



ICLG

The International Comparative Legal Guide to:

Fintech 2017

1st Edition

A practical cross-border insight into Fintech law

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EDITORIAL

Welcome to the first edition of *The International Comparative Legal Guide to Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Artificial Intelligence in Fintech.

Country question and answer chapters. These provide a broad overview of common issues in fintech in 33 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Israel, the “Start-Up Nation”, had been a fertile ground for disruptive financial technologies long before the term fintech achieved its current prominence. Today, with innovation centres established by Citibank and Barclays (each boasts its own accelerator programme), local R&D centres of international giants like of Visa, PayPal and Intuit (many of which were initially established by acquiring an Israeli start-up company), and support of the prominent local financial institutions (including “The Floor” hub at the Tel-Aviv Stock Exchange, sponsored by internationals including HSBC, RBS, Santander, and Deutsche Bank) – Israel is leading the fintech innovation scene worldwide.

With more than 400 fintech start-ups located in Israel, and more than 500 million dollars of capital raised in 2016, Israeli technology is on its way to wallets and accounts around the world, in the same manner as it became part of every Intel or Apple device. In some cases, ventures which were seeded in Israel reach maturity in other, bigger markets; Lemonade, Payoneer, eToro, Forter and Credorax would be a few of such examples.

While Israeli fintech companies are to be found in each and every sub-sector (as can be seen in the excellent chart compiled by Carmel Ventures (<http://www.slideshare.net/violanotes/israeli-fintech-companies-created-by-carmel-ventures>), recent focus is mainly put on AI and technologies relating to all aspects of Big Data: novel algorithms for analysis of enormous amounts of aggregate data from various sources, are used to provide faster, better results for actuarial, pricing, underwriting, fraud prevention, customer retention and engagement, and other challenging tasks in today’s financial markets.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction?

Currently, there are no prohibitions or restrictions that are specific to fintech businesses in Israel. A pending legislative initiative is aimed at prohibiting the activity of offering binary options on trading platforms, both to Israeli and non-Israeli customers.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Israel’s highly developed and sophisticated funding infrastructure for technology companies is equally accessible for the fintech industry. Start-up companies of all sizes and stages of growth, from early seed company to late stage development have taken advantage of such funding, and almost all venture capital firms in Israel have investments in this field, some more than others. Equity financing through venture capital is available on customary standard terms and conditions.

Specialised venture capital funds and corporate venture capital investors which invest only or primarily in fintech companies have now entered this competitive space. Alongside the well-established legacy funds such as Carmel Ventures, which has a broad range of fintech companies in its portfolio, some newcomers have emerged, such as Moneta Seeds a micro fund specialising only in the fintech field. Another prominent trend is equity financing by multinational banks and corporate investors looking to invest in Israeli companies, such as The Standard Bank of South Africa and Visa.

The large commercial banks in Israel are also heavily involved in financing start-up companies in Israel in various manners. In addition to the special terms of debt financing offered to technology companies in general, some of the large commercial banks have also started special programmes in which a blend of equity and debt along with a “Proof of Concept” platform is offered, allowing start-ups in the field to enjoy both financing and design partnership programmes.

Very early stage programmes are available for start-ups in the field, through specialty “acceleration” and incubation programmes in which the companies may enjoy initial convertible debt products as first financing, along with design and development support through the programmes and “acceleration”, into the market and the general financing platforms.

A recent amendment to the Israeli Joint Investment Trust Law, which is the primary legislation governing mutual funds in Israel, authorises the establishment of designated closed-end mutual funds, listed for trading on the TelAviv Stock Exchange (TASE), which will specifically invest in high-tech companies (including, potentially, fintech companies).

Finally, some peer-to-peer (P2P) debt and equity financing platforms have emerged in recent years which offer technology companies the ability to finance through debt, where such investment is syndicated through the platform among many individual lenders. This is very early stage financing in most cases.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

In August 2010, the Government of Israel, through the Office of the Chief Scientist in the Ministry of the Economy (recently re-branded as the Israel Innovation Authority), enacted Directive 8.17, aimed at assisting multinational financial institutions in setting up R&D centres in Israel. The programme provides direct participation in financing of R&D centres in Israel by such multinationals, and is uniquely tailored to R&D in the fintech field. Two large R&D centres have been established in Israel under this programme operated by Citibank and Barclays. All of the Government's funding opportunities offered through the Israel Innovation Authority are available to all fintech companies, to the extent that they meet the criteria for each available programme.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The Tel-Aviv Stock Exchange (TASE) recognises the need of high-tech companies to raise capital in their early stages. Therefore, the TASE has laid down rules to enable R&D companies, including (potentially) fintech companies, to offer shares to the public on particularly lenient terms. An "R&D company" is a company that has invested at least ILS 3 million in research and development over the last three years, including investments using funds received from the OCS.

R&D companies are not required to show a specified period of activity or level of shareholders' equity prior to IPO. The minimum public-float rate is relatively low (ILS 16 million), making it easier for R&D companies to raise capital on the TASE at an early stage in their life cycle, with relatively little dilution of the founders' holdings.

An IPO on the TASE can serve as a convenient stepping-stone to an additional issuance on NASDAQ and other stock markets, as the company matures. The Dual-Listing Law on NYSE, NASDAQ, AMEX or the London Stock Exchange enables companies that initially issued shares on the TASE and later listed in the U.S.A. or U.K. to report according to U.S. or U.K. reporting rules, so that they are not required to report under two different sets of rules.

The TASE's Tel-Tech index helps to increase the exposure of technology companies traded in Tel-Aviv to the investing public.

Further reliefs and benefits for R&D companies include tax benefits for both investors and founders/controllers/shareholders, support of the TASE with free analysis of selected high-tech companies by Edison or Frost & Sullivan, easing of the reporting obligations for R&D companies included in the Tel-Tech index, and more.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

Notable exits in the past few years include, Actimize (bought by Nice Systems), Check (bought by Intuit), Trusteer (bought by

IBM), Superderivatives (bought by Intercontinental Exchange) and Billguard (bought by Prosper Markets).

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

While there is no specific regulatory framework under Israeli law which applies to fintech businesses as such, the provision of financial products or services in Israel may fall within the scope of one (or more) of the existing financial regulatory frameworks:

- (i) the Bank of Israel (BoI) regulates banking business, payment systems (including merchant acquirers) and credit data;
- (ii) the Israel Securities Authority (ISA) regulates (*inter alia*) securities exchanges, trading platforms, investment advice and portfolio management; and
- (iii) the Capital Markets, Insurance and Savings Authority regulates insurance companies and agents, pension and provident funds, pension advisors, money service businesses, non-bank lending (including by issuance of credit cards), credit unions and services for comparison of financial costs.

Recent regulatory initiatives, some of which are still pending, address specific aspects of the above regulatory frameworks which are typically relevant to fintech activities. These include (a) regulation of P2P platforms by the Capital Markets Authority, (b) a new regulatory framework for payment service providers by the BoI, (c) crowd-funding for corporations, under the ISA's remit, and (d) investment advice/management by use of technological means (algo-trading and robo-advisory), also under supervision of the ISA.

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested?

All of the Israeli financial regulators and policy-makers are very receptive to fintech and financial innovation. Their support is clearly shown in the recent regulatory reforms and initiatives which are aimed at opening the regulated financial services markets to new entrants, mainly by technology-driven means (such as online platforms, alternative payment means, etc.).

Having said that however, turning this sentiment into actual developments, and adapting the licensing and supervisory methodologies of the various regulators is proving more challenging. Most of the regulatory initiatives relating to developments in the fintech space have yet to come into force.

3.3 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Provision of regulated financial services in Israel usually requires a licence, permit or registration; various exemptions apply, and specific legal advice should be sought in each case.

Israeli legislation does not generally specify the territorial scope of application of a particular law or regulation (whether any set of rules will apply cross-border or globally). In many cases, an analysis is required to determine whether cross-border financial services

will entail sufficient “nexus” to be subject to Israeli jurisdiction. Accordingly, different operational models may have significant consequences in that regard, and specific legal advice should be sought in light of the relevant circumstances.

Non-Israeli banks, insurers and investment advisors/managers may apply for an Israeli licence based on their foreign licence (with reduced requirements and obligations); foreign entities may also apply for registration as insurance agencies and money service businesses (until June 2018). Other licences (including for money service businesses from June 2018 onwards) require incorporation as an Israeli entity.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The Protection of Privacy Law, 1981 and the regulations enacted thereunder (the “**Privacy Law**”) regulate the matter of protection of privacy in general, and the matter of protection of privacy in computerised databases in particular (including with respect to the collection, use and transfer of such personal data). Fintech businesses which collect, use, process or transfer personal data pertaining to natural persons will be required to comply with the provisions of the Privacy Law. This may include, *inter alia*, matters such as registration of a database with the Israeli Data Protection Authority, providing privacy notifications to data subjects, maintaining security of the database, ensuring review and access rights to data subjects, direct marketing activities, and so on.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The Privacy Law is territorial in nature and therefore may apply in cases where the activity has a nexus to Israel (for example, where personal data is collected from Israel, servers containing personal data are located in Israel, processing of personal data is performed within Israel, and so on).

The Protection of Privacy Regulations (The Transfer of Data to a Database Outside the State Borders), 2001 (the “**Transfer Regulations**”) prohibit the transfer of personal data outside of Israel, unless the receiving country in question ensures a level of protection of data which is not lower than the level of protection provided under the Israeli law. The Transfer Regulations set out exceptions to this rule: for example, consent of the data subject for the transfer is in place, data is being transferred to a corporation under the control of the owner of the Israeli database, the data is being transferred to someone who has undertaken in an agreement with the owner of the Israeli database to fulfil the conditions laid down in Israel for the maintenance and use of the data, the data is being transferred to a database in a country which receives data from member states in the European Union under the same conditions of receipt, and so on.

In addition, under the Transfer Regulations, the owner of the database must ensure (by way of a written obligation from the recipient) that: (i) the recipient is taking steps to ensure the privacy of the data subject; and (ii) the recipient undertakes that the data will not be transferred to any person other than himself/herself, whether that person is in the same country or not.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

There are a range of sanctions available, including:

- **Administrative sanctions** – administrative fines might be imposed in cases of breach of the terms of the Privacy Law with respect to databases (such as a breach of a duty to register a database, a breach of a duty to use a database only for the purpose for which it was registered, a breach of a duty to provide data subjects with a privacy notice, and so on). The fines range between approx. US\$545–US\$1,370, and when the offender is a corporate entity, the fines imposed are five times this level.
- **Criminal sanctions** – breach of privacy in general (by willful misconduct) or breach of privacy in databases may amount to a criminal offence (punishable by imprisonment or fine). However, in practice, criminal prosecution is pursued only in extremely severe cases of breach of privacy.
- **Civil claims** – statutory damages of up to approx. US\$16,350 may be imposed by the court in cases of infringement of an individual’s privacy without his/her consent. Individuals may also be entitled to compensation under tort claims for damages (without limitation in amount, subject to proving damage) caused by the breach of Privacy Law.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Fintech companies which process or store personal information are subject to privacy and cyber security legal requirements. Under the Israeli Protection of Privacy Law 5741-1981, businesses which own or store personal information in a database are subject to legal requirements, including an obligation to safeguard the database in a reasonable manner. Moreover, the new Privacy Protection Regulations (Data Security), 5777-2017 (enacted in March 2017) present a wide range of binding regulatory arrangements aimed at ensuring cyber related obligations, including with respect to adaptation of technological, organisational and physical security measures and notification obligations in case of data breach.

In addition, fintech businesses may be subject to sector-specific cyber regulations when offering their services to financial institutions, insurance companies and banks. These entities are subject to strict cyber regulations (such as Directive 361 on Cyber-security Management and Risk Management in Cloud Computing Environment Guidelines issued by Supervisor of Banks at the Bank of Israel, and the Circular on Cyber Risk Management of Financial Institutions, issued by the Director of Capital Markets, Insurance and Savings) which impose various cyber-risk management obligations that may apply to services and technologies which such financial institutions, insurance companies and banks may wish to introduce.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Prohibition of Money Laundering Law, 2000, the Prohibition of Terror Financing Law, 2005 and various orders promulgated under these Laws set various requirements applicable to financial institutions, money service businesses and potentially other fintech businesses. These requirements include client identification, identity verification, reporting and record keeping obligations. Anti-money laundering (AML) supervision is entrusted with the respective

regulators of each type of financial institution/business, with certain authority to tailor necessary adjustments and exemptions to the standard rules set in the respective AML orders.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Possible regulatory regimes that may apply include:

- **Consumer Protection legislation** – the Consumer Protection Law, 1981 and the regulations enacted thereunder (the “CPL”) regulate the protection of a “consumer” (“a person who purchases a product or a service from a dealer within the framework of the dealer’s business, mainly for personal, home or family use”). Consequently, to the extent that fintech businesses sell products or services to Israeli consumers, they may have to comply with various principles and requirements set out in the CPL. These include, *inter alia*, the prohibition on misleading consumers with respect to any matter which is material; certain disclosure requirements; requirements with respect to marketing and promotions; requirements relating to transactions carried out from a distance; rights of cancellation of transactions and so on.
- **Spam law** – Israeli law prohibits the sending of marketing material to recipients, by means of email, automated telephone message, facsimile or SMS/MMS, without the recipient’s explicit prior consent, or, under certain specific circumstances, if the recipient has given his or her details in the past to the advertiser.
- **Standard Contracts** – the provisions of the Standard Contracts Law, 1982 (the “Standard Contracts Law”) might apply if the relationship between the fintech business and its customers or clients or business partners) is governed by certain contractual terms which are pre-determined by the fintech business. In such case, the terms may be regarded as a standard contract, in which case the Israeli court might strike out unfairly prejudicial terms within the standard contract.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

In general, subject to the provision of mandatory employment benefits (as detailed hereunder), the employer and employee can agree on their contractual engagement terms.

Prior to a decision to employ a candidate, an employer is entitled to perform some background checks with respect to the candidate, subject to the certain limitations such as the candidate’s basic right for dignity and privacy, nondiscrimination and general good faith obligations. Criminal background checks are, in general (and subject to certain exceptions), prohibited.

In principle (and subject to certain exceptions), Israeli law does not require that an employment contract be in writing. However, each employer is required to provide all new employees with a formal written notification (in a form as set out under applicable law) regarding certain employment terms, and to update all such employees in writing of any changes in those terms. If all terms of such notification are included in the employee’s employment contract, there is no need to provide formal notification. There is no requirement that employment contracts be written in any specific language, as long as the employee understands the language.

As a general rule, either party to an employment contract is entitled to terminate the employment contract, subject to providing the other party with prior written notice as required by law.

Employers should exercise their right to terminate employees in good faith and for valid reasons. Valid reasons for dismissal may include performance-based, redundancy and disciplinary reasons.

There are categories of employees whose employment cannot be terminated without obtaining a special permit (such as pregnant employees and employees undergoing fertility treatment) or at all, such as employees on maternity leave.

Notice Period – both employers and employees are required to give prior written notice when ending their employment relationship. The minimum notice period required by law to be given by both employer and employee depends on the seniority of the employee. Longer notice periods may be set out by any additional binding source applicable between the parties, such as an employment agreement.

A collective bargaining agreement applicable on the parties may impose additional terms and requirements with respect to hiring and termination.

5.2 What, if any, mandatory employment benefits must be provided to staff?

The main mandatory benefits which should be provided to employees are as follows:

Wages: an employer is required to pay its employees at least the minimum wage according to law. Currently, the minimum monthly wage for an adult employee is approximately NIS 5,000 per month (currently, equivalent to approx. US\$ 1,400).

Annual Leave: The Annual Leave Law – 1951 requires employers to provide employees with a minimum number of paid annual leave days on which the employees shall receive their full salary.

Public Holidays: Non-Jewish employees are entitled to choose whether to be absent from work on their religious holidays or on Jewish holidays.

Sick Leave: According to applicable regulations and prevailing industry customs.

Recuperation Pay: An employee is entitled to an additional annual payment referred to as “recuperation pay”. The name of this payment is historical.

Travel Expenses.

Pension: Almost all employees in Israel are entitled to pension insurance. There are some limited exceptions to this rule.

Employers are required to contribute, on their own account, a percentage of the employee’s salary (up to the average market salary) to pension insurance, and to also deduct a certain percentage from salary as the employee’s contributions to the pension fund. A more beneficial pension entitlement may apply pursuant to any collective agreement, personal employment agreement or other binding source. Currently, the mandatory required employer’s contributions are as follows: 6.5% of the salary towards the saving and risk component and 6% of the salary towards the severance component (this can be increased to 8.33%). The employee contributes 6% of his or her salary (deducted by the employer).

Severance Pay: As a general rule, an employee who is dismissed after completing at least one year of service is entitled to statutory severance pay. Severance pay is calculated based on the employee’s last monthly base salary multiplied by the number of years of service. Any amounts accumulated in the employee’s severance fund (a component of his

pension arrangement) are on account of the employee's entitlement to severance pay, unless a special arrangement has been adopted. Under Israeli law, severance pay will only be denied under extreme circumstances of misconduct on the part of the employee.

The severance component deposited in the employee's pension arrangement is taken into account when calculating the amount of severance pay to which the employee is entitled (if at all).

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

In order to employ a foreign employee in Israel, an employer must obtain a work permit. In general, work visas for the employment of foreign nationals are granted in the following fields of the economy: (1) construction; (2) agriculture; (3) nursing; and (4) industry.

A special category of permit within the "industry" sector has been created for "foreign experts". A foreign expert visa is granted based on a list of criteria, such as holding a managerial position or special expertise that cannot be found in Israel. Most of the foreign expert permits are conditional upon the employer undertaking to pay the foreign expert a monthly salary of at least twice the average salary in Israel.

Once the employer obtains a foreign expert permit, it is then eligible to employ the specific employee. The employee may only work for the employer that obtained the permit and only after obtaining a work visa, which is stamped in his or her passport.

Generally speaking, the employment of a foreign expert in Israel is subject to the same legal framework as applies to every foreign worker in Israel. A foreign expert work permit can be issued for a period of 45 days, three months, one year or two years. However, a work visa will only be issued for up to one year. In general, a work permit can be extended, subject to the discretion of the Immigration Authority, for additional periods up to a maximum of five years and three months.

Notwithstanding the above, the Foreign Workers Regulations (Exempt Employers of Foreign Experts), 2007 (the "**Regulations**"), determine that the employers will be exempt from certain obligations set out in the general law relating to foreign workers. In this regard, there is no special route for fintech employees.

In principle, a foreign employee is entitled to the same benefits and entitlements as an Israeli employee and in addition, is entitled to the following main entitlements: (a) an employer of a foreign worker is required to purchase private health insurance for the employee throughout the entire employment period; and (b) employers must provide suitable housing for foreign workers. Such housing must meet the conditions set out in Regulations. These (and other related) obligations will not apply to an "Exempt Foreign Expert", such as a manager, senior representative or senior employee in a position that requires a high degree of personal trust in a foreign corporation or an international company.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Israeli law generally protects innovations and inventions by means of patents under the Patent Law, 1967 (the "**Patent Law**") and trade secrets, which are governed by the Commercial Torts Law, 1999 (the "**Commercial Torts Law**"). Patents have a term of 20 years

from the date of application, subject to certain exceptions, and there is no limitation on trade secret protection, as long as the information remains secret and does not enter the public domain.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

The general rule under Israel law is that the creator of the right is the first owner, except in employer/employee relationships, where the first owner is the employer.

Patents: The first owner of rights in an invention is the inventor, except where the invention is created by an employee in the course of employment (defined as a Service Invention). In the absence of any agreement to the contrary, the employer owns all Service Inventions (although it is nonetheless customary to include a broad "assignment of IP" clause in employment agreements, as well as an express waiver of any right to royalties on Service Inventions, so as to avoid claims by employees).

Copyright: Israel's Copyright Law, 2007 protects the economic and moral rights of authors. The author of a literary, dramatic, musical or artistic work, or the producer of a sound recording, is the first owner of copyright in the work or sound recording respectively (unless otherwise agreed, for example in the case of a commissioned work, where the parties may agree that the principal is the first owner of the copyright rather than the creator of the work). As an exception to this rule, the first owner of a work created by an employee in the course of his or her employment is the employer, unless otherwise agreed between the parties.

Software is protected as a literary work.

Moral rights refer to the right of attribution and to the right to prevent detrimental changes to the work. The rights are personal and non-transferable (although it is generally accepted that they can be inherited). In an employment relationship, moral rights remain with the employee; it is customary in employment and contracting/consulting agreements to require a waiver of moral rights, although this has not been tested in Israeli courts.

There is no moral right in software.

Trademarks: the registered owner of a trademark is presumed to be the owner.

Trade Secrets: Trade secrets are defined as any business information which is not publicly known and which cannot readily and legally be discovered by the public, the secrecy of which grants its owner an advantage over his or her competitors, provided that its owner takes reasonable steps to protect its confidentiality.

The person in possession of the information is usually the owner of the trade secret. This is a question that is largely governed by case law, mainly in the context of employment and non-competition.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Generally speaking, IP rights in Israel are territorial, and it is necessary to own a local/national right in order to be protected, but there are cases in which international treaties grant protection to the owners of foreign rights. International treaty obligations are not self-executing under Israeli law, but some provisions incorporated into Israel law are closely based on the language of the applicable international treaty obligations.

Under the Berne Convention for the Protection of Literary and Artistic Works, no discrimination is permitted on the basis

of whether the author is a foreign national or a national of the jurisdiction in which the right is being asserted. This provision has been implemented by the Copyright Law. Infringement of copyright (or a violation of moral rights) in Israel is a civil tort, and the available remedies include, *inter alia*, injunctions, monetary awards, statutory damages and the seizure and disposal of infringing materials.

Israeli law protects unregistered well-known marks in accordance with the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPS Agreement”).

With respect to enforcement, injunctive and monetary relief are available for trademark infringement. In addition, statutory damages for passing off under the Commercial Torts Law 1999 can serve as a complementary claim to trademark infringement.

Furthermore, the Copyright Law, the Trade Marks Ordinance, and the Customs Ordinance [New Version] each contain sections stating that the customs authorities are authorised to suspend the release of imported goods suspected of being infringing copies.

Patents are only protected on a national level. If the patent is not registered in Israel, it is not protected under Israeli law. In case of patent infringement, injunctive and monetary relief are available. No statutory damages are available.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP rights in Israel can be assigned, licensed or used as collateral.

The right can be sold/assigned on its own or together with the corresponding business.

Both exclusive and non-exclusive rights are recognised. Patent and trademark licences must be recorded with the registry in order to be valid against third parties.

A security interest in IP rights must be recorded at the relevant registry. In the case of unregistered rights (copyrights, trade secrets and unregistered trademark right, if any), the only required registration is either with the Registrar of Companies (if the debtor is an Israeli company) or with the Registrar of Pledges in all other cases.

Under Section 90 of the Patent Law, a security interest against a patent is also required to be recorded on the Patent Registry, in addition to the Companies Registry or the Pledges Registry. This recordal is constitutive and the lien/charge will not be effective against third parties if it is not so registered.

While the Trademarks Ordinance [New Version], 1972 does not require the recordal of a security interest against a registered trademark, it has become common practice for the Commissioner of Trademarks to record a note of the lien/charge against the trademark in question at the request of one of the parties, by way of courtesy. This is not constitutive.

The Patent and Design Ordinance, 1924, which is the law applicable to industrial designs, does not require the recordal of any security interest against a registered design, but we believe these should be treated the same way as trademarks and that a note may be entered against the design upon request.

Please note there are different tax implications to each of the means of monetisation.

We note further that in certain cases the Government may provide incentives to different companies and projects. For example, the Israel Innovation Authority encourages innovation by providing a variety of incentives to Israeli companies and entrepreneurs. There are tax and fiscal incentives for, *inter alia*, R&D. Such incentives can impose various conditions on the IP created, including with respect to freedom to use and transfer the IP outside of Israel.

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Elad Wieder is a partner in HFN's Banking and Finance Department. Elad has experience in a wide range of legal issues within the financial industry, with a particular emphasis on technology. This includes online platforms, digital payment solutions and other innovative products and services. Elad's knowledge of alternative payment mechanisms means that his expertise is invaluable to credit card companies, online payment processors and others concerned with payment methods in the 'post-money' age. As part of his specialisation, Elad advises major financial institutions as well as innovative start-ups, on matters of cross-border compliance, international anti-money laundering and sanctions regimes and other regulatory & licensing topics.

While working at HFN, Elad has spent time on secondment at Allen & Overy in England and Barclays in Tel Aviv.

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Ariel Yosefi co-heads HFN's Technology & Regulation Department. He is highly-regarded for his prominent global practice and experience in advising startups, multinational companies, mobile app and software developers, internet vendors and disruptive technologies on various technology compliance, regulatory and commercial matters.

Ariel's multidisciplinary expertise covers numerous areas, including Adtech and online advertising, telemarketing and e-marketing, quality media and traffic, content, social networks and User-Generated-Content platforms, monetisation, mobile and other app marketplaces, Insurance Technology, Health Technology, Fintech, Cybersecurity, Internet of Things, computer and software protection e-Commerce, privacy and data protection.

Ariel has unique experience with the increasing volume of related regulations, enforcement actions and legislative trends across a myriad of jurisdictions, as well as with the industry's best practices and leading self-regulatory guidelines.



Herzog Fox & Neeman is one of Israel's largest law firms and has earned a reputation as a market leader – evident by its recognition as '2016 Israel Law Firm of the Year' by Mergermarket, *IFLR*, *BDI Code and Dun & Bradstreet*, and its consistent top-tier rankings in both international and Israeli legal ranking directories. HFN is the most diverse law firm in Israel with over 300 lawyers, of whom more than 115 are partners. The firm has expertise in all aspects of corporate, commercial and administrative law and serves many of Israel's and the world's best-known companies.

Along with an international network of expert advisers, HFN provides an interdisciplinary, global regulatory advisory service to the fintech industry. We keep abreast of the rapidly changing landscape of the industries in which our clients operate, to ensure that we provide them with a current and comprehensive understanding of the laws and regulations that govern their activities.

The Fintech team provides a fully coordinated range of services to our clients, including licensing, regulatory, tax, commercial and e-payments, as well as coordinating and assisting in the implementation of public offerings and other exit strategies.

Other titles in the ICLG series include:

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- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
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- Gambling
- Insurance & Reinsurance
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