreign residents and Israeli currency.

Without derogating from the above, subject to certain minimum thresholds, a banking corporation (which includes a bank, a foreign bank, a mortgage bank, an investment finance bank, a bank for the promotion of business, a financial institution or a joint services company) must report to the Governor of the Bank of Israel on each transaction: (a) carried out by an Israeli resident with a foreign resident through him; (b) performed by a resident of Israel in foreign currency; and (c) performed by a foreign resident in Israeli currency.

The banking corporation must report the identity of the transaction and the nature of the transaction. In addition, a financial intermediary (which includes a banking corporation and an investment portfolio manager) shall report to the Governor on the balances of Israeli securities held by him for a foreign resident and on balances of foreign securities held by him for an Israeli resident. If the amount of the balance in a particular security exceeds the sum of \$100,000 or equivalent in Israeli currency, or if he is a resident of Israel in respect of which the financial intermediary holds the balance of the securities as a financial intermediary, provident fund, mutual fund or insurer, the financial intermediary must report the identity of the person for whom he holds the paper value and security details.

Both Israeli residents and foreign residents are subject to reporting requirements.

Under the Bank of Israel Order, an Israeli resident who enters into a transaction with a foreign resident through a financial intermediary must inform the financial intermediary that the transaction is with a foreign resident and indicate to it the nature of the transaction. A resident of Israel who transfers foreign currency to their account or performs a foreign currency transaction with another resident of Israel through a financial intermediary must inform the financial intermediary that the transaction is with an Israeli resident. In addition, a foreign resident who carries out a transaction for which their account is debited or credited in Israeli currency shall inform the financial intermediary in whose account the account is conducted whether the transaction is with an Israeli resident or with a foreign resident.

5.1.4. *Can the investor receive loans from nationals, residents or non-residents?*

There are no currency control restrictions on loans being obtained from, or granted to, Israeli residents or non-residents.

5.2. Investment Controls

5.2.1. *Are there restrictions on direct investments in the country?*

Subject to the foregoing, there are no currency control restrictions on direct investments in Israel.

5.2.2. *Are there restrictions on indirect investments in the country? Must the investor make declarations regarding the nature of his investment?*

There are no exchange restrictions on indirect investments in Israel. However, reporting requirements apply, in certain cases, both to Israeli and foreign residents. For example, a foreign resident is obliged to report any acquisition of securities by them in an Israeli resident company which is performed in exchange for the allotment of securities in such foreign resident company.

5.3. Money Transfer

5.3.1. *Is there free determination of exchange rates?*

Foreign currency is traded against the NIS between commercial banks and customers and between the banks themselves on the interbank market. The Bank of Israel is authorised to intervene in the determination of exchange rates in circumstances which the monetary committee considers to be necessary to achieve the Bank's objectives and to fulfil its functions. The Bank of Israel publishes foreign exchange rates based on supply and demand and on the strength of other currencies in world financial markets. Parties to transactions which are indexed or linked to foreign currencies are free to perform such transactions at the exchange rate of their choice.

5.3.2. *Are there restrictions on the transfer of money into or out of the country?*

The Bank of Israel Order also applies to the transfer of money into or out of Israel, as aforesaid. Another pertinent law is the Prohibition on Money Laundering Law, which imposes certain identification and reporting obligations on financial institutions, including banks, stock exchange members and providers of currency exchange (see in this regard, Chapter 4—*Financial Facilities*). The aforesaid financial institutions are obliged to identify any person, whether an individual or a company, wishing to obtain their services and to report certain transactions to the Money Laundering Prohibition Authority. The Prohibition on Money Laundering Law imposes, *inter alia*, a duty on a person who enters or leaves Israel with a sum of NIS 50,000 or more, to report such monies (including cash, banker's cheque and traveller's cheques) at the time of his entry to Israel or departure therefrom (a lower amount of NIS 12,000 applies when entering from or leaving Israel to certain locations, for example, the Gaza territory). The foregoing reporting obligation also applies to a person transferring monies into or out of Israel by mail or in any other manner. However, this reporting requirement does not apply to the Bank of Israel, commercial banks or a person transferring monies into or out of Israel through a banking corporation.

5.3.3. *Are there restrictions on the remittance of profits abroad?*

Subject to the provisions of the Prohibition on Money Laundering Law and the Bank of Israel Order, the remittance of profits abroad may be subject to withholding tax.

5.3.4. *Are there reporting requirements?*

The reporting requirements under the Bank of Israel Order apply also to the transfer of money (see section 5.1.3 above). In addition, reporting requirements are imposed under the Prohibition on Money Laundering Law (see section 5.3.2 above).

5.3.5. *Can hard currency be taken out of the country?*

Yes

6. IMPORT/EXPORT REGULATIONS¹⁴

6.1. Customs Regulations

6.1.1. *Is the country a member of GATT?*

Yes. Israel is a contracting party to the General Agreement on Tariffs and Trade (GATT). Israel also played an active role in the Uruguay Round, leading to the establishment of the WTO. The WTO Agreement was ratified by the Knesset on 15 January 1995.

6.1.2. *Is the country a member of the EEC?*

Israel is not a member of the European Union. However, pursuant to an agreement signed in November 1995, Israel is a participant in the European Union's Research and Development Framework Programs.

6.1.3. *Is the country a party to a regional free trade agreement?*

Israel is party to regional free trade agreements with the following countries/trade organisations: the European Union (EU), the USA, European Free Trade Association (EFTA), Israel-MERCOSUR (the Common Market of South America, Argentina, Brazil, Paraguay and Uruguay), Jordan, Canada, the Czech Republic, Slovakia, Turkey, Hungary, Poland, Slovenia, Mexico, Romania and Bulgaria.

6.1.4. *Does the Customs Department value the goods?*

Prior to 1998, Israel followed the Brussels Definition of Value, pursuant to which the value of imported goods was construed to mean the value of the goods on the open market on the date of their release from customs.

As part of its WTO commitments, Israel amended its pertinent legislation, switching from the Brussels Definition of Value to the transaction value, as a basis for customs valuation. For customs purposes, "transaction value" is determined by the price paid or payable for the relevant goods when they were sold for export to Israel, adjusted to reflect certain costs not already included in the price borne by the buyer. Such costs include purchase fees and commissions, as well as other fees payable in respect of containers; packaging; royalties and licences; transportation to the ports; loading;

¹⁴ Some of the information contained in this Chapter 6 was obtained from the internet site of the Israeli Ministry of Foreign Affairs (www.mfa.gov.il) and from WTO Trade Policy Review on Israel, July 17 and 19, 2018.

unloading and handling; insurance, etc. The amount of such costs is calculated based on objective data capable of assessment.

6.1.5. *How are goods cleared through customs?*

In line with its trade facilitation policy, Israel has developed an integrated electronic foreign trade system to facilitate and simplify all stages of the customs clearance procedure, from the initial shipment of goods to payment of customs duties thereon. Customs clearance procedures are the same for most-favoured nations (MFN) and preferential imports. An electronic foreign trade system is fully computerised, with all customs brokers able to access the database of, and be directly linked with, the customs authorities. All imports are processed by computer. Inspection of imported goods is based on risk assessment and, to a much lesser extent, on random selection. No provisions are available for clearance prior to the landing of imports. The documentation can be prepared in advance. Pre-shipment inspection is not a mandatory requirement. The Global Gate System (which was introduced during early 2018) has further simplified the administrative burden of the international movement of goods by improving service in customs and providing for the rapid transit of goods to and from the State of Israel. The system allows importers to grant power of attorney to others (e.g., custom and clearance agents) to carry out customs procedures and affidavits and other documents can be transferred in digital form and can be digitally signed by the importer. Importers are issued with "smart cards" that allow them to perform operations with customs, including completing and submitting online forms and files.

Goods brought to Israel may be left at the port or placed in public bonded warehouses or other storage places approved by customs.

6.1.6. *Are there applicable tariffs?*

Israel has, since January 1988, adopted the Harmonised System (HS) as a means for determining and classifying applicable tariffs.

6.2. **Exports**

6.2.1. *Are there restrictions on exports?*

Controlled exports are included in the Annexes to the Free Export Order with respect to which export of certain items is prohibited under law, unless a special licence or permit has been obtained (subject to certain exceptions and exemptions) and goods and technological equipment falling within the scope of the security authorities.

Israel prohibits direct export to countries that do not allow trade with Israel or that have no diplomatic relations with Israel. Israel may also impose trade embargoes under provisions of international

agreements. Israel also complies with United Nations' resolutions with respect to trade embargoes.

6.2.2. *Are export licences required?*

The pertinent Israeli legislation regulating exports is the Free Export Order. The Free Export Order permits the export of goods which are not prohibited, whether under such Order or any other order.

Unless otherwise prohibited in the Free Export Order and the Annexes thereto (see section 6.2.1 above), the export of goods is permitted without a licence. If the export of certain goods is prohibited or restricted in any manner, such export may be allowed only by obtaining a special licence. Israel maintains an export licensing system, *inter alia*, with respect to certain food products and fresh agricultural products for sanitary and quality control; diamonds and certain precious stones; as well as certain tools. In addition, an export monitoring system is in place for the export of waste. Licences are issued by the relevant regulatory (e.g., the Ministry of Economy and Industry has the authority to issue export licences in respect of industrial products).

6.2.3. *Are there applicable export duties?*

Exporters can benefit from duty concessions on imported inputs, raw materials and capital goods. Exporters are exempt, in most cases, from some indirect taxes, such as VAT. Moreover, the fees payable by exporters for the use of ports and stevedores are less than those payable by importers.

6.3. **Foreign Trade Regulations**

Are there foreign trade regulations on the import or export of goods involved in the business?

The main legislation pertaining to international trade is the Import and Export Ordinance, which provides the legal basis for the regulation and development of foreign trade. Most imports are now covered by the Free Import Order, permitting the free import of all commodities, save for, *inter alia*, those listed in Annexes 1- 3 thereto, from time to time. The Customs Ordinance regulates customs administration, control, documentation, warehousing, valuation, payments of duties, drawback and legal procedures. The Customs Order regulates imports with respect to a number of products. Annex 1 thereto prescribes conditions for the import of specified products, including alcoholic beverages, tobacco products, dangerous chemicals and drugs. The Free Export Order permits the free export of all products, save for certain listed products with respect to which an export permit is required.

6.4. **Imports**

6.4.1. *Are import licences required?*

See 6.3 above.

The customs tariff book contains a column indicating whether a product is subject to licensing at the time of its import into Israel. Licences are usually required for import of arms and ammunition, vehicles, aircraft, vessels and associated equipment as well as for live animals and animal products.

Licences are issued by any of the Ministry of Industry and Economy, the Ministry of Agriculture, the Ministry of Health or the Ministry of Transport, depending on the type of goods to be imported. The validity period of licences varies, according to the type of merchandise involved.

A special import regime applies to imports from countries that have no MFN agreement with Israel or apply restrictions, *de jure* or *de facto*, on imports from Israel (see section 6.4.4 below). Imports from these countries are generally subject to licensing.

6.4.2. *Are there applicable import duties?*

With most products from the United States, the European Union and the European Free Trade Association receiving duty-free status in the Israeli market, relatively few of Israel's imports are subject to customs duties.

Most imports, like domestic products, are also subject to purchase tax and VAT, while certain items (such as fuels and tobacco) are subject to additional taxes.

Israel levies VAT—currently at the rate of 17%—on most products sold in Israel, including imports. The VAT element is then recoverable by the importer upon resale of the goods to consumers at retail prices.

Purchase tax is levied on certain luxury items and consumer goods, most notably, motor vehicles, electrical goods, alcoholic beverages and tobacco.

6.4.3. *Are there applicable import quotas?*

Israel has eliminated most of its import quotas, save for those imposed on a few agricultural products, which are catalogued in Annex 5 of the WTO Agreement on Agriculture and on ozone depleting substances, under the Montreal Protocol.

6.4.4. *Are there applicable import barriers?*

A special import regime applies to imports from countries without diplomatic relations with Israel and which prohibit imports from Israel. Imports from the 17 countries affected by the regime are generally prohibited. These countries include: Afghanistan, Algeria, Bahrain, Bangladesh, Iran, Iraq, the Democratic Republic of Korea, Kuwait, Lebanon, Libya, Pakistan, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

6.5. Manufacturing Requirements

6.5.1. *Must the product contain ingredients or components, which are found or produced only in the country?*

There is no such general requirement. However, there may be specific requirements for special types of products.

6.5.2. *Will the import of certain component parts be permitted only if they are to be ultimately incorporated in a final product?*

See 6.5.1 above.

6.6. Product Labelling

Are there applicable labelling or packaging requirements (e.g., multilingual notices, safety warnings, listing of ingredients, etc.)?

In general, the marketing and labelling of products is regulated by the Consumer Protection Order and regulations enacted thereunder. According to the Consumer Protection Order, the marking of goods or their packaging should be done either by printing, engraving, stamping or by any other means (other than handwriting).

The marking must include the name of the products and their commercial name, the registered trade mark (if any), the name and serial number of the model (if any), the fact that a product is a class B product or of an inferior quality, or is defective, the fact that a product is reconditioned and the date of its reconditioning, an indication as to the country of origin, the manufacturer's name and address, the importer's name and address, the content, and the weight and volume in metric units. While Hebrew must be used in all instances, labels in English may be added, provided that the printed letters are not larger than those printed in Hebrew. Special labelling requirements apply to imports of some consumer goods, paper products, handbags, musical recordings, fertilizers, insecticides, chemicals, pharmaceuticals, some food products, seeds and alcoholic beverages. Products shipped to Israel may be labelled in Israel (with the exception of cigarettes and tobacco).

Marketing and packaging of food products is governed by the Consumer Protection Order (Food Products).

Other labelling and packaging requirements may be imposed with respect to specific types of products (e.g., drugs, cigarettes, *etc.*).

7. STRUCTURES FOR DOING BUSINESS

7.1. Governmental Participation

7.1.1. *Will the government seek to participate in the ownership or operation of the entity (e.g., depending on the type of activity involved)?*

The Israeli government has, in recent years, decreased its participation in the private sector. To this end, the Israeli government adopted a policy, the ultimate aim of which was privatisation of many of the government-held enterprises. Accordingly, it is unlikely that the Israeli government will seek to participate in an entity's ownership or operation.

However, to further boost the Israeli economy and facilitate development in both the private and public sectors, a novel method of encouraging joint collaboration within these sectors was proposed and adopted as a means of carrying out certain projects in the field of infrastructure. The manner for implementing such joint collaboration involves establishing Public-Private Partnerships (PPPs), between entities from both the public and private sectors.

Broadly, PPP projects entail entering into long-term cooperative agreements between the public and private sectors (for the most part, being large-scale and complex), pursuant to which the private sector will provide public infrastructure/products/services, while utilising the partners' relative advantages through the efficient allocation of risks, resources and rewards. In the last 15 years, Israel has started to outsource infrastructure projects under BOT or PPP agreements, such as the desalination plants at Ashkelon, Hadera, Palmahim, and Nahal Sorek, Route 6, the Carmel tunnels, the fast vehicle lane into Tel Aviv and Tel Aviv's and Jerusalem's respective light rail projects.

7.1.2. *If so, to what extent?*

Notwithstanding the Israeli government's reduction of its involvement in private enterprise, in order to promote, develop and provide financial assistance to certain industries, the Israeli government offers support and encouragement, *inter alia*, to industrial R&D by awarding grants, loans, remissions, benefits or reliefs to Israeli companies engaging in Israel in industrial R&D (see in this regard, sections 3.2.1(b) and 3.2.1(a) as well—*Grants, Subsidies or Funds* above).

7.1.3. *What is the investor's potential liability to partners, investors or others?*

The extent of an investor's liability to partners, investors or others depends upon: (a) the scope of undertakings to be included in the relevant agreements to be entered into with such partners, investors or others; and (b) the nature of the activity to be undertaken by the relevant parties. A foreign investor interested in investing in a local enterprise should consult an Israeli lawyer prior to entering into an agreement in order to minimise his potential liability to the extent reasonably possible.

7.1.4. *Are there restrictions on capitalisation?*

Generally, there are no restrictions on the capital structure of a private entity engaging in business in Israel. For example, the registered share capital of a private company is not usually subject to a minimum or maximum threshold and capital structures may consist of more than one class of shares. However, there are certain exceptions to this general rule—e.g., with respect to the operation of a bank or an insurance company, where a minimum investment in equity is usually required.

7.2. **Joint Ventures**

7.2.1. *Are joint ventures permitted?*

Conducting business by means of a joint venture is permitted in Israel. Though a term not expressly defined by Israeli Law, for the purposes of this section 7.2, "joint venture" shall mean a commercial venture between two or more separate legal entities that pool their resources and carry on a specialised business activity without establishing a separate legal entity, and instead rely solely on the execution of a joint venture agreement (or cooperation) between them.

Accordingly and for the purposes of this section 7.2, one may distinguish a joint venture from a partnership or a company, *inter alia*, because a joint venture *per se* is not regarded as a separate legal entity, with each party's liability thereunder limited to the scope of its obligations in the joint venture.

For further details on the establishment of a joint venture company or a registered partnership in order to conduct business in the form of a joint venture, see sections 7.3 and 7.5, respectively, below.

7.2.2. *If so, what is the registration or incorporation procedure?*

There is no registration or incorporation requirement for a joint venture. However, in the event that a joint venture company has specifically been incorporated in order to operate the joint venture business on behalf of two already existing companies, partnerships or persons, the registration procedure for such joint venture company will be similar to the registration requirements of a limited liability

company—see section 7.3.2 below. Similarly, with respect to a joint venture partnership specifically incorporated in order to operate the joint venture, the provisions of section 7.5—*Partnerships General or Limited* below will apply.

7.2.3. *How long do these procedures take?*

The time required to establish a joint venture will depend upon the length of time it takes the parties to negotiate and agree upon the terms and conditions of the joint venture agreement.

7.2.4. *What costs and fees are involved?*

Save for legal fees, no other costs are involved.

7.2.5. *Must a national of the country or a related state (e.g., the EEC) be a participant, manager or director?*

There is no requirement that an Israeli citizen or resident be a participant, manager or director of the joint venture and a foreign national may be appointed to serve in the joint venture in any of the foregoing capacities. However, certain restrictions are imposed on foreign investors serving in any such capacity in certain sectors, such as telecommunications and broadcasting.

7.2.6. *What is the investor's potential liability?*

The scope of the investor's potential liability depends upon the contractual undertakings and the nature of the actual investment in the joint venture. Parties engaging in a joint venture should avoid being regarded as a partnership (*i.e.*, persons carrying on business with the aim to achieve a profit), since establishment of a joint venture partnership is likely to result in one of the parties thereto (in this case, the investor) being liable for the actions of the other party (for further details on potential liability in partnerships, see section 7.5—*Partnerships, General or Limited* below).

A foreign investor wishing to conduct business in Israel through a joint venture should consult an Israeli lawyer prior to entering into any agreement in order to ensure that the investor's liability thereunder is limited to the extent reasonably possible.

7.2.7. *Are there restrictions on capitalisation?*

There are no restrictions on the capitalisation of joint ventures. The level of capitalisation required is dependent upon the commercial factors required to operate the joint venture.

7.3. Limited Liability Companies

7.3.1. *Are limited liability companies permitted?*

Establishment of a limited liability company, a very common, formal structure through which business is conducted in Israel, is permitted.

As the term connotes, a “limited liability company” refers to the extent of liability each shareholder in such company has, having regard to the amount of share capital invested by such shareholder, while the company itself retains unlimited liability for its debts. However, the Israeli courts may “pierce the corporate veil” (*i.e.*, impose obligations on a company’s shareholders) in some (rare) circumstances.

In general, under the relevant provisions of the Companies Law, every person (it is permissible for a company to have a sole shareholder) has the right to incorporate a company, provided that the objects of the company do not contravene the provisions of the Companies Law, are not immoral or do not conflict with public policy.

A company is deemed to exist from the date of its incorporation, as reflected in its Certificate of Incorporation (as issued by the Registrar of Companies) and ceases to exist upon such company being wound-up (whether voluntarily or compulsorily).

There are two main types of limited liability companies which may be incorporated under the Companies Law including:

- a *public company*—its shares are listed for trading on an approved stock exchange or which were offered to the public by way of a prospectus, as defined in the Securities Law, or which were offered to the public abroad under a public offering document as required by statute in the relevant jurisdiction, and which are held by the public; and
- a *private company*—defined in the Companies Law as a company that is not a public company.

A private company consists of two or three main organs: (a) the General Meeting, which, *inter alia*, has the authority to amend the company’s articles of association and, usually, to appoint the company’s directors; (b) the Board of Directors, which must have a minimum of one director and whose primary function is to formulate the company’s policy; and (c) optionally, the general manager, who may or may not be a member of the Board of Directors and who is responsible for the day-to-day operation of the company’s affairs under the direction of the Board of Directors.

7.3.2. *If so, how are they registered or incorporated?*

Several documents need to be submitted to the Registrar of Companies in order to register a company. Such documents (some

of which must be prepared in the Hebrew language) include the following:

- a copy of the articles of association (by-laws) of the company, which shall include details such as: the name of the company; the objects of the company; particulars relating to the registered share capital; and particulars relating to limitation of liability. In addition, the company may include in its articles of association matters relating to the company or to its shareholders, including: the rights and obligations of its shareholders, provisions with respect to the management of the company, the number of directors that may be appointed to the board and any other matter which the shareholders deem necessary or proper for inclusion therein;
- an application to the Registrar of Companies to register the company, duly signed by the company's shareholder(s) and whose signature is thereafter certified by a lawyer;
- a written declaration by the first directors of the company, setting forth, *inter alia*, their willingness to act in such capacity;
- a written declaration by the shareholder(s) in which it is stated, *inter alia*, that there is no legal restriction preventing such shareholder(s) from incorporating the company;
- in the case of a shareholder (which is a body corporate) incorporated outside of Israel, a certified copy of such shareholder's documents of incorporation including a confirmation that the foreign corporation is in good standing and validly exists; and
- in the case of a director who is not an Israeli resident, a certified copy of the personal details of such director as appearing on the relevant pages of his/her passport.

Inter alia, in order to avoid the registration procedure set out above, an investor may purchase a company that has already been incorporated.

7.3.3. *How long do these procedures take?*

After the relevant documents have been filed with the Registrar of Companies, new company registration takes approximately two to three days.

7.3.4. *What costs and fees are involved?*

A registration fee is due upon submission of an application to register a company to the Registrar of Companies. Currently this fee is NIS 2,614.

7.3.5. *Must a national of the country or a related state be a participant, manager or director?*

Generally, there is no requirement that the shareholders, manager or directors of a company be Israeli citizens or residents and a foreign national may be appointed to serve in any such capacity. However, as mentioned in section 7.2.5 above, in certain sectors (such as telecommunications and broadcasting) certain restrictions are imposed on foreign investors for holding shares in Israeli companies and in the case of certain types of companies, all or some of such companies' directors are required to be Israeli citizens or residents (e.g., external directors in an Israeli public company must be Israeli residents, save that where the public company's shares, or part thereof, were offered to the public abroad, or are listed for trading on a stock exchange abroad, then such public company may appoint an external director who is not an Israeli resident).

7.3.6. *Are there restrictions on capitalisation?*

Generally no capitalisation restrictions are imposed on private companies (i.e., no minimum or maximum threshold is fixed for a private company's registered share capital), save that either all or none of a company's shares may have a par value.

Accordingly, the level of capitalisation will depend on the commercial needs required to operate the company, save that with respect to certain companies (which would include a bank or an insurance company), a minimum investment in equity is usually required.

The relevant structure of share capital may include more than one class of shares, each conferring different rights or restrictions on the holder thereof, however, public companies may only list shares with equal voting rights for trading on the TASE. A company may buy-back its own shares without obtaining court approval, provided that such company has complied with the two cumulative criteria for distribution of dividends as specified in the Companies Law.

7.4. **Liability Companies, Unlimited**

7.4.1. *What are the forms of liability companies?*

Establishing an unlimited liability company is permitted in Israel. Under the Companies Law, the shareholders' liability with respect to a company's obligations may be unlimited and should be expressly stated as being so in the company's articles of association.

Broadly, an unlimited liability company is a company whose shareholders bear unlimited liability. It is rare for unlimited liability companies to be incorporated in order to conduct business. However, certain professional groups, such as law firms (in the event that the partners are interested in establishing a company) must, by law, be incorporated as unlimited liability companies.

7.4.2. *How are these companies registered or incorporated?*

Liability companies are formed and registered in the same manner as limited liability companies—see section 7.3.2 above.

7.4.3. *How long do these procedures take?*

See response to section 7.3.3 above.

7.4.4. *What costs and fees are involved?*

See response to section 7.3.4 above.

7.4.5. *Must a national of the country be a participant, manager or director?*

There is no requirement that the shareholders, manager or directors of the company be Israeli citizens or residents and a foreign national may be appointed to serve in any such capacity. However, certain restrictions are imposed on certain professions, such as law, where local qualifications may constitute prerequisites for serving as a shareholder in such professional unlimited liability company.

7.5. Partnerships, General or Limited

7.5.1. *Are partnerships recognised or permitted?*

Partnerships may be established in Israel. Partnerships are regulated pursuant to, and in accordance with, the Partnership Ordinance. Other than certain professional partnerships, the number of general partners in a partnership may not exceed twenty. Partnerships of lawyers or accountants may have more than twenty members. Partnerships may be general or limited and (save for certain exemptions) must be registered with the Registrar of Partnerships if they intend to engage in business activities.

A registered partnership has separate legal identity and is able to own real property, and sue and be sued in its own name.

7.5.2. *Must a national of the country or a related state be a partner?*

There is no requirement that the partners be Israeli nationals and foreigners may serve as partners in an Israeli partnership, unless certain specific restrictions are found to exist (*inter alia*, restrictions imposed on certain partnerships in specific sectors or professions,

such as law, where local qualifications may constitute a prerequisite for serving as a partner in a partnership).

Foreign partnerships may operate in Israel, provided that the relevant information with respect to the applicable foreign partnership is submitted to the Registrar of Partnerships, including, *inter alia*, details of the partners and the name of an Israeli resident who is authorised to accept service of legal documents and notices on behalf of the foreign partnership. In general, registration of a foreign partnership may be effected in similar manner as registration of an Israeli partnership.

7.5.3. *What costs and fees are involved?*

A fee is payable to the Registrar of Partnerships upon formal application being made to register a partnership. Currently, the fee payable for registering an unlimited foreign partnership is NIS 892 and for a limited foreign partnership NIS 2,614.

7.5.4. *What is the investor's potential liability?*

The Partnership Ordinance provides for two types of partnerships: a general partnership and a limited partnership. The liability of the partners formed under a general partnership is deemed to be joint and several. Registration of a general partnership must take place within one month of its incorporation.

A limited partnership must have at least one general partner and at least one limited partner. The general partners are liable for all of the debts and obligations of the partnership. The liability of the limited partners is limited pro rata to the contribution made by such partner to the partnership. Accordingly, the limited partners may not: (a) participate in the management of the partnership; (b) be authorised to undertake obligations on the partnership's behalf; or (c) bind the partnership in any manner. If a limited partner fails to comply with the foregoing restrictions he may be exposed to, and become liable for, the debts and liabilities of the partnership for so long as he participates in management of the partnership. The partnership agreement memorialising, *inter alia*, the relevant obligations, undertakings, commitments and the partnership's other agreed-upon terms and conditions must be filed with the Registrar of Partnerships and must specify which of the partners will serve as limited partners and which will serve as general partners. Approval for the limited partnership must be received prior to the commencement of operations and is subject to the approval of the Minister of Justice.

In December 2016, the Ministry of Justice published a draft Memorandum of Partnerships Law, 2016 for public comment, which is proposed to replace the Partnership Ordinance, among other things, in order to attract more investment to Israel. Under the new

proposed law, *inter alia*, limited liability partnerships would more closely resemble limited liability corporations, and limited liability would be given to all of its partners, including the general partner. It would also remove the obligation to register a general partnership, as well as eliminate the restriction on the number of general partners.

7.6. Sole Proprietorships

7.6.1. *Can the investor be a sole proprietor?*

It is permissible for an investor to operate in Israel as a sole proprietor.

7.6.2. *How is the sole proprietorship registered or established?*

There are no statutory or registration requirements for establishing a sole proprietorship (other than registering themselves with the Israeli taxation authorities for income tax purposes (if necessary) or in cases where a permit to operate a business is required by law).

Since the entry into force of the Companies Law (on 1 February 2000), companies may be established with a single shareholder. Accordingly, in all respects, a sole proprietor company's incorporation and functioning is broadly similar to companies with more than one shareholder (see section 7.3.2 above).

7.6.3. *How long does this process take?*

If the sole proprietorship is intended to be registered as a company, see our response to section 7.3.3 above.

7.6.4. *What costs and fees are involved?*

If a sole proprietor wishes to be registered as a company, the costs and fees levied in section 7.3.4 above will apply.

7.6.5. *What is the investor's potential liability?*

Since the sole proprietorship business is not regarded as a separate legal entity *per se*, the investor is exposed to personal unlimited liability for all actions undertaken or made pursuant to or in connection with the business, including all debts associated therewith.

7.6.6. *Are there restrictions on capitalisation?*

There are no restrictions on capitalisation and the level of capitalisation depends upon the commercial requirements for operating the sole proprietorship.

7.7. Subsidiaries/Branches/Representative Offices

7.7.1. *Can the investor establish a branch, subsidiary or representative office?*

There are no restrictions under local law on the incorporation of a local subsidiary of a foreign enterprise. In the event that the local subsidiary is incorporated in Israel, Israeli law will apply to such local subsidiary. However, as mentioned in section 7.2.5 above, in certain sectors (such as telecommunications and broadcasting) specific restrictions are imposed on foreign investors for holding shares in Israeli companies.

Alternatively, a foreign company can maintain a place of business in Israel, including a share transfer office or a share registration office, provided that it is registered in Israel as a foreign company under the provisions of the Companies Law and the relevant registration and publication fees have been duly paid.

7.7.2. *If so, how long does registration or incorporation take?*

The application for registration shall be submitted to the Registrar of Companies within one month after the establishment of the place of business, together with the following documents:

- (a) a copy and a Hebrew translation, certified as prescribed by the Minister of Justice, of the documents of incorporation of the company or under which it operates, as required by the laws of the state in which it was incorporated, including its articles of association (by-laws), if any;
- (b) a list of the company's directors;
- (c) the name and address of a person resident in Israel, who is authorised to accept, in the company's name, court documents and legal notices to be served on the company; and
- (d) a copy, certified as prescribed by the Minister of Justice, of a written authorisation which empowers a person ordinarily resident in Israel to act in the company's name.

If any change occurs in any of the documents referred to above, or in the directors or in the name or address of one of the persons enumerated in paragraphs (c) and (d) above, then the company shall inform the Registrar of Companies within fourteen days of such change. A foreign company is required to submit an annual report to the Registrar of Companies.

A foreign partnership may operate in Israel, provided that the relevant information with respect to the applicable foreign partnership is submitted to the Registrar of Partnerships, including, *inter alia*, details of the partners and the name of an Israeli resident who is authorised

to accept service of legal documents and notices on behalf of the foreign partnership.

Obviously, the choice of legal structure for engaging in business activities in Israel depends on the nature and extent of such activities.

7.7.3. *What costs and fees are involved?*

With respect to the incorporation of a local subsidiary, see response to section 7.3.4 above.

With respect to the registration of a foreign company, the registration fees will be those applicable for the registration of limited liability companies as referred to in section 7.3.4 above.

With respect to the registration of a foreign partnership, the registration fees will be those applicable for partnerships as referred to in section 7.5.3 above.

7.7.4. *What are the investor's tax consequences?*

Broadly, the tax consequences to be imposed on an investor depend on the way in which the relevant subsidiary, branch or representative office, as the case may be, is incorporated in Israel and engages in business.

For example, a local subsidiary will be taxed as a company, as discussed in Chapter 12—*Tax on Corporations* below. The taxation of a branch or a representative office, as the case may be, will generally depend upon the residence of the relevant company and upon the nature and extent of its activities in Israel. If such company is a resident of a country with which Israel is party to a double taxation treaty, the income associated with the permanent establishment's activities in Israel will be taxed as Israeli income (*i.e.*, the income of the permanent establishment will be subject to Israeli companies tax at the standard rate)). In addition, further tax exposure may arise if it is claimed that certain income of the foreign company (produced outside of Israel) relates to the permanent establishment and is thus subject to tax in Israel. If the branch or the representative office, is not considered a permanent establishment, its business profits will usually not be subject to tax in Israel.

Similarly, no branch tax is levied in Israel on transfers of profits (after first deducting Israeli corporate tax) from the branch to the parent foreign entity.

If the company is a resident of a country that is not party to a double taxation treaty with Israel, then any business profits produced in Israel may be subject to Israeli corporate tax.

7.8. Trusts and Other Fiduciary Entities

7.8.1. *Are trusts or other fiduciary entities recognised?*

Israeli law recognises trusts which have been set up to manage or to operate the assets of a grantor on behalf of the beneficiaries thereunder and for any other purpose. However, the general view is that a trust will not be considered a separate legal entity. A trust may be created by law, by written agreement with a trustee or by a written instrument of endowment.

7.8.2. *If so, how are each defined?*

A “trust” is defined in Section 1 of the Trust Law as—

“Linkage to any assets by virtue of which a trustee is bound to hold the same or to act in respect thereof, in the interest of a beneficiary or for some other purpose.”

7.8.3. *What are the legal consequences of a transfer of assets to a trust or fiduciary?*

The trustee is obliged to hold, or act in respect of, the asset for the benefit of a beneficiary or for some other purpose. The trust property may not be tampered with, save for payment debts arising from such property or arising as a consequence of activities performed by the trust. The income of any trust property or any other asset or right for which any trust property has been exchanged, shall also belong to the trust.

Where any action respecting the trust's requires registration in a register maintained under any law, the trustee may notify the relevant person responsible for the register of the trustee's existence, and such person shall make the appropriate recordal.

A trust has effect *vis-à-vis* any person who is aware or ought to be aware of its existence and where notice of the trust has been recorded, as referred to in the preceding paragraph, *vis-à-vis* the entire world.

7.8.4. *Can the investor be a grantor, trustee or beneficiary?*

There is no general statutory requirement that a grantor, trustee or beneficiary, as the case may be, be an Israeli resident or citizen and, therefore, a foreign national may serve as a trust's grantor, trustee or beneficiary, as the case may be.

8. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

8.1. Alien Business Law

8.1.1. *Is the business subject to any alien business law?*

There is no one statute addressing foreign investment in Israel or the transaction of business by non-citizens of Israel (see section 2.1.3 above regarding certain restrictions on foreign investment).

Under the Trade with the Enemy Ordinance enacted by the British mandatory government in 1939 and still in force, trade with a citizen of a country at war with Israel is prohibited and assets of such a country's citizen situated in Israel may be impounded by the Israeli government.

8.1.2. *Are there registration or reporting requirements?*

Depending on the area of business and form of business entity, registration and reporting requirements may apply (see, e.g., Chapter 7—*Structures For Doing Business* above, with respect to the form of business entity). Although there are no exchange control restrictions on direct or indirect financial investment in Israel, certain reporting requirements by Israeli residents regarding transactions in foreign currency exceeding certain thresholds apply (see section 5.1—*Business Transactions with Nationals, Residents or Non-Residents* above). Under the Prohibition on Money Laundering Law and regulations adopted thereunder, persons (including foreign persons) having or opening bank, brokerage and other accounts have the obligation to provide certain declarations regarding the ownership (including the beneficial ownership) thereof to the banks, brokers and other entities at which such accounts are maintained (see section 5.3—*Money Transfer* above).

8.2. Antitrust Laws

8.2.1. *Do the entity's operations comply with antitrust laws?*

Entities operating in Israel are subject to the RTP Law which, *inter alia*, regulates mergers and acquisitions that meet or exceed relevant notification thresholds (see section 8.2.2 below) as well as other types of restrictive practices, such as restrictive arrangements and monopolies.

- *Restrictive arrangements*

A "restrictive arrangement" is defined in the RTP Law as an arrangement made between persons who manage businesses, according to which at least one of the parties imposes a restriction on itself that is liable to prevent, or reduce, competition between itself and all or some of the other parties to the arrangement, or between itself and a person who is not a

party to the arrangement. Without derogating from the above definition, a restrictive arrangement exists where there is a restriction:

- ◆ with respect to the price being requested, offered or paid;
 - ◆ with respect to the profits to be earned;
 - ◆ on the allocation of all, or part of, a market, by the location of the business, or by the people, or categories of people, with whom business is to be transacted; and
 - ◆ on the quantity, quality or category of assets or services in a business.
- *Broad definition of restrictive arrangements*

The RTP Law defines an arrangement to include all types of agreements and understandings, whether made formally or informally, orally or in writing, or whether or not such agreements and/or understandings are legally binding or enforceable.

The RTP Law also applies to concerted practices and to policies set by trade associations which impact on their members, as well as to the conscious behaviour of a person who, knowing of the existence of a restrictive arrangement, adjusts his activities to conform with all, or part of, the arrangement.

However, there are statutory exclusions and the RTP Law provides for individual and block exemptions.

- *Exclusions*

Section 3 of the RTP Law excludes a number of types of arrangements. Major exclusions include arrangements:

- ◆ where all the restrictions are determined to be in accordance with the law;
- ◆ where all the restrictions concern the right to use certain IP rights, subject to the following two conditions:
 - ◇ the arrangement is made between the proprietor of the IP right and the recipient of the right to use; and
 - ◇ the IP right is registered as required by law;

- ◆ an arrangement entered into by a person assigning a right to real property, and a person acquiring such right, involving restraints, all of which relate to types of assets or services which the acquirer of the right is to engage in on such property;
 - ◆ an arrangement involving restraints, all of which relate to growing or marketing domestic agricultural produce of the following kinds: fruits, vegetables, field crops, milk, eggs, honey, cattle, sheep, poultry or fish, provided all parties thereto are growers or wholesale marketers (the above provision shall not apply to products manufactured from such agricultural produce and the Minister of Economy, with the consent of the Minister of Agriculture and the ratification of the Knesset Economic Affairs Committee, may, by order, add or delete types of agricultural produce);
 - ◆ an arrangement between a company and its subsidiary;
 - ◆ an obligation by the seller of a business sold in its entirety towards the purchaser of the business, not to engage in the same type of business, provided such obligation is not contrary to reasonable and accepted practices; and
 - ◆ an arrangement to which a trade union or an employers' association is party, involving restraints, all of which relate to the employment of workers and to working conditions.
- *Exemptions*

The RTP Law provides for individual and block exemptions—

- ◆ *Individual exemptions*—an individual exemption from the duty to have a restrictive arrangement approved by the Antitrust Tribunal can be obtained from the Antitrust Authority, provided that:
 - ◇ the restrictions in question do not restrict competition in a substantial portion of the market affected by the arrangement, or are likely to affect a substantial portion of the relevant market, but do not have a substantial effect on competition in that market; and
 - ◇ the object (or essence) of the arrangement is not to reduce or prevent competition and all the restrictions are necessary for implementing this object.

- ◆ *Block exemptions*—under the RTP Law, the Antitrust Authority has issued several block exemptions, including a block exemption for:
 - ◇ agreements whose effect on competition is minor;
 - ◇ joint ventures (this block exemption stipulates conditions for exemption of a joint venture between competitors that are more stringent than those relating to joint ventures between non-competitors);
 - ◇ agreements relating only to the performance of joint R&D activities;
 - ◇ exclusive purchase agreements;
 - ◇ exclusive distribution agreements; and
 - ◇ franchise agreements.

All other restrictive agreements should be brought before the Antitrust Tribunal for its approval.

Applications for approval by the Antitrust Tribunal are judicial proceedings that are generally lengthy, time-consuming and costly.

Any restrictive arrangement is illegal and unenforceable, unless exempted by the RTP Law or by block exemptions issued under the RTP Law or individually exempted by the Antitrust Controller, or approved by the Antitrust Tribunal.

- *Monopolies and abuse of market power*

The RTP Law regulates (mainly in Chapter Four thereof), monopolies and abuse of market power. The Antitrust Authority and the Antitrust Tribunal are the main, relevant regulators. The two main elements of the special statutory regime applicable to monopolies are:

- ◆ a declaration made by the Antitrust Controller on the existence of a monopoly; and
- ◆ special duties imposed on monopolies.

Declaration of a monopoly—the RTP Law empowers the Antitrust Controller to declare that a certain person or company is a monopoly. However, this is only a declaration and the provisions of the RTP Law relating to monopolies and

monopolistic duties will apply, without a declaration, to any monopoly.

The RTP Law defines a monopoly as a concentration of a market share that exceeds 50% (no proof of market power is necessary). The main significance of the declaration is that it can be used in any legal proceedings as *prima facie* evidence of the existence of a monopoly. The Antitrust Controller's declaration is also intended to be a warning sign to the monopolist, reminding him of his special position in the market and (although not necessary under the RTP Law) constitutes a first step in intervention in the business conduct of the monopolist.

Limitations imposed on monopolies—under the RTP Law the Antitrust Controller can demand in writing that a monopolist comply with the Standards Law with respect to any asset or service manufactured, sold, imported or provided by the monopolist, whose activity is subject to the standards specified in the Standards Law.

The RTP Law also imposes the following restrictions:

- ◆ a monopolist may not unreasonably refuse to supply or acquire the asset or service with respect to which he holds the monopoly;
- ◆ a monopolist may not abuse his position in the market in any manner liable to reduce business competition or injure the public.

The RTP Law specifies several categories of behaviour that will be deemed an abuse of the monopolist's position:

- ◇ excessive or predatory pricing of the product under a monopoly;
- ◇ reducing or increasing the quantity of assets or scope of services offered by the monopolist, outside the framework of fair competitive behaviour;
- ◇ discriminatory practices, which involve setting different, discriminatory, terms for similar transactions, which are likely to give certain of the monopolist's customers or suppliers an unfair advantage over their competitors; and
- ◇ tying agreements;

- ◆ if the Antitrust Controller concludes that the existence of a monopoly injures competition or the public (or that there exists suspicion of significant injury being caused) he may instruct the monopolist to take certain measures to prevent the injury. The monopolist may file an appeal with the Antitrust Tribunal; and
- ◆ if the Antitrust Controller cannot prevent injury to competition or the public by directing the monopoly's operations, he can file an application with the Antitrust Tribunal for the dissolution of a monopoly into two or more separate corporate bodies.

- *Violations of the RTP Law*

Violations of the RTP Law could, depending on the circumstances, lead to orders and consent decrees by the Antitrust Authority, criminal proceedings (that could impose personal liability on the violator's directors, managers and officers) and third party (including class action) civil proceedings for damages.

8.2.2. *Are there filing requirements?*

- *Merger Control Filing*

Once the merger threshold requirements are met (see below), a merger notice (in the prescribed form) must be filed by each of the parties to the merger.

- *Procedural thresholds*

The RTP Law broadly defines a "merger of companies" as including either:

- ◆ the acquisition of most of the assets of a company by another company; or
- ◆ the acquisition by a company of shares in another company that gives the acquiring company:
 - ◇ more than 25% of the nominal value of the issued capital or the voting power; or
 - ◇ the right to appoint more than one-quarter, in number, of the directors; or
 - ◇ the right to participate in more than one-quarter of the company's profits.

The filing of a merger notice is only required if the merger falls within the above definition and if any of the following conditions are met:

- ◆ as a result of the merger, the merged entity would be considered a monopoly (that is, the market share of the merged companies in the relevant market exceeds 50%). The Minister of Industry, Trade and Labour may lower this threshold for a particular market;
- ◆ the aggregate sales turnover of the merging companies in the fiscal year preceding the merger exceeded NIS 150 million *and* the sales turnover of at least two of the merging companies exceeded NIS 10 million each during that year; or
- ◆ one of the merging companies is already a monopoly in any relevant market.

A merger between non-Israeli companies is viewed by the Antitrust Authority as falling within the scope of the RTP Law, if all of these companies conduct business in Israel and meet the above thresholds (with respect to their activities in Israel only).

- *Timing*

There is no specific timing requirement. However, the parties must obtain approval from the Antitrust Authority before closing, or implementing any other action that might be considered performance of the merger. Therefore, it is recommended to file the merger notice as soon as possible.

The Antitrust Authority must review a merger notification within thirty days after its receipt. Failure by the Antitrust Authority to render a decision within such thirty-day period will be deemed to constitute an approval of the merger. The Antitrust Authority can request that the thirty-day period be extended if further investigation is required.

- *Filing fees*

There is no fee at present but, following an amendment to the RTP Law (in effect as of 2002), filing fees may be imposed under regulations enacted pursuant to such amendment.

- *Review of merger notices*

The Economic Division of the Antitrust Authority primarily conducts the review process. It considers the information included in the merger notice and any accompanying letter, as

well as any other relevant public information. It can also ask the views of interested third parties, such as competitors, suppliers, customers and governmental Ministries.

If the Antitrust Authority intends to object to the merger, it will usually hold an administrative hearing with the notifying parties. The Antitrust Authority presents its views and gives the notifying parties opportunity to comment. The notifying parties will be allowed to provide further information or to provide the Antitrust Authority with their arguments in light of the Antitrust Authority's intended objection of the merger.

In cases where the Antitrust Authority is of the opinion that the merger should be conditionally approved, the Antitrust Authority will usually approach the parties concerned with a draft of its proposed conditions. The parties may then comment on the proposed conditions in order to reach agreement.

- *Substantive test for merger approval*

Under the RTP Law, a merger will be approved unless the Antitrust Controller believes there is a reasonable danger that as a result of the merger:

- ◆ competition will be substantially lessened; or
- ◆ the public will be harmed by the price level, quality, quantity or the regularity and terms of supply of a particular asset or service.

- *Restrictive arrangements in merger agreements*

Restrictions included in a merger agreement are not automatically approved if the transaction is cleared, but, rather, are reviewed separately by the Antitrust Authority and should be dealt with by the parties accordingly. If the restrictions are not excluded or exempt under a block exemption, the Antitrust Authority should approve them.

8.3. Government Approvals

Are government approvals required for the anticipated business? If so, how long does this process take? What fees are involved?

If a merger or acquisition of a business is involved, see section 8.2—*Antitrust Laws* above for approvals that may be required from the Antitrust Authority.

For a discussion of government approvals with respect to benefits that may be granted under the Capital Investments Law and/or the R&D Law, see section 3.2—*Grants, Subsidies or Funds* above.

Certain industries (e.g., banking, insurance, telecommunications, etc.) require licences from the regulatory bodies for such industries in order to operate in the Israeli market. The length of the process and fees involved will depend on the industry and the proposed activities in the Israeli market.

A business may be required to obtain other governmental approvals, licences and permits, depending on the nature of the anticipated activities (see section 8.5—*Licences/Permits* below).

8.4. Insurance

8.4.1. *Must the enterprise carry insurance?*

An enterprise is obliged to take out the following insurances: (a) with regard to salaried employees, those portions of the employee's national insurance contributions and health insurance tax withheld by the enterprise which must be paid and reported by the enterprise to the National Insurance Institute on a monthly basis (see further in this regard section 14.6 below); and (b) third party motor insurance with respect to motor vehicles registered in the name of the enterprise. In addition, it is customary and recommended for an enterprise to procure further insurances, depending on the field of activity in which the enterprise engages, such as: professional liability insurance (usually taken out by law firms and chartered accountants) and products liability insurance.

8.4.2. *If so, what kind of risks must be insured?*

Insurance of the motor vehicle to cover personal injuries incurred as a result of use of the vehicle. Businesses voluntarily insure against a wide array of other risks as well, such as professional negligence and defective products.

8.4.3. *Is there a state monopoly on insurance?*

There is no state monopoly on insurance.

8.5. Licences/Permits

8.5.1. *Are licences or permits required for the anticipated activity?*

Depending on the anticipated activity, a licence or permit may be required. The Licensing of Businesses Law authorises the Minister of Interior, in consultation with a number of different governmental Ministries, to require businesses to be licensed in order to protect environmental quality (see section 2.4—*Environmental Regulations*

above), public peace, safety and health as well as compliance with planning and building and fire protection requirements. Pursuant to said law, the Minister of Interior requires businesses operating in the following general categories to be licensed:

- health, pharmacy and cosmetics;
- fuel and energy;
- agriculture and livestock;
- food;
- water and waste;
- miscellaneous commerce;
- public entertainment, relaxation and sport;
- vehicles and transportation;
- security and protection services; and
- industry, crafts, chemistry and minerals.

The Licensing of Businesses Law generally designates the local authority as the licensing authority, although, depending on the activity, approval from other governmental bodies may be required. If the type of business is regulated by another enactment (*e.g.*, banking, insurance, telecommunications, *etc.*), the licensing authority may refrain from granting a licence as long as the business has not been licensed pursuant to such other enactment.

New licences are required when ownership or control of a business is transferred.

8.5.2. *If so, how does the investor apply for and receive the necessary licence or permit? How long does it take to receive the licence or permit?*

The length of time to apply for and receive the necessary licence will depend on the authority approving the licence and the nature of the activity. Temporary permits may be obtained in certain circumstances, pending receipt of the licence.

9. OPERATION OF THE BUSINESS

9.1. Advertising

Are there restrictions on advertising?

There are wide-ranging restrictions on advertising in Israel.

Specific rules apply to adverts issued for certain products and services such as foods, medicines and tobacco. Additional regulations may apply depending on the medium used for advertising and on the particular consumer group to which such products and/or services are directed (e.g., minors).

Principally, an advertiser must ensure that the advert does not contain any libellous or misleading material, is not discriminatory and does not harm public policy.

9.2. Attorneys

9.2.1. *Is it necessary to have local counsel?*

There is no general requirement to appoint local counsel. Nevertheless, it is highly recommended that specific advice from Israeli counsel be obtained prior to entering into any transaction with Israeli law aspects.

In addition, other than in exceptional circumstances, only Israeli counsel may represent a party in any litigation proceedings initiated in Israel.

9.2.2. *How can local counsel be found?*

It is always best to choose lawyers through personal recommendation, or from an official legal practitioner's guide.

9.2.3. *How much are attorneys' fees?*

Most commercial litigation firms use a time-based fee structure; usually fees range from US \$150 to US \$600 per hour, depending on the seniority of the lawyer (articled clerks are employed by law firms at a lower hourly tariff). Fees do not include out-of-pocket expenses and VAT (currently 17%). The cost of complex litigation can extend to hundreds and thousands of US dollars and maybe even higher, in particularly large and complex cases.

Some firms take cases on a contingency basis. Flat or task-based fee agreements are not common in large commercial disputes. Fees for commercial disputes are not fixed by law, although the Israel Bar Association does publish a non-binding regulation specifying minimum fees ([see www.israelbar.org.il](http://www.israelbar.org.il)).

9.3. Bookkeeping Requirements

9.3.1. *Bookkeeping requirements applicable to Companies*

Israeli law imposes requirements on private and public companies to keep accounting records and to prepare and disclose accounting records.

9.3.2. *Accounting Records*

Every company is obliged to keep accounting records which are sufficient to show and explain the company's transactions and in order to: (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and (b) enable the directors to ensure that the accounts comply with the legal requirements.

Israeli law requires that accounting records be maintained at the company's registered office in Israel for a minimum period of seven years (the Companies Law).

9.3.3. *Preparation and Disclosure of Company Accounts*

In the case of private companies, a private company must prepare a balance sheet, a profit and loss report and other financial reports, according to Israeli generally accepted accounting principles in force from time to time for each financial year (see section 9.3.4 below). The company's external auditor is required to audit the reports. The accounts must also include a directors' report. Where at the end of a financial year a company is a group company, the directors must also prepare group accounts (Section 172(a) of the Companies Law).

The accounts are subject to the overarching requirement that they must give a true and fair view (Section 172(d) of the Companies Law). The accounts must comply with the detailed rules regarding the form and content of the balance sheet and profit and loss report. Any additional information must be provided by way of notes.

A private company must file its accounts with the Registrar of Companies within fourteen days of approval of the accounts by the general meeting, or if no general meeting is convened by the company, such accounts must be filed by the company within fourteen days after their despatch to the company's shareholders.

If the accounts are not filed within the relevant time limits, a fine may be imposed on the company's directors. If the company is so penalised and the fine is not duly paid, the Registrar of Companies may request for the dissolution of such company.

With regard to public companies, under the Securities Law and regulations enacted thereunder, a public company is obliged to file with the Israeli Securities Authority (established under the Securities Law) additional reports (e.g., quarterly reports, immediate reports, etc.).

9.3.4. *Accounting Principles; Rules of Standards*

Since 1997, the Israel Accounting Standards Board (“**the IASB**”) has been responsible for issuing accounting standards. Prior to 1997, a committee of the Israel Institute of Certified Public Accountants was empowered with such responsibility and standards issued by such Institute, unless replaced by new standards of the IASB, continue to remain in force.

A majority of the Israeli accounting standards are similar to the international accounting standards published by the International Standards Accounting Committee (“**the ISAC**”). In the absence of specific Israeli standards or practices, the standards of the ISAC will apply.

Public companies are obligated by IASB standards to use the International Financial Reporting Standards (“**IFRS**”). Private companies may use either IFRS or official standards published by the IASB (such as Israeli GAAP). Private companies that are owned mostly by foreign citizens may apply to use other accounting standards (e.g., US GAAP).

The major Israeli accounting principles concern the following:

- a going concern;
- the matching concept;
- consistently applied accounting principles;
- the recording of only realised profits and all losses; and
- preparation of the financial statements on the basis of historical cost.

9.4. **Business Ethics/Codes**

Are there certain business ethics or codes, which the investor must follow (e.g., GAAP for accountants, etc.)?

A description of all relevant codes of practice is beyond the scope of this Guide. The extent to which codes of practice may apply will depend upon the nature of the business and its activities. However, some of the codes which are likely to be applicable are briefly mentioned below. With respect to accounting issues, see section 9.3—*Bookkeeping Requirements* above

- *Employment; Minimum Wages*

Equal pay, non-discrimination as to sex, colour, race and creed, prohibition on sexual harassment, *etc.*

There are also numerous regulations covering a range of specific issues, such as working time, maternity and parental leave and health and safety issues in the workplace.

- *Public Companies*

Companies whose securities are listed or traded on a recognised investment exchange (in Israel—the TASE) or companies whose shares are offered to the public by way of prospectus and subsequently held by the public, are, in general, subject to a higher degree of regulation than companies whose securities are not publicly traded. These regulations include the Rules of the TASE (which, *inter alia*, regulate the listing of new securities on the TASE and the conduct of companies whose shares are already so listed), the Securities Law and regulations enacted thereunder. The foregoing constituting some of the rules applicable to companies whose securities are publicly traded. Detailed consideration of the rules, however, falls outside the scope of this guide and it is always advisable to take appropriate legal and financial advice as to the regulatory regime applicable to Israeli public companies.

9.5. Consumer Protection Laws

Are there consumer protection laws which apply to the investor's operations?

There is a range of Israeli law which regulates transactions with consumers and which would apply in relation to the investor's operations involving consumers, whether directly through contracts entered into with consumers or indirectly, or as a manufacturer or supplier. We refer to some of these laws below:

- *The Consumer Protection Law*

Under the Consumer Protection Law, as its name implies, certain obligations are imposed on manufacturers, importers, merchants and suppliers, the aims of which are: (a) to prevent any misleading fact from being transmitted to consumers; (b) to provide consumers with adequate disclosure regarding the relevant transaction to be entered into with any such consumer; and (c) to provide consumers with the tools necessary to enable them to exercise their rights *vis-à-vis* any such manufacturer, importer, merchant or supplier.

The Consumer Protection Law offers protection to consumers who purchase an asset or good or receive services for their own personal or domestic purposes.

In addition, the Consumer Protection Law and the regulations enacted thereunder include, *inter alia*, the following duties and obligations:

- ◆ the prohibition to enter into a transaction where the consumer is being exploited having regard *inter alia* to:
(i) any distress, or intellectual or physical weakness they may have; or (ii) their lack of knowledge of the language of the transaction;
- ◆ the duty to disclose to the consumer any defects, inferior quality or other fact which may materially reduce the value of the asset and/or good;
- ◆ the duty to disclose information such as the purchase price and interest rate in credit transactions; and
- ◆ the duty to provide the consumer with an option to receive guarantees in return for advance payment.

- *Misleading Consumers*

In practice, the Consumer Protection Law does not expressly deal with misleading acts. The Consumer Protection Law prohibits any act or omission which may result in the consumer being misled. In addition to civil liability, the Consumer Protection Law sets out a list of matters with respect to which a misleading act or omission will be deemed a criminal offence, such as: the quantity and type of asset, goods or services, the weight and contents/ingredients, the delivery date, the identity of the manufacturer, the importer or the supplier, the date of manufacture and expiry, the type of warranty being offered, *etc.*

- *Hawking Transaction*

A “hawking transaction” is defined as a transaction in which the supplier visits the consumer’s home, place of work, *etc.*, without an invitation. Where a “hawking” sales transaction has been effected, such transaction may be terminated within fourteen days of the date of delivery of the relevant goods. If the transaction involves the rendering of services, such transaction may be terminated within fourteen days of signature of the services agreement by the relevant parties thereto.

- *Selling Transactions via Mail, Telephone, etc.*

These types of sale transactions are defined in the Consumer Protection Law as an approach to the consumer by a seller or supplier via mail, telephone, radio, television, facsimile, *etc.*, in order to enter into a transaction without the actual presence of the parties. When offering a product for sale, the seller must disclose all pertinent details, including the seller's name and address, the identity of the manufacturer, the country of manufacture of the product, the purchase price being offered, *etc.*

The consumer may terminate a transaction of this type within fourteen days from the later of: (a) the delivery date; or (b) the date of receipt of all information as required under the Consumer Protection Law. The termination notice should be in writing.

Should the consumer elect to terminate the transaction for reasons other than that the product was defective or that the information with respect thereto was misleading, the consumer will be obliged to pay to the supplier/seller a fee, the rate of which shall be the lower of: (i) 5% of the value of the transaction; and (ii) NIS 100.

The above conditions under which a consumer may terminate a transaction will, of course, not apply, *inter alia*, to products having a short shelf life, products manufactured expressly for the consumer, CDs, *etc.*

- *Limited-Period Transactions: Automatic Extensions and Renewals*

In order for contractual relations between consumers and providers to be automatically extended, the consumer must have full awareness of the contractual time period and must provide their express consent to its extension. Furthermore, any provider must itemize bills and send the consumer an itemized receipt once every six months reflecting all payments the consumer made by a bank order or credit card, unless the payments are fixed and never changed and the consumer has not requested such a receipt. Violation of the provisions entitles the consumer to damages.

Various services that are considered essential are specifically exempted from the above amendment, such as gas services and basic phone services. These can be automatically extended and renewed, provided that the service provider notifies the consumer of such renewal prior to the expiration date.

- *The Standard Contracts Law*

The main purpose of the Standard Contracts Law is to protect consumers from unduly disadvantageous conditions included in standard contracts.

A “standard contract” is defined in the Standard Contracts Law as a contract where all or part of its conditions have been specified in advance by one party (*i.e.*, the supplier) in order to serve as conditions in many agreements between such party and other persons undefined as to number or identity (*e.g.*, a software licensing agreement; contracts for the rental of DVDs and videos, *etc.*).

The Standard Contracts Law sets out a list of unduly disadvantageous conditions which ought not to be included in standard contracts. Some worth mentioning include: a condition which exempts the supplier from liability imposed upon them by law; a condition which grants the supplier an unreasonable right to change, revoke, or postpone undertakings in the contract; a condition which allows the supplier to amend the contract without the consent of the other party, *etc.* Unduly disadvantageous conditions, if proved to be included in a standard contract, may be amended or even cancelled by the Israeli courts.

- *The Commercial Civil Wrongs Law*

The Commercial Civil Wrongs Law protects consumers, albeit indirectly, by prohibiting a person from applying a false trade description to goods, or supplying or offering to supply goods to which a false trade description has been applied, or misleadingly suggesting that a supplier's product or services is actually that of another supplier. A trade description constitutes an indication, whether direct or indirect and by whatsoever means, with respect to specific goods in question or part thereof. For further details in this regard, see, *inter alia*, section 2.5.1.8(e) above.

- *The Defective Products Law*

The Defective Products Law provides that a manufacturer is liable for compensating any person who has suffered bodily injury as a result of a defective product manufactured by such manufacturer. The manufacturer has no-fault liability (*i.e.* the plaintiff need not prove negligence on the manufacturer's part). However, there are several exceptions to the foregoing, *inter alia*, where the defect was caused when the product was no longer under the manufacturer's control. Possible sums awarded for non-pecuniary damages, loss of earnings and loss of earning capacity are limited. The manufacturer may not

contract out of terms of the Defective Products Law, but he may seek indemnification from a third party.

9.6. Construction

9.6.1. *What are the costs of construction?*

The costs of construction depend upon the purposes for which the construction is required. The approximate average standard costs may be categorised as follows (all amounts excluding VAT)—

- for residential purposes: NIS 4,701 per square metre built. The costs per square metre for constructing luxury apartments could be double or even more;
- for commercial and industrial purposes: NIS 5,565.¹⁵

9.6.2. *Are permits required for construction?*

Under the Planning and Building Law, all construction projects require a building permit prior to their commencement.

9.6.3. *How is authorisation to construct obtained?*

In order to obtain a building permit pursuant to the Planning and Building Law and Regulations, the applicant is required to submit an application to the relevant local licensing authority (“**the Application**”). The Application must be signed by the following persons: the owner of the rights in the relevant asset, the applicant, the draughtsman, the structural planner, the contractor appointed to carry out the works and the supervisor appointed to supervise works.

The following documents must be attached to the Application: maps and various plans describing the construction areas, building plans and documents describing the current status of construction in the area as well as other appendices (as applicable), such as appendices detailing transportation, drainage, fire safety and the like. In addition, approvals obtained from the various utility companies with regard to the preparation of suitable infrastructure so as to facilitate provision of various services for the building (such as electricity, fire fighting, *etc.*) must also be attached to the Application.

9.6.4. *How long does it take to receive authorisation?*

It usually takes between six months and up until one year to obtain a building permit. One of the reasons for the delay stems from the fact that the relevant local licensing authority may, after reviewing the Application, return same to the applicant, together with its comments and may also request that certain modifications be made to the

¹⁵ Figures obtained from the Israel Central Bureau of Statistics website at: www.cbs.gov.il

Application (the submission and return of the Application can occur repeatedly until the relevant licensing authority is satisfied with the contents of the Application). It is only after the applicant has complied with all of the requests and demands of the local licensing authority, will the building permit be granted.

A delay in obtaining a building permit may also be caused by, *inter alia*, the scope of the project for which the building permit is being requested, the surrounding areas, applications for additional building rights (by obtaining building relaxations deviating from directives contained in the existing building plans), and the like.

Additional factors which could cause a delay include a backlog at the relevant licensing authority and conflicts between the various licensing authorities dealing with the same Application.

9.6.5. *What fees are involved?*

The amount of fees required for filing the Application, depends upon the nature of and the purpose for which the building or structure will be used.

With respect to a building for residential purposes, the fee is NIS 32.40 per square metre subject to a minimum charge of NIS 299.97.

The aforesaid sums relate only to the tariff for filing the Application and do not include other fees and duties for development of the area for which the owner of the asset may be assessed, if required (such as: road paving, construction of a sewage system, water infrastructure, drainage, etc.).

9.7. **Contracts**

9.7.1. *Can the investor freely enter into local contracts?*

The origins of Israeli contract law are firmly rooted in the philosophy that parties, including foreign investors, should be free to contract as they choose. However, some areas of local law reflect strong public policy and could apply to a contract, irrespective of the choice of law. These include—

- employment;
- competition;
- health and safety; and
- consumer protection.

Other areas that might be subject to mandatory legal provisions include—

- ◆ securities;
- ◆ real property;
- ◆ financial services; and
- ◆ telecommunications.

9.7.2. *Can contracts be governed by the law of another country?*

Contracts formed in Israel can be governed by the laws of a foreign jurisdiction.

The parties' intention in choosing the governing law should be *bona fide* and not, for example, in order to avoid terms and conditions specified in Israel (in which latter event Israeli law would apply notwithstanding the intention of the parties to apply a governing law other than Israeli law).

9.8. **Price Controls**

Are there applicable price controls?

With the exception of certain essential utilities, there are no directly imposed price controls in Israel. Essential utilities such as water, electricity, telecommunications, public transport, basic foodstuffs (e.g., eggs, salt, flour, milk, etc.) are regulated by authorities who are able to impose restrictions on prices charged to the applicable system and end-users.

Competition law provisions relating to matters such as resale price maintenance and predatory pricing can also affect a company's pricing policy.

9.9. **Product Registration**

9.9.1. *Must the entity register its product?*

In general, there is no requirement to register all products with the authorities in Israel. However, there are a number of exceptions to this rule (e.g., with respect to drugs, medical equipment, etc.). In addition, all products to be marketed in Israel must comply with local regulations on health, the environment and labelling.

9.9.2. *If so, how is registration obtained?*

In order to obtain registration of a product, an application must be made to the relevant governmental authority, together with the relevant duly completed documentation.

9.9.3. *How long does the process take?*

The timetable for registration of a product depends, *inter alia*, on the nature of such product and on tests to be carried out by the relevant governmental authority.

9.9.4. *Are there fees involved?*

Where registration is necessary, fees are usually imposed, the scope of which depends on the specific product.

9.10. **Reductions or Return on Capital**

Can capital be repatriated while the corporation is still ongoing?

Under the Companies Law, a company may acquire its own shares thereby reducing its share capital. The shares so acquired by the company (and for so long as they remain in the company's ownership) are considered "dormant shares"—since no rights are attached thereto. In addition, the acquisition by the company of its own shares will be considered a "distribution" and, accordingly, subject to certain conditions as prescribed therefor in the Companies Law.

Loans may be freely repatriated in accordance with the express terms of the relevant loan agreement.

Dividends may be freely repatriated subject to certain terms as prescribed therefor in the Companies Law and subject, further, to deduction of tax at source.

9.11. **Sale of Goods**

Are there restrictions on the manner, time or place of sale of goods?

Under the Consumer Goods and Services Supervision Law a governmental Minister may declare certain goods or services to be under such Minister's supervision. Furthermore, a governmental Minister may specify in an order conditions to be imposed with regard to the manufacture, storage, transportation, distribution, purchase price, *etc.*, of certain goods or services. An example of such restriction is the prohibition on the manufacture, import and sale of dangerous toy products, *i.e.*, toys which may cause bodily injury.

9.12. **Trade Associations**

9.12.1. *Are there trade associations that the investor can or must join?*

In Israel several trade associations have been established which relate to the various industrial sectors. Membership in any such trade association is voluntary. Examples of trade associations include the following:

- *The Manufacturers' Association of Israel ("the MAI")*¹⁶

Since its establishment in 1921, the MAI is recognised as a central force in the Israeli economy as a whole and in the industrial sector in particular. The MAI constitutes a powerful force in all decision-making at the macro-economic level, including in matters relating to labour and foreign trade—both at the level of proposed parliamentary legislation, as well as in the execution of laws.

The MAI is the sole representative body of all industrial sectors in Israel (private, public, kibbutz and government industries) and its membership comprises more than 2000 companies which are either direct or affiliated members.

The MAI—the single body representing this force—is a full partner in all decisions made by leaders of the economy at the macro-economic level.

- *Israel Association of Electronic, Information and Software Industries*

This Association represents the electronic and software industries, which account for more than 30% of Israel's total export of goods. Members originate from both the private and government sectors. Also active within the framework of the Association, or in collaboration with it, are: *the Society of Electronic and Information Industries*—an independent and voluntary body that unites companies from all sectors, as well as *the Israeli Association of Software Houses*.

- *Textile and Fashion Industries Association*

The Textile and Fashion Industries Association numbers in the hundreds of companies employing thousands of workers and comprises secondary sections in various fields, including: dyeing, military/security textiles, domestic textiles, swimwear, underwear, apparel and raw materials.

The Directorate of the Association determines its overall policy and method for dealing with macro-branch issues, as well as in

¹⁶ For more information on the MAI and its divisions (which include many of the associations that are listed below), see the MAI website: <http://eng.industry.org.il/>

handling ongoing problems relating to the branch as a whole and to individual plants, *vis-à-vis* the Ministry of Industry and Economy, the Ministry of Finance, the Customs Authorities, the Ministry of Defence, the Police Force and other relevant bodies.

- *Chemical, Pharmaceutical & Environmental Industries Association*

The Chemical, Pharmaceutical & Environmental Industries Association has approximately one hundred and seventy factories which are members of the Association, all of whom are involved in the fields of chemistry, pharmaceuticals and the environment, including:

- ◆ basic chemicals;
- ◆ fuel, oils and oil refining;
- ◆ fertilizers;
- ◆ decontaminants and disinfectants;
- ◆ detergents and cosmetics;
- ◆ human medications;
- ◆ veterinary medications and products;
- ◆ biotechnology; and
- ◆ disposable medical equipment.

The objectives of the Association are to represent the interests of the industrial companies before the Israeli governmental Ministries, administrative agencies and bureaus and public officers, to create a supportive business environment for the chemical industry, to promote cooperation between cleantech enterprises and traditional factories and to promote organisational and entrepreneurial activities for each sector.

- *Infrastructure Products & Consumer Goods Association*

Representatives from twelve industrial branches, covering all sectors, are members of this Association. Each branch maintains its own institution, holds periodic meetings, and is run by democratically elected management boards (comprising of chairmen and board members).

The Association represents industry in all its various aspects, before different public bodies and acts to promote and further industry in Israel.

- *Food Industries Association*

The Food Industries Association comprises approximately two hundred food and drinks manufacturers.

The Association carries out a variety of activities, covering areas such as standards, legislation, foreign trade, local marketing, export, quality control, industrial data, individual attention to specific needs of plants and other relative issues for promotion and development of this industry in Israel.

- *The Metal and Electrical Industries Association*

The metal and electrical industries include a wide range of products and technologies intended for: (a) military and civilian use; (b) investments and infrastructure; (c) private and public consumption; and (d) local export markets.

The Metal and Electrical Industries Association comprises approximately five hundred factories which manufacture an extremely wide range of products at differing technological levels.

9.12.2. *If so, are there fees involved?*

Yes. In order to become a member of one of the above-referenced associations, the investor will be required to pay an annual fee usually based on the following two parameters: (a) the annual turnover of the investor; and (b) the number of employees employed by the investor.

9.12.3. *Are there mandatory trade practices?*

Other than: (a) the obligatory permits/licences required for engaging in business in Israel in general; (b) compliance with the Israeli commercial laws; and (c) compliance with customary practice for engaging in business in Israel, there are no mandatory trade practices in Israel.

The Israeli courts widely apply the good faith doctrine pursuant to which persons are obliged to engage in a trade, conduct negotiations or enter into a transaction in an acceptable manner and in good faith.

10. CESSATION OR TERMINATION OF BUSINESS

10.1. Termination

- 10.1.1.
- *What costs are involved in termination?*
 - *How long does it take to terminate the business?*
 - *How is the investor's particular form of business treated in termination?*
 - *Can the business be terminated without government approval or intervention?*
 - *What are the obligations towards creditors, employees and others upon termination?*

See our general response in paragraphs (a)–(h) below of this section 10.1.1.

(a) *General*

On 15 March 2018, the Law of Insolvency and Economic Rehabilitation, 2018 was published in Reshumot (the Israeli Government Gazette). Much of what follows relating to insolvency will be replaced by the new Law when it commences eighteen months after this date. Until then, what follows below which relates to insolvency remains applicable law.

The Companies Ordinance sets out the procedures for compulsory and voluntary winding-up (liquidation) of a company; the liabilities of participants thereunder; the powers of the court; and the functions of the official receiver, liquidator, receiver, creditors and special managers in winding-up proceedings.

In certain circumstances, regulations allowing company restructuring may be utilised instead of receivership or liquidation (in this regard, see section 10.2—*Insolvency/Bankruptcy*, below).

Under the Companies Ordinance, the winding-up of a company may be performed in any of the following ways:

- ◆ by the court;
- ◆ voluntarily; or
- ◆ voluntarily, under the court's supervision.

Voluntary winding-up does not interfere with the rights of any creditor or contributor to cause the company to be wound-up by the court, but the court has the right to respond to an application by a contributor only if it is convinced that voluntary winding-up is likely to harm the rights of contributors.

The duration of the winding-up proceedings depends on the method adopted for winding-up the company (whether by the court or voluntarily, as detailed below) and any complications associated therewith which may arise, *inter alia*, from the following:

- ◆ the ability to achieve an arrangement with creditors; and/or
- ◆ the scope of the company's debts and the number of creditors.

(b) *Winding-up by the Court*

The relevant District Court (located in the area in which the company's registered office or its core place of business is located) may wind-up a company upon any of the following occurrences:

- ◆ a special resolution being adopted by a majority of 75% of the company's shareholders resolving that the company shall be wound-up by the court;
- ◆ failure by the company to operate its business within one year after its incorporation, or upon cessation of the company's business activities for a period of one year;
- ◆ the insolvency of the company;
- ◆ where the court is of the opinion that it is just and equitable for the company to be wound-up (e.g., upon it being established that fraud was committed by the company's founders against the investors; the company's objects were found to be unlawful; the organs of the company are unable to function; the company is unable to reach its goals as set out in its documents of incorporation, etc.).

In addition to the grounds for winding-up prescribed above, the court may liquidate a public benefit company when the company's activities violate the law of its purposes or its by-laws; or when the person appointed to investigate the company (according to section 345R of the Companies Law, in certain circumstances the Registrar of Endowments may investigate the affairs of a company) recommends that the company be wound-up.

An application to wind-up a company consists of an application submitted by all or some of the following, whether jointly or severally:

- ◆ the company (in which event, a financial report setting out the company's financial position must be filed together with the application);
- ◆ a creditor;
- ◆ a contributory.

In addition, in certain circumstances as set out in the Companies Ordinance, an application to wind-up the company, may be filed by the Attorney General or the Registrar of Companies.

The costs of the proceedings will be borne by the initiator of the process. If the process was initiated by a creditor and the relevant winding-up order has been granted, the court may order that the creditor be reimbursed from the assets of the company for all costs associated with the proceedings.

As soon as the winding-up order has been issued, the Official Receiver may *ex officio* serve as temporary (provisional) liquidator for the company and they must serve in such capacity until they or another person is appointed permanent liquidator and is able to act in such latter capacity. The Official Receiver must convene separate meetings of creditors and contributories in order to decide whether or not to apply to the court—

- ◆ for the appointment of a liquidator instead of the receiver;
- ◆ for the appointment of a review committee, which will work together with the liquidator and, if so, to decide on the members thereof.

The court may make any appointment and order necessary to implement any decision made. The court may, with respect to any matter relevant to winding-up, take into consideration the needs of creditors and contributories, to the extent proven to it by sufficient evidence.

(c) *The Results of a Winding-up Order, or an Appointment of a Temporary Liquidator, by the Court*

As a consequence of the issuance by the court of a winding-up order or the appointment by the court of a temporary (provisional) liquidator over the company—

- ◆ no proceeding may be continued or initiated against the company without first obtaining the court's consent and subject to such conditions as shall be prescribed by it;

- ◆ every transaction involving the company's assets and every transfer of shares or change of status of the company's shareholders implemented after the commencement of winding-up proceedings are void unless the court instructs otherwise;
- ◆ every attachment, execution and other procedure carried out in respect of the company's assets after the commencing of winding-up proceedings shall be void for all intents and purposes;
- ◆ most of the authorities vested in the directors will be withdrawn and transferred to the liquidator (unless permitted otherwise by the court);
- ◆ all of the company's employees will be dismissed, entitling them to receive severance pay (in accordance with the rules of preference applicable to creditors in winding-up proceedings);
- ◆ no derivative action shall be conducted on behalf of the company.

After the affairs of a company have been completely wound-up, the court makes an order that the company be liquidated from the date of such order and the company shall accordingly be deemed to be wound-up with effect from such date. The liquidator must inform the Registrar of Companies of such order within fourteen days of the date of making such order and the Registrar of Companies shall record the entry of the company's liquidation in the register pertaining to the company.

(d) *Voluntary Liquidation*

- ◆ *General*—a company may wish to be wound-up voluntarily upon the occurrence of any of the following events:
 - ◇ the period fixed for its existence in its articles of association has expired, or an event has occurred following which, in accordance with its articles of association, the company must enter into voluntary liquidation and the company in general meeting has resolved to wind-up voluntarily;
 - ◇ the company adopting a resolution to be voluntarily wound-up by a majority of 75% of those present; provided that notice of the meeting (and of the proposed resolution to be adopted) was sent

twenty-one days prior to the scheduled date of the meeting;

- ◇ the company adopting a resolution by a majority of 75% of those present that, in light of the company's liabilities, it cannot continue with its affairs and that it is just and proper that it be wound-up; provided that notice of the meeting (and of the proposed resolution to be adopted) was sent seven days prior to the scheduled date of the meeting.

Upon the company making a decision to be voluntarily wound-up, the court may order the winding-up proceedings to be continued under the court's supervision according to its directives and subject to conditions it will prescribe, all as the court deems necessary or appropriate.

Upon a company being wound-up—whether voluntarily or under the court's supervision—the Official Receiver or any person qualified to file a petition for winding-up by the court may request that the company be wound-up by the court; the court may then make an order for winding-up on the basis of such petition only after satisfying itself that the rights of creditors or contributories require that the procedure for voluntary winding-up or winding-up under the court's supervision be discontinued.

◆ *The results of voluntary winding-up—*

- ◇ Once winding-up proceedings have commenced, the company ceases to conduct its affairs, save for ensuring its orderly winding-up. However, the company maintains its status and powers as a corporate body, notwithstanding any contrary provision in its articles of association, until it is finally liquidated.
- ◇ All transfers of the company's shares made after the commencement of winding-up proceedings, save for transfers made to the liquidator or with his approval and any change in the status of the company's shareholders, will be considered unlawful.
- ◇ Upon the appointment of a liquidator to the company, the authority vested in the directors shall lapse, unless the company in general meeting or the liquidator decides that the directors' authority shall continue and the extent thereof.

- ◇ Although winding-up proceedings initiated against the company do not cease, the liquidator or any contributory or creditor may apply to the court with a request to decide on any matter arising from the winding-up, or that it utilise any of the powers vested in it for the purpose of enforcing calls for payment or for any other matter, as if the company were about to be wound-up by the court and the court may, if it finds just and expedient, respond to the request in whole or in part, on terms it deems appropriate, or make an alternative order on the basis of such application, as it deems just.

An arrangement between a company about to enter into liquidation proceedings or which is being wound-up voluntarily and its creditors shall bind the company—if such arrangement was adopted by way of an extraordinary resolution (namely, a resolution passed by a majority of 75% of the shareholders present)—and its creditors, if agreement thereto was received from three-fourths of such creditors, in number and by value.

- ◆ *Manner of winding-up*—there are two methods for winding-up a company voluntarily:

- ◇ Winding-up by the shareholders: winding-up by the shareholders may be carried out upon a declaration being made by the company's directors that they have closely examined the company's state of affairs and have reached the conclusion that the company will be able to pay all of its debts within twelve months after the commencement of winding-up proceedings (“**Declaration of Solvency**”). The declaration of solvency must be delivered to the Registrar of Companies prior to the despatch of notices to convene a general meeting of the company.

The company in general meeting must appoint one or more liquidators for the winding-up of its affairs and the division of its assets and may also set the remuneration to be paid to the liquidator(s).

- ◇ Winding-up by creditors: if a Declaration of Solvency is not submitted by the company's directors as referred to above, the winding-up must be carried out by the company's creditors.

In this latter event, separate creditors' and shareholders' meetings will be convened for the

purpose of appointing a liquidator. Notice of the creditors' meeting shall be sent by mail and published once in *Reshumot* and at least once in a local newspaper distributed in the area in which the company's registered office or its core place of business is located.

The creditors and the company may, at their separate meetings, nominate any person to act as liquidator on behalf of the company's affairs, including with regard to the distribution of the company's assets. If the creditors do not nominate any person, the candidate nominated by the company shall act as liquidator.

If the creditors and the shareholders nominate different candidates, the candidate nominated by the creditors shall be appointed liquidator, however, any director, shareholder or creditor may apply to the court, within seven days of the date on which the creditors' candidate was nominated and request that it appoint the company's candidate instead of the candidate nominated by the creditors, or that the company's candidate serve together with the creditors' candidate, or that the court appoint another person to act as liquidator.

(e) *Liquidator's Remuneration and Winding-Up Costs*

The major costs to be incurred in liquidation proceedings emanate from the remuneration payable to the liquidator. In certain cases the liquidation may be carried out whilst the company continues to operate (whether fully or partially). In such cases, the liquidation process will naturally involve operational costs, which may be substantial.

A liquidator will usually be paid either according to time spent by him on the matter or based on a percentage of the value of the assets which are eventually realised and distributed. This rate of remuneration is subject to a published, approved scale.

All costs and fees properly associated with the winding-up, including the liquidator's remuneration, shall be paid out of the company's assets according to the ranking of priority, as set out in section 10.1.1(h) below.

Other costs associated with the liquidation proceedings and which may be incurred include: costs arising as a consequence of the convening of creditors' and shareholders' meetings; the mandatory publications in *Reshumot* and in daily local

newspapers; and fees payable to administrative authorities. However, these ancillary costs are not significant.

(f) *Breach by the Liquidator*

Penalties (usually in the form of a fine) are imposed on a liquidator who fails to comply with any of his obligations as set out in the relevant provisions of the Companies Ordinance.

(g) *Voidance of dissolution*

After a company has been dissolved the court may, upon application by the liquidator or by a person deemed by the court to be an interested party, at any time following a period of two years from the date of dissolution and on such conditions as it deems fit, make an order voiding the dissolution; upon the making of such order, it shall be possible to initiate any proceedings against the company which would have been possible, but for the dissolution of the company.

An order voiding the dissolution may be granted in the following circumstances:

- ◆ the order will prevent inequity or injustice;
- ◆ an unexpected occurrence (e.g., the location of assets or money belonging to the company);
- ◆ upon it becoming apparent that the liquidation process was carried out in a fraudulent or deceptive manner; or
- ◆ the applicant has a right of action against the company.

(h) *Priority of Debts*

In winding-up proceedings, the company's debts will be repaid in the following order of priority:

- ◆ *first*, tax debts levied on the company's real estate;
- ◆ *second*, holders of liens;
- ◆ *third*, holders of debentures by virtue of a fixed charge created by the company;
- ◆ *fourth*, winding-up costs (including the liquidator's remuneration);
- ◆ *fifth*, employee wages, up to a maximum sum, subject to a published, approved scale;

- ◆ *sixth*, any amount withheld by the company from wages under the Income Tax Ordinance and not paid to the assessing officer;
- ◆ *seventh*, compulsory payments owed by the company; taxes payable to the State Treasury; rent for a maximum period of one year due to a lessor for office premises and/or immovable property leased by the company;
- ◆ *eighth*, holders of debentures by virtue of a floating charge created by the company;
- ◆ *ninth*, other creditors; and
- ◆ *tenth*, shareholders.

10.2. Insolvency/Bankruptcy

10.2.1. *What is the extent of the investor's liability in the event of insolvency or bankruptcy?*

- *Limited Liability Company*

A shareholder will not generally be liable for the debts of the company in the event of insolvency or bankruptcy, other than for any unpaid amounts on the nominal value of its shares, or for any guarantee or other collateral given by such shareholder to creditors of the company, or otherwise as may be specified in the company's articles of association.

However, as referred to in section 7.3.1 above, the Israeli courts have the discretion to "pierce the corporate veil" in circumstances where the shareholder has disregarded the company's status as a separate legal entity.

In addition, if the shareholder, in its capacity as a shareholder of the general meeting, assumes the powers conferred on the company's Board of Directors, such shareholder will be deemed to have assumed the obligations and liabilities of the Board of Directors in connection with the exercise of such powers, as specified below.

A director will not generally be held liable for the debts and actions of a company in the event of insolvency or bankruptcy. Nonetheless, a director may be held personally liable for the debts and obligations of the company in winding-up, for knowingly participating in the fraudulent management of the company with the aim of defrauding its creditors or others. As a consequence, the director may face up to one year's

imprisonment or may be prohibited from serving as a director or a general manager, or from being involved, directly or indirectly, in the establishment or management of a company, for a period of up to five years.

The law specifies various criminal sanctions which may be imposed on directors who commit certain defrauding acts or omissions relating to the winding-up of the company towards the company, its creditors, its liquidator or others.

If it appears in the course of a company's winding-up that any person who participated in its promotion or foundation, or who was or is a director, abused or retained any of the company's assets or committed any misfeasance or unlawful act in any negotiation concerning the company, the court may enforce upon such person the return of the asset or demand payment of compensation.

- *Unlimited Liability Company*

An unlimited liability company is a company with no limit on the liability of its shareholders where the company is insolvent on winding-up.

- *Ordinary Partnership*

Each investing partner will generally be liable (in an unlimited amount) in the event of insolvency or bankruptcy, jointly and severally with the other partners, for the debts and obligations of the partnership incurred during the period he served as partner, including (a) the liability of the partnership for any loss or injury caused by any wrongful act or omission of any partner in the ordinary course of the business of the partnership or with the authority of his co-partners; and (b) money or property that has been misappropriated.

- *Limited Partnership*

The general partner(s) are liable for all of the debts and obligations of the partnership in the event of insolvency or bankruptcy, as with any partner in an ordinary partnership, unlike the limited partner(s) whose liability is limited to the amount it/they agreed to contribute to the limited partnership.

However, the limited partner(s): (a) are restricted from withdrawing any part of their contribution from the partnership for as long as it exists; and (b) may not participate in the management of the limited partnership or have authority to enter into any obligations on the partnership's behalf. If the limited partner(s) fail to comply with the aforesaid restrictions

they may become liable for all of the debts and liabilities of the limited partnership in the event of insolvency or bankruptcy, up to the amount withdrawn (in the case of (a) above) and/or incurred during the period in which they participated in the management of the partnership (in the case of (b) above).

- *Joint Venture*

In the event that the investor does not establish any of the above-mentioned legal structures and, instead, relies on execution of a joint venture agreement, the liability of the parties to such agreement in the event of insolvency or bankruptcy will be determined by their respective duties and obligations set forth in such joint venture agreement. However, the parties will need to take heed of the terms to be agreed upon and included in such joint venture agreement, so as to avoid their cooperation being deemed a partnership—*i.e.*, persons carrying on business jointly with the aim of reaping a profit.

- *Sole Proprietorships*

An investor deciding to act as a sole proprietor will be personally liable for all of the debts of the business in the event of insolvency or bankruptcy.

10.2.2. *What choices, if any, are available to the investor with regard to the restructuring of the business?*

Section 350 of the Companies Law deals with the granting of a freeze on proceedings (*moratorium*) order. In cases where a compromise or an arrangement with the company's creditors is proposed, the court has the authority to grant a freeze on proceedings order with respect to all proceedings initiated against the company.

The purpose of such an order is to allow the company time to rehabilitate and reorganise without creditors pursuing the company and assets being seized. A freeze on proceedings order will only be granted if the court is convinced that it will aid in the crystallisation or approval of a rehabilitation plan. However if a person was harmed by an *ex parte* freeze on proceedings order, then they may apply to the court that gave the order for its revocation.

11. LABOUR LEGISLATION, RELATION AND SUPPLY

11.1. Employer/Employee Relations

- *What laws govern employer/employee relations?*
- *Are there obligations to train employees?*

Fundamental employee rights, such as minimum wage, paid leave, sick pay, maximum work day and week, overtime, rest day, holiday pay, notice for dismissal, severance pay, maternity leave, social security and wage protection, are regulated by mandatory provisions of law. The relevant laws apply to all employees (subject to very specific exceptions). Further fundamental employee rights, such as recreational pay and travel expenses to and from work, are protected by extension orders of general collective agreements. These orders similarly apply to all employees (again, subject to specific exceptions). Other fundamental rights, such as pension, additional salary and fringe benefits granted to employees in various sectors of public institutions or private industries may be protected by general and specific collective agreements. Generally, the rights of employees pursuant to mandatory provisions of law, extension orders and/or general and specific collective agreements, as aforesaid, cannot be waived or derogated from. On the other hand, individual work agreements may have the effect of vesting additional rights in employees beyond these fundamental rights.

There are no general mandatory obligations to train employees, though, needless to say, there are regulatory requirements pertaining to various occupations and activities.

11.2. Employment Regulations

- *Must the investor hire nationals of the country?*
- *Is there a minimum wage?*
- *Is there a maximum number of hours an employee can work each week?*
- *Is there a minimum number of vacation and sick days to be given?*

Under Israeli law, there is no obligation to hire nationals only. However, in order to employ a foreign national, a work permit and visa must be obtained (see section 11.5—*Labour Permits* below).

Under the Minimum Wage Law, the minimum hourly wage is NIS 28.49 and the minimum monthly wage is NIS 5,300.

Under the Hours of Work and Rest Law, the maximum work day is eight hours and the maximum work week is forty-five hours. Most public institutions and many private industries and enterprises have transferred to a five-day work week and, according to a general permit, in such a case the work day may be extended to nine hours. In addition, under an extension order of a general collective agreement pertaining to all employees (subject to specific exceptions), the work week has been shortened to forty-three hours.

Under the Paid Leave Law, the annual minimum paid leave entitlement is fourteen days for each of the first four years of employment. Such entitlement increases from the fifth year of

employment and thereafter up to a maximum of twenty-eight days' paid leave per annum.

Under the Sick Pay Law, an employee is entitled to eighteen days of sick leave pay. The entitlement to sick leave pay accumulates at a rate of one and-a-half days per month of employment, up to a maximum of ninety days, less the number of days for which the employee has already received sick pay according to law. The employee is only entitled to sick leave pay from the second day of their absence from work due to illness: 50% of their wage in respect of the second and third day and 100% of their wage in respect of the fourth day onwards. However, the first day of their absence from work due to illness is also deducted from the sick pay leave entitlement.

11.3. Hiring and Firing Requirements

- *Must the investor employ a minimum number of people?*
- *Must the investor employ a minimum number of nationals?*
- *Must nationals hold certain positions in the company?*
- *Are there rules to follow in hiring/dismissing personnel (e.g., notice)?*
- *Does the investor have a continuing obligation towards dismissed employees?*

In general, Israeli law contains no requirements limiting or regulating the number of employees to be employed by a company, nor concerning an employee's nationality or position in such company.

The main rules applicable to the hiring and dismissal of personnel are those prohibiting discrimination on the grounds of sex, sexual inclination, parenthood, personal status, age, race, religion, nationality, country of birth, political views, military reserve duty or disabled persons. In addition, collective agreements which apply to certain sectors of industry prescribe procedures for hiring employees.

Separate laws protect employees against dismissal or discrimination on grounds of filing complaints for sexual harassment or exposure of corruption in the workplace. Additional protection is afforded under case law in the event of dismissal without a hearing or, if applicable, without consultation of the employees' representatives.

Under the Advance Notice for Dismissal and Resignation Law, dismissed personnel are entitled to advance notice, amounting to one month after the completion of one year's service (a lesser notice period applies during the first year of service). A personal employment contract may prescribe a longer period of notice.

As a general rule, any employee who has been employed for at least one year by a certain employer or in a certain place of work, is entitled to severance pay upon dismissal. (In some cases, resignation of an employee, for example, because of illness, is

treated as dismissal for the purposes of severance pay entitlement.) Severance pay is due at the rate of one month's salary for each year of employment with the same employer or at the same place of work. Part of a year's employment (after completion of the initial qualifying year) entitles the employee to the proportionate part of a month's salary.

There is no mandatory pension scheme to which all employees must participate or contribute. Pension and insurance schemes are maintained and operated for employees in certain sectors of the market. In the industrial sector, such schemes are usually implemented based on the concept of joint monthly contributions made by each of the employer and the employee. Upon termination of the employment, the employee will receive payment either in the form of an annuity or a lump sum. The responsibility for payment of the pension is borne by the pension fund and not by the former employer.

11.4. Labour Availability

Is adequate skilled or unskilled labour available for the anticipated business?

The investor will find Israel to have an attractive labour force in the various sectors of industry. Due to the many opportunities available in Israel, it is common for students who, after completing their secondary education and subsequent military service (which is obligatory for both men and women in Israel), to pursue tertiary education at recognised academic institutions or other higher learning institutions or colleges located throughout Israel.

The labour force in Israel continues to expand through both natural growth and immigration.

According to official sources published by the Israeli Central Bureau of Statistics, the average unemployment rate for 2017 was 4.2% and the unemployment rate as of June 2018 was 3.9%.

11.5. Labour Permits

- *Are labour permits required?*
- *If so, how are they obtained?*
- *How long does the process take?*
- *What fees are involved?*

Employment of foreign workers requires both a special permit and work visa.

The authority responsible for the issuing of work permits and visas is the Population and Immigration Authority of the Ministry of Interior. The application must be made in writing by the prospective employer

and must include, *inter alia*, details of the employer and the prospective employee and of his/her skills, justifying the issue of a work permit to a foreign worker. The following documents must be filed with the application:

- (a) the employing company's certificate of registration/business licence;
- (b) a copy of the employer's Form 102 issued by the National Insurance Institute;
- (c) an explanatory letter, detailing the need to employ a foreign employee instead of an Israeli resident/citizen;
- (d) documents proving the employee's education and training (certificates, diplomas and resume);
- (e) an affidavit signed by or on behalf of the employer testifying to the accuracy of the details stated in the application and confirming there is not a suitable employee in Israel to fill the position (the affidavit constitutes an appendix to the application);
- (f) a certificate by an attorney or an accountant certifying that the person signing the affidavit is authorised to do so on behalf of the employer;
- (i) a further affidavit by or on behalf of the employer (usually requested at a later stage of the application procedure) including an undertaking as to the minimum monthly salary to be paid to the employee; and
- (j) a confirmation by an accountant that the employer has the financial resources to pay the employee the said monthly salary.

It is possible to obtain a work permit within 1-2 months from the date that the application, in proper form and together with the necessary supporting documentation, is filed.

Once the work permit has been issued, an application for a work visa must be submitted (together with such work permit) to the Population and Immigration Authority. If the application is accepted, Population and Immigration Authority will then issue a work visa (B-1).

The Foreign Workers Law is a comprehensive law regulating various aspects of the employment of foreign workers in Israel. The initial fee to be paid upon applying for a work permit is NIS 1,190 per worker, with a lower fee for agricultural workers, ethnic restaurant workers, construction, or industry workers, and the annual fee payable for

maintaining such permit is NIS 9,500 (in agriculture, ethnic restaurant workers, construction, or industry workers the annual fee is lower). In addition, the employer must procure medical insurance, provide other basic hiring necessities (such as adequate lodging facilities) for the foreign worker and may also be required to provide the authorities with appropriate securities in order to ascertain that the employer has complied with all legal obligations pertaining to the employment of foreign workers.

11.6. Safety Standards

Are there safety codes that must be followed?

Numerous and detailed safety precaution measures are imposed upon employers, in certain circumstances, by legislation. The main act of legislation regulating the safety standards in a workplace is the Work Safety Ordinance. In addition, various specific regulations relating to health and safety in the workplace have been enacted.

11.7. Unions

- *Are unions recognised?*
- *What are the unions in the investor's business?*
- *What are these unions' political affiliations, if any?*
- *Is there an obligation on the part of the employer to organise unions?*
- *Are there mandatory collective bargaining agreements for the business involved?*

Unions are recognised for various aspects of labour law.

The major trade union in Israel is *the Histadrut* and this body constitutes an umbrella for most of the trade unions in Israel. Nonetheless, there are a few independent unions which are not affiliated with the *Histadrut*, such as the Physicians' Union.

Officially, the *Histadrut* is a non-political organisation.

There is no obligation on the part of an employer to organise a labour union for its employees.

Several industrial branches are governed by general collective agreements, the provisions of which have been extended to apply to all employers and employees operating in that branch.

12. TAX

Income Tax

12.1. General

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- 12.1.1. The major taxation related laws in Israel are:
- (a) Income tax under the Income Tax Ordinance;
 - (b) Value Added Tax (VAT) under the VAT Law;
 - (c) Real Estate Appreciation Tax; and
 - (d) the Capital Investments Law.
- 12.1.2. **Accounting principles:** In general, costs and income are recorded on an accrual basis. A company's taxable income is usually based on the nominal financial reports prepared by the company in accordance with Israeli GAAP. Nominal figures are submitted to the Israel Tax Authority ("the ITA") and adjustments are made in accordance with the applicable taxation laws in force in order to determine the taxable income.
- Certain companies (usually, those without inventory), such as professional companies (e.g., law firms and firms of chartered accountants) are entitled to calculate and report their taxable income on a cash basis.
- 12.1.3. **The tax year** begins in January. Taxpayers may apply for a special tax year if certain conditions are met.
- 12.1.4. **A tax ruling** may be requested by taxpayers regarding the tax consequences of a proposed transaction.
- 12.2. **Filing Requirements**
- 12.2.1. A company is generally required to file a tax return annually, not later than five months after the end of the tax year (*i.e.*, until 31 May of the subsequent calendar year). If the company's tax return is not based on a complete set of double entry accounts, then it shall deliver the return by not later than 30 April of each subsequent year. The tax return must include details of the profits which are taxable, specify each source of income and the amounts arising from the source, as well as the special rates of tax applicable to that income. The company must give details of asset disposals and any capital gains or losses arising. Details of asset acquisitions must be given for the purposes of calculating depreciation allowances. An extension to file may be obtained in certain circumstances.
- 12.2.2. Other than its obligation to make a monthly advance payment to the ITA, the company is obliged to pay its taxes upon the submission of its tax return or within fifteen days after delivery to the company of a notice of assessment from the ITA.

- 12.2.3. Every assessee is required to make advance payments to the ITA each month on account of the final tax due (usually, the advance payment in respect of the relevant month constitutes 10% of the amount of tax for which the company is liable in the determining year and must be paid on the fifteenth day of each of the ten months falling from February to November in each tax year). Another and more popular alternative to determine the scope of the advance payment is based on an agreed percentage of turnover. The percentage is generally computed by comparing the turnover and tax paid in the previous tax year.
- 12.2.4. An individual must file an annual tax return no later than 4 months following the end of the tax year. An extension to file or an exemption from filing may be obtained in certain circumstances.
- 12.2.5. A new Israeli resident or a senior returning resident will not be subject to the reporting requirements on income derived from or accrued abroad, or sourced from assets abroad for a 10 year benefits period.
- 12.2.6. Penalties apply if advance payments are overdue or if tax returns are filed late. Overdue tax is subject to an annual 4% interest rate. Both the interest and principal are linked to the Consumer Price Index (CPI) until the payment date.
- 12.2.7. Generally, companies are not permitted to file a consolidated tax return. However, if certain conditions are met, qualified "industrial companies" may file a consolidated tax return.
- 12.2.8. Enterprise may elect to submit annual dollar based tax return if certain conditions are met.
- 12.2.9. Under Israeli taxation laws and regulations different tax treatments apply to specific legal bodies which are not regarded as body corporates in the ordinary sense. Amongst those legal bodies, reference is made to the following: Partnerships; Controlled Foreign Corporations (CFCs); House Property Companies and Real Estate Associations; Real Estate Investment Trusts (REITs); Family Companies and Transparent Companies; Trusts and Non-Profit Organizations.

12.3. Territoriality Rules

- 12.3.1. Israeli residents (individuals and corporations) are subject to tax on their worldwide income and capital gains. Any payment of foreign taxes will be allowed as a credit against payment of the applicable Israeli tax.

Non-residents are taxed only on Israeli source income and capital gains.

- 12.3.2. Certain rules have been adopted into Israeli taxation legislation which determine the place where income is deemed to be accrued or produced, for example:
- 12.3.2.1. in respect of business income—the place where the income yielding business activity takes place;
 - 12.3.2.2. in respect of income from business or from incidental business of a commercial nature—the place where the transaction or the business takes place;
 - 12.3.2.3. in respect of income from an occupation—where the service is carried out;
 - 12.3.2.4. in respect of work income—where the work is carried out;
 - 12.3.2.5. in respect of interest, discount and linkage differentials—the place where the payer is resident;
 - 12.3.2.6. in respect of rent or property use fees—where the property is used;
 - 12.3.2.7. in respect of a gain or profit, including royalties deriving from an intangible asset—the place where the payer is resident;
 - 12.3.2.8. in respect of dividends—the seat of the body of persons distributing the dividend.
- 12.3.3. The place where capital gains was accrued or generated shall be deemed to be in Israel, in any of the following instances:
- 12.3.3.1. the asset being sold is located in Israel;
 - 12.3.3.2. the asset being sold is located abroad and essentially constitutes a direct or indirect right to an asset, or to inventory or constitutes an indirect right to real estate or to an asset in a real estate company located in Israel (“**the Property**”), in respect of that part of the consideration deriving from the Property located in Israel;
 - 12.3.3.3. the asset comprises a share or any right relating to a share in an Israeli resident body of persons; or
 - 12.3.3.4. the asset comprises a right in a foreign resident body of persons which constitutes essentially a direct or indirect right to Property in Israel, in respect of that part of the consideration deriving from the Property located in Israel.

12.4. **Corporate Tax**

12.4.1. **Residence:** A corporation is deemed to be resident in Israeli if it is organized under the law of Israel or controlled and managed from Israel. A foreign corporation managed and controlled from Israel by a new Israeli resident or a senior returning resident (individual who returned to Israel after being a foreign resident for at least 10 years continuous) generally will not be classified as an Israeli resident company for 10 years from the date of return to Israel.

12.4.2. **The corporate tax rate** applicable in Israel upon net income is 23% as of 2018 (24% in 2017).

12.4.3. **Dividends:** There is no corporate tax on dividends distributed by an Israeli resident company to another Israeli resident company if the dividend so distributed originated from income generated or accrued in Israel.

Dividends originating from income generated or accrued outside of Israel, or received from abroad, are subject to corporate tax. Tax credit will be granted in respect of the withholding foreign taxes paid abroad on such distributed dividend. A company may elect or, pursuant to the provisions of any applicable tax treaty in force, be entitled, to declare, that corporate tax shall apply to “the grossed-up dividend” (as defined below) and thus enjoy the benefit of a credit on a direct and an indirect foreign tax paid if the Israeli company qualifies for the indirect tax credit mechanism.

“**The grossed-up dividend**” means the amount of income received in the form of a dividend to which there has been added tax payable in respect of the income out of which the dividend was distributed.

12.4.4. **Capital Gains**

12.4.4.1. Broadly, the sale of a capital asset is subject to capital gains tax.

12.4.4.2. When calculating the sum of capital gains tax payable, certain basic principles need to be taken into consideration. The term “sale” includes any direct or indirect exchange, renunciation, disposition, transfer, grant, gift and also any other act or occurrence as a consequence of which an asset passes out of the control of one person to another, excluding by way of inheritance.

12.4.4.3. For this purpose, an “asset” includes any property, whether movable or immovable, as well as any rights in Israel or abroad, except: movable property held by an individual for his personal use, inventory, rights in real estate and rights in real estate companies (all of which are subject to land appreciation tax (a tax similar to that imposed on capital gains)).

- 12.4.4.4. The capital gains tax rate depends on the purchase date and the nature of the assets.
- 12.4.4.5. The rate of corporate tax on “real capital gains” (*i.e.*, the capital gain less the inflationary amount) is the corporate tax rate.
- 12.4.4.6. The tax rate on the inflationary amount is 10% with respect to that part of the inflationary amount which accrued until 31 December 1993 and is zero-rated with respect to that part of the inflationary amount accruing after such date.
- 12.4.4.7. Subject to several conditions, the tax rate on the real capital gain, equal to the seller's right in the profits available for distribution which accrued until 1 January 2003, is 10% and the tax rate on the real capital gain equal to the seller's right in the profits available for distribution accruing after 1 January 2003 is the same tax rate as that imposed on it had the sum been received by the seller as a dividend, prior to the sale of the shares (*i.e.*, 0% if the seller is an Israeli company for the purposes of corporate tax and if the profits available for distribution derive from income generated or accrued in Israel, or a tax rate of 25% / 30% in other cases).
- 12.4.4.8. Certain exemptions from capital gains tax are applicable to foreign residents (corporate and individuals). A foreign resident is exempt from tax on capital gains from the sale of securities listed on the TASE, if the capital gain is not attributable to a permanent establishment in Israel.
- Moreover, subject to several conditions, all foreign residents (corporate and individuals) are exempt from Israeli capital gain tax from the sale of shares in Israeli or Israeli related companies acquired on or after 1 January 2009.

12.5. Treatment of Tax Losses

- 12.5.1. Certain principles apply facilitating a set-off of losses. Losses arising from a vocation or business may be set-off in the year in which they are made against income from any other source (interest, dividends, capital gains and the like). Where losses are carried forward to subsequent years they may be set-off, without any time limit, against income from a vocation or business, or capital gains and land appreciation from assets that serve the business or the vocation, but not against income from any other source.
- 12.5.2. Tax losses cannot generally be carried back. Profits or losses of one company may not be set-off against those of another company, even if the other company is within the same group of companies, except in certain cases of “industrial companies” where consolidated tax returns have been filed.

- 12.5.3. Certain specific rules exist to facilitate a set-off of losses suffered by an Israeli resident company outside of Israel.
- 12.5.4. With respect to set-off of capital losses, the amount of the capital loss incurred in a given tax year shall be set-off firstly against the “real capital gain” (including the “real appreciation”—the real capital gain from the sale of real estate) and thereafter against the chargeable inflationary amount (at a ratio of 1:3.5 of the inflationary amount). If the capital loss from the sale of an asset was incurred outside of Israel, then such loss shall firstly be set-off against any capital gain derived outside of Israel. Only capital losses which cannot be set-off as aforesaid may be carried forward to the subsequent year, without any time limit. Generally, no carrying back of capital losses is permitted.
- 12.5.5. In addition, certain specific rules permit set-off of capital gains losses incurred from the sale of securities in a given tax year against interest or dividend income in respect of securities.
- 12.6. **Deductions**
- 12.6.1. Broadly, an assessee can deduct all types of expenses which were “wholly and exclusively” incurred during the tax year and which relate to the production of income by such assessee, unless such deduction is limited or disallowed.
- 12.6.2. Part of the permitted deductions is determined by statute. Expenses that are statutorily deductible include, *inter alia*, interest and linkage differentials, depreciation, rent, repairs, bad debts, sums paid to approved employee benefit funds (subject to maximum levels), costs of preventing damage by natural causes (soil erosion, floods), air-raid precautions, costs of preparing accounts and R&D expenses.
- 12.6.3. The major expenses that are excluded from deductibility are: private expenses, capital withdrawn or a sum used as capital, the cost of improvements, any loss or expense which is recoverable under insurance or under a contract of indemnification, amounts paid as tax (including interest and penalties accruing thereon), or expenses in respect of a benefit granted by an employer to his employees which cannot be attributed to a particular employee.
- 12.6.4. Capital expenditure will be taken into consideration on the date of sale of the asset (having regard to the calculation of the capital gain) and, until such date of sale, by way of depreciation.
- 12.6.5. Under certain conditions, an investment in the shares of a company whose main activity is R&D may be deductible as an expense for tax purposes over a five year period.

12.7. Depreciation

- 12.7.1. Depreciation allowances of fixed assets are available according to depreciation regulations.
- 12.7.2. With regard to goodwill, if the goodwill was acquired after 1 July 2003, the assessee can, in certain circumstances, deduct same at the rate of 10% per annum (of the original value).
- 12.7.3. Higher depreciation rates apply to industrial equipment used for more than one shift.
- 12.7.4. Enterprises qualifying for reduced rates are entitled to accelerated depreciation on certain conditions.

12.8. Withholding Tax

- 12.8.1. **Dividend:** The rate of withholding tax on dividends distributed to a controlling foreign resident (a person who holds at least 10% of shares of the Israeli distributing company) is 30%. Otherwise, the rate is 25%. These rates may be reduced under a tax treaty or incentives regime.

Dividends paid by an Israeli company to an Israeli resident company are exempt from corporate tax, unless the dividend derived from income generated by such Israeli company abroad.

Dividend paid to resident individual are subject to a 25% withholding tax or 30% with respect to individuals classified as a "significant shareholder".

However, in the case of a dividend distributed by a foreign resident company to Israeli resident individuals, the rate of withholding tax will be determined according to the provisions of the relevant tax treaty in force (if applicable).

- 12.8.2. **Royalties:** The rate of withholding tax on royalties is, generally the same as that imposed in respect of corporate tax if paid to foreign company and 25% if paid to foreign individual. Royalties generated in Israel are treated as part of the regular taxable income of a company. These rates may be reduced under a tax treaty.
- 12.8.3. **Interest:** Various withholding tax rates have been fixed in respect of payments of interest income, which are dependent upon the residency status and type of person receiving such interest income payments. For example, interest income payments to companies are usually taxed at the rate of corporate tax, although the rate may be reduced under a tax treaty. It should also be noted that the obligation to withhold tax is imposed also on financial institutions (e.g., banks).

Interest income payments to foreign resident individuals are usually taxed at source at the rate of 25%, although the rate may be reduced under a tax treaty.

In certain circumstances, the rate of withholding tax on nominal interest income paid to a resident individual is 15% and 25% on interest payments that are index linked.

Individuals classified as "significant shareholders" or employees of the paying company or service provider or selling products to the paying company may pay the marginal tax rate on interest payments (47% as of 2017).

- 12.8.4. Other payments to foreign corporation are subject to withholding tax at a rate of 23% as of 2018 (24% in 2017), and 25% to foreign individuals, unless otherwise determined by specific regulations. The rate may be reduced under a tax treaty.

12.9. Tax Treaties

- 12.9.1. Israel has entered into tax treaties with more than fifty countries. The provisions of any tax treaty provide a relief from double taxation on all types of income and limit the taxation by a contracting state of companies resident in the other contracting state.

- 12.9.2. Certain provisions of the tax treaties include tax-sparing relief intended to protect the special tax incentives given by Israel to foreign investors.

- 12.9.3. Israel has not enacted specific legislation concerning treaty shopping. However, the ITA is deemed to have the authority to deny benefits and reliefs under tax treaties, based on Israeli general anti-tax planning provisions as embedded in Israeli tax laws. Likewise, certain tax treaties include anti-tax planning provisions which can be used also against treaty shopping.

12.10. Anti-Avoidance Rules

- 12.10.1. Israeli tax laws include, *inter alia*, specific anti-tax avoidance provisions (e.g., rules applicable to CFCs) and a general anti-tax avoidance rule, according to which the ITA may disregard certain transactions or dispositions for tax purposes. Under the relevant Israeli taxation laws (e.g., the Income Tax Ordinance, VAT Law, etc.), if the ITA believes that a certain transaction, which reduces, or is likely to reduce, the amount of tax payable by any person (including corporations and other bodies of persons) is artificial or fictitious, or that a certain disposition is not in fact carried out, or that one of the principal objectives of a particular transaction is an improper avoidance or reduction of tax, then the ITA may disregard such

disposition or transaction and assess the tax obligation in a different manner.

- 12.10.2. The Israeli courts have developed certain parameters for determining whether a certain disposition or transaction shall be deemed artificial or fictitious for taxation purposes. The main test for reaching such determination is "the business objective" of the transaction, *i.e.*: if the assessee has a business objective for consummating the transaction in the manner elected by him, then the assessee will have a strong basis for arguing that the transaction shall not be deemed artificial or fictitious.
- 12.10.3. As may be evident from Israeli case law, the ITA has the authority to reclassify certain transactions even if a transaction is not deemed artificial or fictitious. For example, a dividend distribution could be reclassified, in certain circumstances, as payment of salary to a shareholder of a company who is also an employee of such company. Likewise, the VAT authorities have the authority to reclassify the status of an assessee as a business dealer (*i.e.*, a company or individual operating a business) or a non-profit organization or a financial institution, each of which have different tax ramifications.
- 12.10.4. **Transfer pricing** rules, which are based on the OECD guidelines, apply to every international transaction between related parties that must be set according to the arm's length principal (the fair market price). Documentation requirements determine that the taxpayer shall attach a statement to the annual tax return and provide a detailed transfer pricing study at the request of the ITA. An advance pricing agreement may be obtained between the parties.
- 12.10.5. The **CFC** rules determine that if a CFC has unpaid passive profits, then the controlling member thereof shall be treated as if he had received his proportional share of unpaid profits by way of a Deemed Dividend. A Deemed Dividend received by a corporation will be subject to corporate tax rate in Israel and if received by an Israeli individual shareholder ("a Significant Shareholder") will be subject to tax in the rate of 30% (plus 3% surtax).

In general, a CFC is a foreign resident company, which meets the following criteria:

- 12.10.5.1. its shares are not listed for trade on a stock exchange or its shares are so listed on an exchange, but less than 30% of the rights therein have been offered to the public;
- 12.10.5.2. the majority of its income in the tax year comprises passive income or the majority of its profits derive from passive income;

- 12.10.5.3. the tax rate applicable to its passive income in the foreign country does not exceed 15%; and
- 12.10.5.4. more than 50% of one or more of its means of control are directly or indirectly held by Israeli residents or more than 40% of one or more of its means of control are held by Israeli residents who, together with a relative of one or more of them, holds more than 50% of one or more of its means of control or in the case where an Israeli resident has the right to prevent the adoption of substantive management decisions, including decisions with regard to the distribution of dividends or winding-up.

If a dividend is actually paid to a shareholder out of the CFC's profits on which he or his designate paid tax as a Deemed Dividend, then such dividend shall be exempt from tax up to the proportional part of the unpaid profits in respect of which tax was paid, in addition to a tax credit for foreign tax paid.

12.11. Tax Positions Reporting Obligations & Tax Opinion Reporting Obligations

- 12.11.1. The Israeli Parliament enacted legislation which includes new reporting requirements related to income tax, VAT and import tax as of 1 January 2016.
- 12.11.2. The ITA has published a list of tax positions, which require reporting, with regard to income tax, VAT and import taxes. As opposed to an income tax related position, which must be reported in the yearly tax return, in the case of VAT and import taxes (Customs, Purchase tax and VAT on imports), the reporting of the tax positions must be made via a special form, and be submitted within 60 days of the tax year in which the position was taken.
- 12.11.3. Tax positions, which require reporting is a tax position which is opposed to a tax position which was published by the ITA as a tax position, and in respect of which the tax benefit derived from it, is greater than NIS 5 million per year, or NIS 10 million over a four-year period.
- 12.11.4. VAT positions, which require reporting is a VAT position which is opposed to a VAT position which was published by the ITA as a VAT position, and in respect of which the tax benefit derived from it, is greater than NIS 2 million per year, or NIS 5 million over a four-year period.
- 12.11.5. The new law requires disclosure of certain written tax opinion received after 1 January 2016, and tax positions taken in 2016 and thereafter. The new reporting requirements will apply to a "tax opinion," defined either as written opinion with fees which depend on

the amount of tax advantage generated, or that the opinion is considered an “off-the-shelf planning.”

- 12.11.6. The taxpayer would be required to report on receiving tax opinion, but would not be required to provide the opinion to the ITA.
- 12.11.7. Failure to comply with the new disclosure requirements can trigger interest and penalties, and even criminal sanctions.
- 12.11.8. **Reportable tax planning acts:** Israeli Tax Planning Rules created a blacklist of “reportable tax planning acts”. If the assessee completed any reportable tax planning act on this blacklist, then it must be reported on a special form that is attached to the annual tax return.
- 12.12. **Encouragement of Capital Investments Law**
 - 12.12.1. In order to encourage local and foreign investors, as well as entrepreneurs to establish businesses and to invest in Israel, the Israeli government and the ITA have introduced many tax incentives designed to reduce the rate of corporate tax in Israel for many local and foreign companies on their taxable income.
 - 12.12.2. Recently, the Capital Investments Law was amended to significantly revise the tax incentive regime in Israel. The amendments introduced a new status of “preferred enterprise,” replacing the existing status of “beneficiary enterprise”. Moreover, the amendments introduced a new status of “special preferred enterprise”, “preferred technology enterprise” and “special preferred technology enterprise”.
 - 12.12.3. A **Preferred Enterprise** must generate ‘industrial income’, which is defined as income that was produced or arose in the course of the enterprise’s ordinary activity from one or more of the types of income mentioned in the Capital Investments Law.
 - 12.12.4. In order to qualify for grants or tax benefits under the Capital Investments Law, the enterprise must meet certain conditions, including a minimum of 25% of its revenue from export activities. A preferred enterprise is entitled to a reduced flat tax rate with respect to preferred enterprise income at rate of 7.5% for operations in development area A and 16% for operations outside of development area A.
 - 12.12.5. Under the Law, preferred enterprise is entitled to accelerated depreciation on certain conditions.
 - 12.12.6. The withholding tax rate applicable to dividends from preferred enterprise profits is 20%, which may be reduced under certain tax treaties.

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- 12.12.7. A **Special Preferred Enterprise** regime is intended for very large companies with material investments in productive assets, R&D, or in providing new employment opportunities. A company must demonstrate that it will greatly contribute to the Israeli economy to qualify for the Special Preferred Enterprise regime.
- 12.12.8. An Israeli company must meet certain conditions, such as having preferred industrial income greater than or equal to NIS 1 billion and being part of a group of companies that generates annual revenues greater than or equal to NIS 10 billion in the same industrial sector in which the Israeli company operates.
- 12.12.9. The Special Preferred Enterprise corporate tax rate will be 5% for operations in development area A and 8% for operations outside of development area A for ten years. After ten years, the Preferred Enterprise tax rates shall apply unless the company has a new investment program that requalifies the company again for Special Preferred Enterprise status.
- 12.12.10. The withholding tax rate applicable to dividends distributed from the profits generated by a Special Preferred Enterprise is 20%, which may be reduced under certain tax treaties. As of 2017 and until 31 December 2019, a 5% withholding tax rate shall apply to dividends paid to a foreign parent company from a Special Preferred Enterprise's profits.
- 12.12.11. A **Preferred Technology Enterprise** is a company that must engage in the technology sector and meets certain conditions in order to qualify as a Preferred Technology Enterprise.
- 12.12.12. The Preferred Technology Enterprise reduced corporate tax rates will be 7.5% for operations in development area A or 12% for operations outside of development area A. These corporate tax rates shall apply only with respect to the portion of R&D in Israel, based on regulations.
- 12.12.13. A Preferred Technology Enterprise that sells IP to a related foreign company will qualify for a reduced 12% capital gains tax rate, provided that the company acquired the IP from a foreign company after 1 January 2017 for at least NIS 200 million, subject to the approval of the National Authority for Technological Innovation.
- 12.12.14. A reduced 4% withholding tax rate may apply to dividends paid to a foreign parent company holding at least 90% of the shares of the distributing company. For other dividend distributions, the withholding tax rate shall be 20%, which may be reduced under certain tax treaties.
- 12.12.15. A **Special Preferred Technology Enterprise** is a company that must meet the eligibility conditions of a Preferred Technology Enterprise as

referred to above and be part of a group of companies with aggregate annual revenues of at least NIS 10 billion.

- 12.12.16. The Special Preferred Technology Enterprise reduced corporate tax rates will be 6% for a period of at least ten years, subject to detailed qualifying rules. The reduced tax rate shall apply only with respect to the portion of R&D in Israel, based on regulations.
- 12.12.17. Companies that sell IP to a related foreign company will qualify for a reduced 6% capital gains tax rate, provided that the company developed or acquired the IP from a foreign company after 1 January 2017, subject to the approval of the National Authority for Technological Innovation.
- 12.12.18. The dividend withholding tax rates are the same as under the Preferred Technology Enterprise regime, discussed above.
- 12.12.19. **Approved Enterprise** and **Benefited Enterprise** regimes were tax incentive programs granted to operations qualifying under the Capital Investments Law prior to its amendment in 2005 and 2011.
- 12.12.20. An Israeli company classified as an Approved or Benefited enterprise is entitled to a reduced tax rate of between 0% and 25%, with the period of benefits depending on where the enterprise is located and whether certain conditions are satisfied. The benefits will be revoked if profits deriving from the Approved/Benefited income are distributed. Qualified companies may be eligible for both reduced corporate tax rates and grants from the Israel Innovation Authority.
- 12.12.21. A withholding tax rate of 20%, subject to a possible reduction under a tax treaty, applies to dividends paid from profits of an Approved Enterprise or Benefited Enterprise. A reduced rate of 4% on the alternative incentive track ("Ireland track") applies only to distribution to foreign resident companies.

12.13. Individual Tax

12.13.1. Residence

12.13.1.1. An "individual" is defined as an "Israeli resident" for tax purposes if his "center of vital interest" is in Israel. In order to determine the place where an individual's "center of vital interest" is, there need to be taken into account such individual's family, economic and social ties.

12.13.1.2. It is assumed that the individual's "center of vital interest" is in Israel in a tax year if: (a) he spent 183 days or more in that tax year in Israel; or (b) he spent 30 days or more in Israel in that tax year and the total period of his stay in Israel in the tax year and in the preceding two tax years amounted to 425 days or

more. Such assumption may be refuted both by the individual and by the ITA.

12.13.1.3. An Israeli resident who spends 2 consecutive years abroad 183 days each year and whose center of vital interest in the two subsequent years was located abroad will be deemed to be a foreign resident as from the date the individual chose to leave Israel.

12.13.1.4. New Israeli residents and senior returning residents are entitled to a 10 year tax exemption for certain types of income derived from or accrued abroad, or sourced from assets abroad starting from the date of immigration or return to Israel.

12.13.2. **Tax Rates**

12.13.2.1. The income tax rates are progressive starting at 10% and increasing to 47%.

12.13.2.2. An additional 3% surtax is levied on annual taxable income (plus capital gains and "real appreciation", if any—see sections 12.13.3 and 12.15, respectively below) exceeding NIS 641,880. The surtax is not applicable to certain type of income.

12.13.2.3. Notwithstanding the aforesaid rates, special tax rates apply to certain types of income under specified conditions, such as: rental from a residential apartment (usually, 0% or 10%); rental income from abroad (15%); the sale of a patent (up to a maximum of 40%); income from gambling or lotteries (35%); dividends (25% or 30% on individuals classified as Significant Shareholders); income from interest (15% on nominal interest payment or 25% on interest that are index-linked, or progressive tax under several circumstances).

12.13.2.4. In general, the national tax rates on income for foreign residents are similar to those applicable to Israeli residents. However, foreign residents may be entitled to certain reliefs and exemptions in respect of certain sources of income and under a tax treaty.

12.13.2.5. In Israel, a special tax treatment applies in relation to employee stock option plans that may reduce the rate of tax payable in respect of benefits gained by an employee to 25%.

12.13.3. **Capital Gains**

12.13.3.1. Broadly, the sale of a (capital) asset is subject to capital gains tax.

- 12.13.3.2. The individual tax rate on “real capital gains” (the capital gain less the inflationary amount) is 25%. However, if the real capital gain derived from the sale of shares in a company by a controlling shareholder (who holds at least 10% of the company's shares), the tax rate is 30%.
- 12.13.3.3. Capital gains derived from the sale of bonds, commercial securities or loans that are not linked to the CPI are subject to tax at a rate of 15% or 20% with respect to the controlling shareholder.
- 12.13.3.4. The real capital gain tax rate depends on the date of acquisition and the type of assets since the tax rates range from 20% up to the individual's marginal tax rate, for example, the applicable tax rate with respect to that part of the capital gain which accrued prior to 1 January 2003 is the marginal income tax rate (up to a maximum tax rate of 47%) and the applicable tax rate with respect to that part of the capital gain which accrued after 1 January 2003 but prior to 1 January 2012 is 20% or 25% with respect to the controlling shareholder.
- 12.13.3.5. If an asset was purchased prior to 1 January 2003 and then sold after such date, the division (for the purposes of calculation of the tax liability) of the accrued capital gains will be made by way of the linear method.
- 12.13.3.6. The tax rate on the inflationary amount is 10% with respect to that part of the inflationary amount which accrued until 31 December 1993 and zero-rated with respect to that part of the inflationary amount accruing after such date.
- 12.13.3.7. The individual tax rate on capital gains from the sale of goodwill for which acquisition no consideration has been paid is 25% (including that part of the capital gain which accrued prior to 1 January 2003).
- 12.13.3.8. Subject to several conditions, the tax rate on the real capital gain, equal to the seller's right in the profits available for distribution which accrued until 1 January 2003, is 10% and the tax rate on the real capital gain equal to the seller's right in the profits available for distribution accruing after 1 January 2003 is the same tax rate as that imposed on it had the sum been received by the seller as a dividend, prior to the sale of the shares (*i.e.*, 25% or 30% with respect to controlling shareholder).
- 12.13.3.9. Israeli income tax laws include several reliefs and exemptions which apply to capital gains tax imposed on individuals, for example: (i) gifts made to relatives or to other individuals if the ITA is satisfied that the gift was made in good faith; (ii) gifts to

the State of Israel or certain public institutions; (iii) new Israeli resident and senior returning resident are entitled to a capital gain tax exemption for sale of assets he or she had abroad for a period of 10 years as from the date of immigration/return to Israel.

12.13.3.10. Certain exemptions from capital gains tax apply to foreign residents.

12.13.3.11. An individual is required to submit a report and make an advance payment of the capital gain tax within 30 days after the date of sale of the capital asset.

12.13.4. **Credits, Deduction and Allowances**

12.13.4.1. Israel has adopted a tax credit system which entitles Israeli residents to deduct, in the form of a credit, specified amounts from the tax payable by them.

12.13.4.2. Deductions are granted for pension fund contributions.

12.13.4.3. Individuals are entitled to various personal allowances.

12.13.4.4. Under certain conditions, an investment by individual in the shares of a company whose main activity is R&D may be deductible as an expense for tax purposes over a 3 year period against any source of income.

12.13.5. **Inheritance and Gifts**

Israel does not levy inheritance tax, gift tax or net wealth tax. However, the recipient of an inherited or gifted capital asset will be subject to capital gains tax on the subsequent sale of such asset taking into account the acquisition value and date of purchase thereof by the testator or transferor of the gift. In light of the foregoing, the recipient (whether the heir or transferee of the gift) of the asset shall also be liable to capital gains tax in respect of the capital gain accruing from the date of acquisition by the transferor until the date of actual sale thereof by the heir or transferee.

12.13.6. **Filing Status**

12.13.6.1. Individuals usually pay the income tax due by them on a cash basis. Income tax payable by Israeli employees on salary income is made on a cash basis, usually by way of withholding tax by the employer.

12.13.6.2. A spouse's income in Israel is calculated on a joint basis, however there are exceptions to this rule pursuant to which

certain income of the spouse is calculated for taxation purposes separately.

12.14. VAT

- 12.14.1. The major sales tax in Israel is VAT. VAT is an indirect tax based on the consumption of goods and services and usually the end-customer is the one who bears the payment of VAT. In general, VAT is imposed in respect of the following: (a) the sale of an asset (not including shares and tradeable securities); or (b) the performance of a service, subject to several conditions. Thus, shares and tradeable securities as well as all rights attaching thereto are excluded from the definition of an "asset" and any sale thereof is usually not subject to VAT.
- 12.14.2. Financial institutions (*i.e.*, banks, insurance companies, *etc.*) are not subject to VAT but, rather, are required to pay wage tax and profit tax at a rate of 17%. Non-profit organizations are not subject to VAT but are obliged to pay wage tax at a rate of 7.5%.
- 12.14.3. An "authorised dealer" (which term is defined, generally, to mean a company, other than a non-profit organization or a financial institution, which sells assets or renders services in the course of its business and that is lawfully registered with the VAT authorities) is entitled to deduct from the VAT for which it is liable the input tax included in a tax invoice lawfully issued to him or as stated in an import entry or other document approved by the VAT authorities, upon certain conditions being met.
- 12.14.4. The rate of VAT in Israel is currently 17%. Some transactions are zero-rated and some transactions are exempt from VAT. The main distinction between zero-rated transactions and a transaction which is exempt is that a dealer may deduct the input taxes paid in respect of a zero-rated transaction, while input taxes payable in respect of a transaction which is exempt will not be credited or refunded by a dealer.
- 12.14.5. Another type of tax payable is **purchase tax**. Purchase tax is imposed on the import or sale of certain types of goods. The rates of purchase tax vary from one product to another.
- 12.14.6. The most-southern port and city in Israel is Eilat, which enjoys a special status as a free trade zone as well as several tax benefits.
- 12.14.7. An authorized dealer is obliged to issue a transaction invoice to a purchaser for each transaction (or part thereof), even if such transaction is zero-rated or exempt from VAT.
- 12.14.8. Likewise, a person liable to VAT shall file a return every month, within fifteen days after the relevant period for filing such return and shall

include therein all transactions made by him during that month. When filing a return, such person shall also pay the VAT payable in respect of the period during which such return falls due.

12.14.9. A foreign resident having a business or activity in Israel and therefore liable to pay VAT in Israel, is required, within 30 days after the commencement of his business activities in Israel, to appoint a representative, having a permanent place of residence in Israel, to act on behalf of such foreign resident for VAT purposes as well as for any and all income taxes payable by the foreign resident to the ITA.

12.15. Real Estate Appreciation Tax

12.15.1. Capital gains accruing from the sale of rights in real estate in Israel or rights in an Israeli real estate company (“**real estate**”) are subject to “betterment tax” (which is similar to capital gains tax).

12.15.2. The rate of corporate tax on the “real appreciation” is corporate tax (23% as of 2018).

12.15.3. The individual tax rate on the “real appreciation” accruing after 1 January 2012 is 25% and that which accrued between 7 November 2001 to 1 January 2012 is 20% and which accrued prior to 7 November 2001 is the marginal income tax rate (up to a maximum tax rate of 47%). Determination of the real appreciation tax for real estate acquired prior to 1 January 2012 will be made using the linear method.

12.15.4. The rate of tax on the inflationary amount is similar to that applicable to capital gains tax, as referred to above.

12.15.5. In respect of the sale of capital assets (rights in real estate or other capital assets) that were acquired until 1960, the rate of capital gains tax payable could be lower under several circumstances.

12.15.6. In the event that, as a result of modifications in the assignment or building rights in respect of certain land (*i.e.*, additional building rights or a change in the designation of the land) there is an increase in the value of the land, the owner of the land is liable to pay “betterment levy” to the relevant local or regional authority (council/municipality) at the rate of 50% of such increase. Betterment levy is generally paid at the time of sale of the land or receipt of a building permit in respect of additional building rights. The betterment levy may be deducted from the betterment subject to the property betterment tax.

12.15.7. Special exemptions apply on certain sales of real estate rights, one major exemption being with respect to the sale, under certain conditions, of residential apartments that are used mainly for residential purposes.

- 12.15.8. In addition, other exemptions apply, *inter alia*: (1) in the event of a transfer of real estate rights in the form of a gift to a relative; (2) upon certain transfers of real estate rights to companies from individuals holding rights in such companies; or (3) upon the unification and partition of real estate.
- 12.15.9. In addition, upon the sale of a real estate right, the purchaser shall be liable to pay real estate acquisition tax at the rate of 0%–10% of the sale price for residential apartments and acquisition tax at the rate of 6% in respect of other real estate rights. Certain reliefs are available with respect to acquisition tax, under certain conditions.
- 12.15.10. Parties to a real estate transaction must file a report with regard to the relevant transaction within 30 days after the date of sale.
- 12.15.11. Usually, no VAT is imposed on any transfer of real estate rights by individuals, unless the real estate constitutes a business inventory or an asset used in the business of the seller or the purchaser, as the case may be, or in other specified cases.

13. IMMIGRATION REQUIREMENTS

13.1. Immigration Controls¹⁷

13.1.1. *Are there immigration quotas?*

Israel has no immigration quotas, *per se*. The Law of Return entitles every Jew or any person with at least one Jewish grandparent to immigrate to Israel.

Since the early 1990's, an increasing number of foreign workers have entered Israel, which gave rise to various internal conflicts, *inter alia*, with respect to the employment market and affected industry sectors. As a result, quotas limiting the number of foreign workers permitted to enter and work in Israel are set annually by the Israeli government with respect to the different sectors of employment where the need for such foreign workers has been recognised (such as: construction, agriculture, industry, *etc.*).

13.1.2. *Are medical certificates or vaccinations required?*

In principle, the Entry into Israel Law and the Entry into Israel Regulations do not require that a person wishing to enter Israel furnish a medical certificate. However, the Minister of Interior (in this Chapter 16, (“**the Minister**”)) is authorised to enact regulations regarding medical inspection of persons entering Israel, medical treatments provided to them and any sanitary disinfection of their

¹⁷ Some of the information contained in this Chapter 16 was obtained from the internet site of the Ministry of Tourism (www.tourism.gov.il).

belongings. The Minister is also empowered to take measures rejecting or reducing contact between travellers who have arrived in Israel and any individual already located in Israel, if the Minister is of the opinion that such measures are necessary, *inter alia*, in the interests of public health. For example, during the outbreak of SARS in 2003, the Minister ordered that all passengers arriving from infected countries be medically examined upon their arrival to Israel.

Regarding foreign workers in Israel, the Entry into Israel Law expressly provides that a permit will not be granted to a foreign worker, unless a medical certificate has been obtained. Such medical certificate must be issued by a medical institution recognised by the Israeli Minister of Health and which is located in the foreigner's country of origin. The medical certificate should certify that: (a) according to the medical institution, the foreign worker underwent medical tests in the three months preceding his entry into Israel; and (b) the results of the medical tests reveal that the foreign worker does not have any of the diseases prescribed in the Foreign Workers Law.

The Minister may exempt a foreign worker from the obligation to furnish the aforesaid medical certificate. Such exemption may be applied personally or collectively.

Finally, vaccinations are not specifically required for persons wishing to enter Israel.

13.1.3. *Are entry permits required? Must you apply for an entry permit before entering the country?*

Every visitor to Israel must have a passport valid for at least six months. Persons with no citizenship whatsoever must have a valid transit certificate, with a return visa to the country that issued it.

The Entry into Israel Law provides that any person wishing to enter Israel who does not possess Israeli citizenship or is not a new immigrant ("*oleh*") must be issued with an entry permit (*i.e.*, a visa). Visitors are permitted to remain in Israel for a period of three months from the date of their arrival, in accordance with the terms of the visa issued to them. Visitors wishing to work in Israel must file the relevant application with the Minister for receipt of a special work visa (B-1).

Citizens of the following countries are not required to obtain a tourist visa prior to their arrival in Israel and will be issued with such visa, without charge, at every port of entry into Israel:

All citizens of the European Union; Albania; Andorra; Argentina; Australia; Bahamas; Barbados; Belarus; Belize; Botswana; Brazil; Canada; Central African Republic; Chile; Colombia; Costa Rica; Dominica; Dominican Republic; Ecuador; El Salvador; Fiji; Georgia;

Grenada; Guatemala; Haiti; Honduras; Hong Kong; Iceland; Jamaica; Japan; Lesotho; Liechtenstein; Macao; Macedonia; Malawi; Mauritius; Mexico; Micronesia; Moldova (only for biometric passports); Monaco; Mongolia; Montenegro; Nauru; New Zealand; Norway; Palau; Panama; Papua New Guinea; Paraguay; Peru; Philippines; Russia; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; San Marino; Serbia; Singapore; Solomon Islands; South Africa; South Korea; Suriname; Swaziland; Switzerland; Taiwan; Tonga; Trinidad and Tobago; Ukraine; United States; Uruguay; Vanuatu; Vatican City.

The above list is applicable to national passports only. In the case of an official passport, the visa requirements may differ from country to country.

Citizens of other countries should contact the local Israeli consulate before the contemplated entry into Israel in order to obtain a visa. It is advisable to apply for a visa at least one month prior to the planned visit.

Visas may be extended (for a nominal fee) at the offices of the Ministry of the Interior located in Jerusalem, Tel-Aviv, Haifa, Eilat, Ben Gurion Airport and Tiberias.

13.1.4. *Are exit and/or re-entry permits required?*

An exit permit is not required. However, when departing Israel, a person will be required to present a valid passport as well as the form duly completed by him upon entering Israel to the relevant border control official.

In general, citizens of the countries listed in section 13.1.3 above are automatically issued a visa upon entry or re-entry into Israel. Citizens of other countries may re-enter Israel for the duration of the visa issued to them, subject to the terms thereof.

13.2. **Immigration Requirements/Formalities**

13.2.1. *Is a residence permit required? If so, does the investor have to apply for one before entering the country?*

Pursuant to the Entry into Israel Law, residence in Israel by a person, other than an Israeli citizen (or an *oleh* (i.e., new immigrant) under the Law of Return), requires a residency permit. Residency permits are granted by the Minister for various periods of time, according to the purpose for which the permit of residence is sought. The available permits and duration of stay allotted to each type of permit, are as follows:

- A *visitor residence permit*—granted for an initial period not exceeding three months, which permit may be extended for a period not exceeding two years.

A visitor residence permit may be issued to a person wishing to enter and work (whether with or without consideration) in Israel on a temporarily basis only.

- A *permit of temporary residence*—granted for a period not exceeding three years. However, the Minister may extend the permit, provided that each extended period does not exceed two years.

A permit of temporary residence may be issued to the following individuals:

- (a) an individual who, ordinarily would be entitled to receive a visa according to the status of an *oleh* (new immigrant), wishes to reside in Israel for a period of up to three years solely for the purpose of exploring the possibility of subsequently settling in Israel as an *oleh*;
- (b) a person wishing to reside in Israel for study purposes;
- (c) a religious scholar wishing to reside in Israel for the purpose of maintaining a religious function within his religious community in Israel who has been invited to come to Israel at the request of the relevant religious institutions;
- (d) a person wishing to reside in Israel who is a relative of a person (spouse or a minor child) who has been issued with a permit of temporary residence of the type falling within (b) or (c) above; or
- (e) any person wishing to temporarily reside in Israel for any reason.

13.2.2. *What information must be supplied to the immigration authorities?*

The information and documents to be provided by an applicant and which need to be attached to the application for a residency permit are as follows:

- the applicant's valid foreign passport;
- a certified copy of the applicant's birth certificate;
- a photograph of the applicant;
- the personal details of the applicant;

- details of the applicant's spouse and/or children;
- the applicant's permanent place of residence outside of Israel;
and
- the purpose for entering Israel.

In specific cases, additional documents may need to be furnished. For example, if the applicant wishes to obtain a residency permit in order to study in Israel, the applicant should also provide:

- written confirmation from the relevant Israeli educational institution to which he has been admitted as a student;
- proof that the applicant has adequate financial resources; and
- a certificate confirming payment of tuition fees.

If the purpose of the applicant for applying for a residency permit is to perform a religious function, in addition to providing the aforementioned, the applicant should also provide a reference from the Ministry of Religion as well as a certificate from the religious institution where he intends to serve.

Furthermore, the Minister has the discretionary power to demand that an applicant provide further details relating to the proposed entry and/or stay in Israel, as well as evidence corroborating such details.

13.2.3. *How long does it take to receive authorisation?*

There is no definite time frame within which the Ministry of Interior is required to issue the relevant authorisation. The duration depends upon the circumstances of each individual case and the country of origin. Under normal circumstances, such authorisation is issued within two to three weeks, after the Minister has had an opportunity to make the necessary internal inquiries and has examined the documents attached to the relevant application, including their accuracy.

13.3. **Visas**

13.3.1. *Is a visa required for travel or stay in the country? If so, for how long is the visa valid?*

See section 13.1.3 above.

13.3.2. *How does the investor apply for a visa?*

See section 13.1.3 above.

13.3.3. *What documents are required?*

The main document which will need to be attached to an application for a visa is the applicant's passport or any other travel document. Citizens of the countries listed in section 13.1.3 above do not require any additional documents. Citizens of other countries should consult with the local Israeli consulate in their country of origin.

13.3.4. *How long does it take to receive a visa?*

Citizens of the countries listed in section 13.1.3 above holding national passports obtain visas at the point of entry. Citizens of other countries should apply to the local Israeli consulate in their country of origin for the relevant visa at least one month prior to their planned departure.

13.3.5. *What fees are involved?*

With regard to citizens of the countries listed in section 13.1.3 above holding national passports, no fees are involved. With regard to citizens of other countries, fees are payable, the amount of which may vary from country to country.

14. EXPATRIATE EMPLOYEES

14.1. Cost of Living and Immigration

- *How does the cost of living compare to that in the investor's home country?*
- *What is the rate of inflation?*

The cost of living in Israel, when compared to the investor's home country, depends on the country of comparison. Of course, the cost of living takes into consideration not only prices, but income as well. The Mercer's Cost of Living 2018 survey, ranked Tel Aviv the 16th most expensive city out of over 200 cities around the world that the survey covered. The survey measures the comparative cost of over 200 goods and services in each location, including housing, transport, food, clothing, household items and entertainment. New York City is used as the base city and all other cities are compared against New York City. Two main factors determine a city's ranking in Mercer's survey—the relative strength of the relevant currency against the US dollar over the prior 12 months and price movements over the prior 12 months as compared to those of New York City. Tel-Aviv is more expensive than most European and US cities (e.g., Paris (ranked 34th), Rome (ranked 46th), Los Angeles (ranked 35th) and Chicago (ranked 51st)). It is less expensive than Zurich (ranked 3rd) and Bern (ranked 10th).

The annual average inflation rates for each year during the five-year period (2013-2017) were as follows:

2017 –	0.40%
2016 –	-0.54%
2015 –	-0.60%
2014 –	0.48%
2013 –	1.55%

(Rate as of July 2018 (year-on-year) was 1.4%.)

14.2. Drivers' Licences

- *Must the investor obtain a driver's licence for that country?*
- *How does the investor obtain a driver's licence?*
- *What fees are involved?*

An investor visiting Israel as a tourist is permitted to drive in Israel during his stay, provided that he has applied for and obtained a valid international driver's licence and holds same together with a valid driver's licence applied for and obtained in his country of residence. In such event, the investor's driver's licence will be valid for one year, commencing on the date of the investor's entry into Israel.

After the expiration of this one-year period, the investor must apply to the Israeli licensing authorities to convert his/her foreign drivers licence into a valid Israeli license.

14.3. Education

- 14.3.1.
- *What types of schools are available for the investor's family?*
 - *What fees are involved?*
 - *What is required for enrolment?*

There are several types of private schools in Israel which provide instruction in languages other than Hebrew. The American International School located in Even Yehuda (a residential area located approximately 25 kilometres north of Tel-Aviv) is attended largely by the children of diplomats. A branch was recently opened in Jerusalem to serve the needs of the children of diplomats or other dignitaries located in and around the Jerusalem area. The fees charged by the American International School are relatively high and are not tax deductible. Several other private schools funded by certain religious sectors have been established in Israel such as the schools located in Jaffa and in East Jerusalem. These schools

charge lower fees and the language of instruction is English, French or Arabic.

The investor may also send their children to public schools located in the area in which the investor resides, where instruction is given in the Hebrew language. No tuition fees are payable but parents are required to pay at the beginning of each school year a set amount to cover certain extra additional items and/or activities offered by the relevant school, including sums to cover cultural and recreational activities and school outings. In addition, parents should provide exercise and text books and pay for standard school attire and other additional costs required by the relevant public school during the course of the school year. In order to enrol with a public school, the investor will need to present his/her passport and visa to the Education Department of the applicable local authority (municipality or local council) where the investor resides in Israel, as well as passports (or birth certificates) of his/her child/children. However, should the investor's child/children not be proficient in Hebrew, they will be required to first attend a school catering solely to teaching the Hebrew language ("*Ulpan*").

14.4. Housing

- 14.4.1.
- *What type of housing is available for the investor?*
 - *Can the investor own property?*
 - *Must the investor have housing before he enters the country?*

The investor may rent or purchase housing in Israel. Usually, when first coming to Israel, it is advisable for the investor to rent rather than purchase property and only purchase property after the deciding to make a long-term commitment to Israel.

Fully furnished apartments or villas with air-conditioning (a must in the hot humid summers) are available for rent in Jerusalem, Tel-Aviv, Haifa and the suburbs. There is no requirement that the investor own housing before entering the country.

14.5. Importing Personal Possessions

- 14.5.1. *How can the investor import his personal belongings?*

Personal belongings may be shipped to Israel by an international moving company, subject to customs duties. It may be possible to obtain an exemption from customs if the goods are intended for personal use during a short-term stay in Israel and the goods are repatriated at the end of the stay. Clearance of belongings through customs is usually performed by customs agents and most international movers retain the services of a customs agent.

- 14.5.2. *Are import duties payable?*

In general, customs and import duties are levied on import of most types of assets (including personal belongings) into Israel. However, the relevant Israeli legislation dealing with the taxation of imports (e.g., the Customs Ordinance) contains many exemptions regarding the import of “personal belongings” and other specific articles brought into Israel by immigrants (new residents), returning residents, tourists and foreign residents under certain circumstances.

14.5.3. *Are there requirements for clearing the belongings through customs?*

In general, any person seeking to obtain an exemption from customs and import duties must submit to the Customs Authorities all relevant documents regarding his status (e.g., whether they are a tourist or immigrant). The Customs Authorities may also require them to provide certain guarantees, in order to ensure that the articles will leave Israel on the date such person departs or that the customs and import duties will be paid, if the articles will, by consent, remain in Israel.

14.6. **Medical Care**

- *What level of medical care is available?*
- *Is there national health?*

The level of medical care in Israel is high, by any objective standard. All Israeli residents are entitled to medical care pursuant to the National Health Insurance Law. Foreign citizens visiting or staying in Israel on a short-term basis are not considered Israeli residents and, therefore, should obtain health insurance from a commercial insurance company. These services are generally provided by the recognised sick funds, private doctors and/or hospitals.

14.7. **Moving Costs**

14.7.1. *What costs are involved in moving?*

No special moving costs are involved, save for the costs involved in shipping personal belongings to Israel.

14.8. **Work Contracts**

- *Does the investor need a work contract to work in the country?*
- *If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?*
- *Does the contract have to be with a national or resident of the country or related state?*

There is no legal requirement for the investor to have a written employment contract to enable him to work in Israel, unless the

employee is neither a citizen nor resident of Israel. Nevertheless, a notice setting down specific employment terms must be submitted by the employer to the employee. Contracts for foreign employees should be made in writing, in a language understood by them. Special entry visa and work permits (see section 14.9—*Work Permits* below) are also required for such foreign employees. The relevant application for a work permit must be made by the prospective employer. The employee should be employed in the occupation described in the application. The contract need not be for a prescribed duration.

14.9. Work Permits

- 14.9.1.
- *Does the investor need a work permit to work in the country?*
 - *How and where does the investor apply for the permit?*
 - *What documents are required?*
 - *What fees are involved?*
 - *How long does it take to receive the permit?*

The applicable requirements appearing in section 11.5—*Labour Permits* above would apply, *mutatis mutandis*, to a foreign investor wishing to be employed in Israel.

- 14.9.2. *For how long is the permit valid?*

Work permits are usually issued for a period not exceeding one year but this period may be extended upon the employer's specific request.
