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ISRAEL

Law and Practice

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1. Legal System and Regulatory Framework

1.1 Legal System

Israel is a constitutional democracy and it is considered to have a "mixed legal system". It has primarily been influenced by, and has adopted concepts of, English common law prior to the establishment of the State of Israel and thereafter. For the last few decades, it has also adopted legal concepts developed and implemented in the United States (particularly in the context of corporate governance law). Concurrently, the Israeli legal system has also been influenced by concepts of civil law. Attempts at codification, which is one of the most prominent characteristics of civil law, have been carried out in Israel more than once. Another prominent import from civil law is the doctrine of "good faith", which has been widely used throughout many aspects of Israeli civil law.

Courts in Israel are structured similarly to those in common law countries: a Supreme Court composed of a small number of justices, who oversee district and circuit courts and whose decisions are binding. The Israeli Supreme Court justices are authorised to interpret legislation and related regulations and also, in relatively narrow circumstances, to terminate legislation to the extent that they find such legislation unconstitutional.

As further detailed here, once a foreign business has established a presence in Israel, it may start carrying out its activities. However, operating in many industries or sectors is subject to complying with regulatory requirements under the applicable law.

1.2 Regulatory Framework for FDI

Overview

Israel does not have a general foreign direct investment (FDI) oversight law. There are no comprehensive or consolidated controls anchored in legislation, but only sector-specific rules. As a result, there are no broad FDI restrictions on foreign ownership that cut across sectors, and as a general rule, non-Israelis can purchase and sell Israeli securities and assets freely.

Generally, different sectors of the Israeli economy, especially regulated sectors, have their own unique restrictions, and each sector's regulator has its own unique oversight powers. Notably, these powers could include discretion when choosing to issue regulatory licences with conditions, to revoke regulatory licences, or, in some cases, to change the conditions included in regulatory licences already issued. Such powers essentially serve as an administrative review function for regulators over foreign investments or investors.

The result of this regime is a mosaic of diverging types of FDI restrictions stemming from differing policy considerations – such as economic protectionism, welfare, and, importantly for this discussion, national security – and varying discretionary powers offered to regulators in different sectors.

Currently, there are no sectors in which foreign investment is automatically prohibited. Moreover, in line with the nature of this FDI oversight regime, there are no special exemptions offered to certain categories of foreign investors or investments, nor timelines for notifications, or review and clearance requirements that cut across sectors or have general applicability to all sectors.

Restrictions in Specific Sectors

In certain defined industry sectors, there are specific restrictions on FDIs, and such investments may be subject to regulatory notification, screening, approval and licensing requirements, including:

- the ownership and transfer of certain rights in real estate, which require prior written approval;
- the transfer of ownership or means of control in companies designated as "Defence Corporations";
- the transfer of ownership or means of control in exporters of certain controlled defence goods (including technology), know-how and services without registration and licence;
- telecommunications, media and broadcasting companies are heavily regulated in Israel and often require operating licences (some such licences are subject to a "minimal ownership by Israelis" requirement);
- the production, system management, transmission, distribution, supply and trade in electricity;
- the establishment and operation of transmission systems, distribution networks, liquefied natural gas installations and storage installations, and construction and operation of export pipelines by anyone other than the holder of the right to such pipelines;
- banks, insurers, merchant acquirers, managing companies of provident or pension funds, and others that provide financial services are all heavily regulated in Israel and require licences, each from the relevant regulator, and controlling such entities might be subject to a permit requirement; and
- trading with "Enemy States", including by way of investment, is prohibited (such prohibitions may apply to (i) enemy states, (ii) residents of enemy states, (iii) companies incorporated in enemy states, and (iv) companies controlled by individuals that are covered by the foregoing).

Additionally, some disclosure obligations in connection with the purchase and sale of securities and assets may be applicable. For example, the Companies Law,1999 and the regulations promulgated thereunder ("Companies Law") require foreign shareholders and directors to provide copies of identifying

documents, such as passports or incorporation documents, to the Israeli Registrar of Companies.

Lastly, payments made from Israel abroad are subject to withholding tax in the absence of an exemption or withholding certificate issued by the Israel Tax Authority (ITA).

2. Recent Developments and Market Trends

2.1 Foreign Direct Investment in the Current Climate

Despite the political turmoil in which Israel finds itself (the fourth general elections within the last two years are set to take place within a few months) and the instability such political conditions entail, and despite the severe health and economic concerns the COVID-19 pandemic has inflicted, the general attitude in Israel remains very much in favour of FDIs, and the Israeli government has tried to encourage these investments in multiple ways.

During the past year, while there has been a significant reduction in M&A activity in light of COVID-19, Israeli companies, predominantly in the technology sector, reached a size and level of maturity attractive enough to pursue viable exit alternatives in local, US and other foreign capital markets. In fact, 2020 turned out to be a record year for offerings of Israeli companies in the international capital markets (both via public offerings of equity and debt). It also turned out to be a record year with respect to the number of Israeli companies which have consummated IPOs and listed their shares for trading on the Tel Aviv Stock Exchange (TASE).

Recent reports have indicated a record number of investments and an amount raised into private companies of more than USD10 billion during 2020, over USD6.5 billion of funding from public capital markets, and USD7.8 billion in M&A transactions. A very significant portion of such amounts raised by Israeli companies involved foreign direct investments. Such record highs have sent a positive message and indicate that many strong companies have not been negatively impacted by the COVID-19 pandemic but have, in numerous cases, benefited from it.

Furthermore, the recent peace and "normalisation" agreements being reached between Israel and a number of regional countries (ie, the UAE, Bahrain, Sudan, Morocco and Bhutan) have also injected a sense of optimism as Israeli companies would very much welcome, and have been actively seeking, FDIs from investors in such countries.

3. Mergers and Acquisitions

3.1 Transaction Structures

Israeli mergers and acquisitions may be structured as a share purchase, asset purchase, statutory merger, tender offer, or court-approved scheme of arrangement. The Companies Law provides for the concepts of statutory mergers, forced sale provisions with respect to private companies and "squeeze-out" mechanisms for public companies, including rules and restrictions applicable to tender offers. The Companies Law and the regulations promulgated thereunder governing a merger are applicable to both private and public companies, setting out detailed procedures.

Reverse Triangular and Statutory Mergers

Under the Companies Law, a purchaser may purchase all or part of the issued and outstanding share capital of a target company. With respect to public company targets, the most common way to achieve this is through effecting a reverse triangular merger with the target company. With respect to statutory mergers, the applicable Companies Law provisions and the regulations promulgated thereunder apply to both private and public companies. The Companies Law sets forth a procedure for a statutory merger between two companies incorporated under the laws of the State of Israel only. Hence, to the extent a foreign buyer would like to acquire an Israeli company via a statutory merger, this would require pursuing a reverse triangular merger and the incorporation of an Israeli merger subsidiary for the purposes of effecting it. The procedure includes filing a merger proposal with the Companies Registrar, issuances of notices to creditors and employees, and corporate approvals of both merging companies.

Tender Offer

Another way by which a purchaser can acquire shares in a public company so that following the acquisition the purchaser holds more than 90% of the shares of the target company, is a "full tender offer" – an offer to acquire all the shares of a target company. However, in practice, the "full tender offer" is rarely utilised as it would be deemed accepted, and the buyer would be able to squeeze-out and purchase the shares of remaining minority shareholders who did not accept the tender offer and agree to tender their shares, only if: (i) the shares held by shareholders of the target who did not accept the full tender offer represented less than 5% of the issued share capital of the target; and (ii) more than 50% of the offerees, who do not have a personal interest in accepting the offer, approved the offer.

Scheme of Arrangement

Another method which may be used (on rare occasions) for an acquisition of both private and public companies is based on Sections 350 and 351 of the Companies Law, and allows

for the filing of an application to the Israeli courts to approve an "arrangement" between a company and its shareholders or creditors. Historically, this mechanism was intended to address reorganisations aimed at implementing measures required to avoid the insolvency of the company in question.

Asset Purchase

Purchasers often acquire businesses through the acquisition of all or part of the target's assets, including the target's commercial agreements with third parties.

Share Purchase

Minority investments in Israeli companies are often consummated through the purchase of shares of the target company, whether ordinary or preferred. The minority rights of such investors are typically set out in the target's articles of association, but shareholders' agreements and investors' rights agreements are also common. With respect to early stage start-ups, to the extent that the parties are not certain of the appropriate valuation, which needs to be assigned to the target, SAFE (simple agreement for future equity) instruments or other convertible securities instruments (such as convertible loans) are often utilised to bridge such gaps.

3.2 Regulation of Domestic M&A Transactions

The main body of law applicable to M&A transactions is the Companies Law, and in the event that at least one party to such transaction is an Israeli company listed on TASE, then the Securities Law and the regulations promulgated thereunder and the by-laws of TASE would apply as well. Other laws may also apply, such as the Economic Competition Law, 1988 ("Competition Law") and the regulations promulgated thereunder, the Encouragement of Industrial Research and Development Law, 1984, the Law for the Promotion of Competition and Reduction of Concentration, 2013 and the Israeli Income Tax Ordinance ("Tax Ordinance").

Mergers require the approval of the Registrar of Companies, and certain share acquisition transactions (regardless of how they are structured), require the approval of the competition commissioner (regarding thresholds, see **6.1 Applicable Regulator and Process Overview**). Additionally, many Israeli technology companies receive government funding from the Israeli Innovation Authority (IIA), and as a consequence thereof, (i) the transfer of know-how outside of Israel requires approval of the IIA, and (ii) changes in holdings or control might trigger notice or approval requirements. Furthermore, changes in control over companies that received grants or tax benefits under the Law for the Encouragement of Capital Investments, 1959 are subject to either a notice or the approval of the Investment Centre of the Ministry of Industry, Trade and Labour or ITA.

Other prior notice and/or approval requirements, which could be significant, might apply with respect to companies operating in regulated industries and sectors, such as financial services, licensed telecommunications companies, and companies that export defence equipment, services or know-how.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

Presence may be established in Israel in several ways:

- incorporation of a limited company, either private or public;
- registration of a partnership, either general or limited;
- registration of a co-operative society;
- registration of a foreign company or a branch (not a separate entity); and
- incorporation of a charitable company for the benefit of the public or an association, or the registration of a branch of a foreign, non-profit organisation – but these are not suitable for for-profit organisations.

Key Implications to Consider

The form of legal entity chosen by an investor for the purposes of FDI has several important implications, such as the applicable body of law and the relevant regulator, which would govern such investment. The legal form may also have significant tax implications.

Corporate Governance in Companies

The Companies Law is the main body of law regulating companies in Israel. Pursuant to the Companies Law:

- Companies have three organs: the general assembly of the shareholders, the board of directors and the CEO. The actions and intentions of an organ are deemed to be the actions and intentions of the company.
- Public companies as well as private companies whose bonds are listed for trade by the public are required to (i) have an audit committee as well as a compensation and remuneration committee, composed of "outside" directors (other qualifications apply to the rest of their members), and (ii) appoint an independent internal auditor, who reports directly to the chairman of the board or the CEO of the company.
- Companies are required to appoint external auditors to audit their annual financial reports.
- Transactions with related parties might require special approvals, including the approval of the audit committee or the compensation and remuneration committee, the major-

ity of the shareholders, and a majority of the disinterested shareholders.

Additional Corporate Governance Requirements

Additional significant corporate governance requirements may apply with respect to certain industry sectors. For instance, the Israeli financial services industry is heavily regulated in Israel, by different regulators. As such, the control of an Israeli bank, a bank holding corporation or a merchant acquirer is subject to a permit issued by the governor of the Bank of Israel. The control of an Israeli insurer, a managing company of provident or pension funds, a credit provider and a financial asset services provider is subject to a permit issued by the Commissioner of Capital Markets, Insurance and Savings and the control of a manager of mutual funds is subject to a permit issued by the Israeli securities authority. In connection with such requirements, there are certain restrictions on the holding of certain percentages of means of control in the aforementioned entities, and related reporting obligations.

4.2 Relationship between Companies and Minority Investors

Protection of Minority Shareholders

The Companies Law sets forth several provisions intended to protect minority shareholders. For example, at the request of a shareholder, a court may give instructions to remedy or prevent the discrimination of a shareholder, in the event that the company's business is conducted in such a manner that unfairly prejudices some of its shareholders, or if there is material ground to believe that its business might be conducted in such a manner. Additionally, shareholders (as well as directors) may bring derivative actions to court on behalf of the company. Furthermore, the Companies Law requires special approvals for related party transactions, the most onerous of which include the approval of a majority of the minority shareholders, which is typically imposed on the transactions of a company with a controlling shareholder.

Typical Rights of Minority Shareholders in Private Companies

Minority shareholders may require and often receive (in each case, based on their negotiation leverage power and assuming they hold a minimum defined stake) customary minority protection rights such as: pre-emptive rights, certain co-sale/tag-along rights, the right to nominate directors and/or observers as long as the minority shareholders hold a threshold stake, veto rights with respect to certain activities a company may undertake and amendments to such company's governing documents to the extent that they are adverse to such minority shareholders. Minority shareholders are often also able to negotiate pretty broad information and inspection rights.

4.3 Disclosure and Reporting Obligations

Reporting Obligations – Public Companies

Corporations that offered their securities to the public pursuant to a prospectus ("Reporting Corporations") are subject to the reporting requirements set forth in the Securities Law and the regulations promulgated thereunder. As such, Reporting Corporations are required to file annual and periodic reports, as well as immediate reports, to investors regarding material information and events. Typically, the following events require immediate disclosure by Reporting Corporations:

- changes in the holdings of principal shareholders (with respect to a Reporting Corporation, this includes any individual or entity that holds 5% or more of the voting power, any person entitled to appoint at least one director or the CEO, the directors, and the CEO);
- changes to senior office holders;
- related party transactions;
- changes to the company's articles of association; and
- resolutions adopted by the shareholders or the board of directors.

Additionally, any matters or events that (i) deviate from the ordinary course of business of a Reporting Corporation, whether due to their nature, scope or possible results, that have or are likely to have a material effect on the Reporting Corporation, or (ii) that substantially affect the price of the Reporting Corporation's securities, require immediate disclosure. Material transactions typically fall within this requirement for immediate disclosure, and in certain events, even prior to the execution of binding agreements.

Furthermore, Reporting Corporations are required to file certain reports with the Registrar of Companies, including in respect of merger transactions.

Shareholders that become principal shareholders and shareholders that cease to be principal shareholders are required to notify the Reporting Corporation immediately they become aware of their change of status as principal shareholders. Additionally, a controlling shareholder that is also a principal shareholder is required to notify the Reporting Corporation of changes in such shareholder's holdings in the Reporting Corporation.

Reporting Obligations – Private Companies

Private companies are required to report certain actions and transactions to the Registrar of Companies, such as any transfers as well as the issuance and allocation of their shares, changes to the articles of association, changes to the board of directors, and security interests the company is subject to. Additionally, there is a requirement to file annual reports with the Registrar of Companies, which would include basic corporate information,

such as details related to the shareholders, directors and share capital of the company.

5. Capital Markets

5.1 Capital Markets

TASE is the only regulated stock exchange in Israel and is considered as the primary source of funding for businesses in Israel (alongside the NASDAQ and NYSE which have traditionally been very friendly to Israeli tech companies). TASE was traditionally viewed by investors as a primarily debt-friendly market, leading to the issuance of tradable bonds to the public by both Israeli and non-Israeli companies. In 2019 and 2020 there was exponential growth in the number of IPOs on TASE, with more than 25 companies (in the aggregate) – most of them in the tech and energy sectors – listing their shares for trading. Other popular financing sources in Israel include Israeli and international private equity funds; venture capital funds that are traditionally very active in Israel; and off-exchange funding by institutional investors that manage a large portion of the savings of the public in Israel.

5.2 Securities Regulation

The main legal source governing the capital markets in Israel is the Securities Law. The Securities Law and the regulations promulgated thereunder provide the regulatory framework for the offering of securities in Israel; instances where the offer of securities requires the publication of a prospectus; reporting requirements of public companies and principal shareholders and other interested parties in public companies; limitations on insider trading; prohibition of market manipulation; and arrangements applying to companies which are dual-listed in and outside of Israel. In addition to the Securities Law, TASE by-laws provide guidelines and minimal requirements for the listing of securities for trading on TASE. Generally speaking, there are no special limitations that apply to foreign investors in the Israeli capital markets, except that there are a number of industries (including telecoms, banking and long-term savings, and defence) where the holdings of non-Israeli investors may be limited under specific rules applicable to those industries (as discussed in greater detail throughout this chapter).

5.3 Investment Funds

Foreign Investment in Israel

Generally speaking, foreign investment funds do not require any licence or registration with any Israeli regulatory authority to invest in Israeli corporations. However, in some cases such investments may be subject to reporting obligations in Israel (eg, in connection with the purchase of publicly traded securities) and/or be conditional on the receipt of approvals from Israeli regulators, such as the head of the Israeli Competition Authority, the Israeli Capital Market, Insurance and Savings Authority Commissioner, the Israeli Supervisor of Banks, the Israeli Ministry of Defence, the Israeli Ministry of Communications, the Israeli Innovation Authority, etc (depending on the sector in which the target company operates).

Israeli Investment in Foreign Funds

Conversely, foreign investment funds that wish to raise funds from Israeli investors are subject to certain regulatory limitations. Namely, the offering of fund units or shares to investors in Israel requires a "public offering permit" from the Israel Securities Authority, unless it is conducted under a specific exemption (eg, as a private placement to "sophisticated investors" and a limited number of retail investors). Funds regulated under the European UCITS Directive or under the US Investment Company Act of 1940, benefit from a dual-registration (or "passporting") relief, which makes them eligible for a "public offering permit" without publishing a prospectus in Hebrew, and without being subject to most of the ongoing requirements that apply to Israeli mutual funds. Since 2017, this relief has been used by several global asset managers (including BlackRock, Franklin Templeton, Natixis and GAM), in the offering of interests in open-ended mutual funds to the public in Israel. An amendment to the rules of TASE, which became effective in April 2019, made it possible to list Exchange Traded Funds on TASE under the same relief. This resulted in the listing of 23 iShares ETFs (managed by BlackRock) on TASE by November 2019. It should be noted that ETFs can only benefit from this "passporting" relief if they are listed for trading on at least one exchange on a specific list compiled by the ISA.

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

Israel has a robust merger control regime in place. The relevant legislation is the Competition Law.

The Israeli competition commissioner, who heads the Israeli Competition Authority, must approve relevant mergers that involve entities with sufficient nexus to Israel that meet the filing thresholds.

A "merger" occurs when one "company" (corporate entity including not only companies but also partnerships, co-operatives and non-profit entities) acquires the main assets of another company or 25% of certain rights (shareholding, voting, profits or board appointments). A merger may also occur in other cases where one entity acquires a foothold in the decision-making processes of another separate entity.

When non-Israeli entities are involved, the merger control regime may apply if both parties to the merger have sufficient nexus to Israel. Sufficient nexus exists when:

- a party is registered in Israel as a "foreign company";
- a party, or its ultimate controlling owner hold, directly or indirectly:
  (a) more than one quarter of an Israeli company's issued capital stock;
  (b) more than one quarter of an Israeli company's voting power;
  (c) the right to appoint more than one quarter of the Israeli company's directors; or
  (d) the right to receive more than one quarter of the Israeli company's profits; or
- the company has a representative in Israel (such as an exclusive distributor or a sales representative) over whom the company has significant input with respect to matters such as pricing, quantities of products sold, inventory or other aspects of the management of the business.

Assuming the nexus tests are met, the filing thresholds are based on sales turnover and market shares, as follows:

- turnover threshold – the combined turnover of the parties to the transaction in or into Israel in the last calendar year before the transaction was over approximately ILS361 million and each of the parties had a turnover in Israel of at least ILS10 million;
- combined market share threshold – the parties' combined market shares in Israel will exceed 50% of a product/service market following the merger; or
- individual market share threshold – one of the parties in the transaction has a "monopoly" (defined for this purpose as having over 50% of the supply or purchase of a product or service) in any market in Israel.

Generally speaking, the thresholds take a group view of the parties to the transaction, referring to the parties and to every company that is controlled by the same ultimate controlling entity. The definition of "control" for this purpose is holding over 50% of voting rights in the general assembly or similar body, or the right to appoint more that 50% of the members of an entity's board or similar body.

For relevant transactions, the commissioner's approval must be obtained before consummating the transaction or part thereof. Each party must file a merger notification form. The commissioner will usually accept submissions only with regard to a signed transaction agreement, although there are some exceptions.

The competition commissioner must render their decision within 30 calendar days of submission. The commissioner may extend this deadline if such extension is required for the review. A fast-track review is available for transactions that do not raise concerns regarding competition.

6.2 Criteria for Review

The commissioner will object to a merger or stipulate conditions to its approval if the commissioner finds that such merger raises "reasonable concern of significant harm" to competition or the public.

According to Opinion 1/11 – Guidelines for the Competitive Analysis of Horizontal Mergers issued by the competition commissioner, the analysis of horizontal mergers (between competitors) may take into account both unilateral and co-ordinated effects. Defences like efficiencies and the failing firm doctrine are also available.

Past Israeli Competition Authority practice demonstrates that the main concern in vertical mergers (supplier-customer relations) is market foreclosure.

6.3 Remedies and Commitments

The commissioner may impose behavioural remedies such as committing to supply to competing businesses, or refraining from bundling certain products; structural remedies, including divestiture of activities or assets; and semi-structural remedies such as holding certain activities separate.

According to Opinion 2/11 – Guidelines on Remedies to Mergers that Raise Reasonable Concern of Significant Harm to Competition, structural remedies are preferred, while behavioural remedies will be acceptable under some circumstances, eg, when they involve a very specific behaviour and a breach would be easy to detect.

6.4 Enforcement

The commissioner is the ultimate decision-maker with regard to approving or blocking a merger. The decision to block a merger is usually preceded by an official hearing. The commissioner's decision may be appealed before the specialist Competition Tribunal, and the latter's decisions may be appealed to the Supreme Court.

Consequences of Not Obtaining the Commissioner's Approval

The consequences of an investment without prior approval of the competition commissioner are fines not to exceed the lower of up to 8% of the relevant entity's turnover or up to ILS100 million; corporations with an annual turnover below ILS10 million and individuals (including company officers) are subject to fines

of up to approximately ILS1 million. The commissioner's decision must follow a hearing procedure that allows the parties to express their reservations about the impending decision. The commissioner's decision may be appealed before the specialist Competition Tribunal.

In the case of a horizontal merger (between competitors), the consequences of an illegal merger may involve criminal sanctions. In practice, criminal sanctions are rare and reserved for extreme cases.

Also, the commissioner may approach the specialist Competition Tribunal and request the separation of the merged entities. This is also very uncommon in practice.

The commissioner may issue a determination of breach that can serve as prima facie evidence in any legal proceeding.

Finally, any breach of the Competition Law may be a tort and is subject to civil lawsuits, including class actions.

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

As elaborated in greater detail above, Israel does not have a general foreign direct investment (FDI) oversight law. Nor are there any comprehensive or consolidated controls anchored in legislation. There are only sector-specific legislation and rules. As a result, there are no broad FDI restrictions on foreign ownership that cut across sectors. See the overview provided under **1.2 Regulatory Framework for FDI** for further details regarding the general regulatory framework.

FDI Oversight Committee

In December 2019, following intense pressure from the US Administration (related to potential Chinese investments in Israeli companies), the Israeli government established an FDI oversight committee, under the administration of the National Security Council, an arm of the Office of the Prime Minister (PMO). The committee is charged with overseeing inbound investments solely from a national security perspective. This committee is informal (it was constituted by a government decision and not through legislation), and its rules, procedures, and working guidelines are not public. Moreover, the committee acts as an informal advisory body to Israeli regulators by advising on potential inbound equity investments and by issuing non-binding opinions. Despite officially having informal status and its opinions being non-binding, it is important to emphasise that the National Security Council's standing among regulators in general gives these non-binding opinions considerable weight.

The FDI oversight committee does not engage directly with the private sector (eg, companies interested in receiving investment, potential investors or buyers, etc). This is in contrast to other sector-specific regimes that have mandatory filing requirements, opportunities to receive pre-rulings on inbound investment, or other engagements.

Examples of Specific National Security and Defence Sectors with Embedded FDI Requirements

As a general rule, foreign investment in Israel's defence and national security sector is permitted (with no sectoral caps/ceilings), however, certain mechanisms can be used to oversee and restrict equity holdings in defence-sector companies on a case-by-case basis. The following are key examples of FDI oversight in this sector.

Designated Defence Corporations

Under Israeli national security laws, tens of Israeli defence companies have been classified as regulated "Defence Corporations". The prime minister, minister of defence, and minister of economy and industry are empowered to designate entities by executive order if national security is likely to be harmed by:

- the acquisition or holding of control or means of control in such entity;
- a joint venture with or merger between such entity and a third party;
- the transfer of information related to such entity or its activity;
- any interruption to, narrowing of or harming of the entity's activity; or
- any other reason (an open list that grants wide discretion to these ministers).

Importantly, classification as a "Defence Corporation" subjects the entity to certain forms of oversight, including restrictions on the transfer, acquisition, and general ownership of their means of control. Such classification is confidential and is not made public; however, the classified entities themselves are obviously aware of their designation.

Registered defence exporters

Under Israeli export control laws, defence exporters who are registered with the Israeli Ministry of Defence (MOD) are obliged to report changes in control. It is important to note that such changes only require to be communicated if they are in the defence exporter itself (as opposed to at the level of the parent or above). The MOD does not have authority to veto such changes, once informed. Nor does it have formal authority to prevent foreign investment or control. However, the MOD has broad discretion when issuing export control licences and essentially governs all controlled defence exports from Israel. In practice, this means

that the MOD may block controlled defence exports where it takes issue with a registered defence company, its products or technology, potential destinations or end users, and, importantly, its ownership and control. For this reason, it is customary and recommended to provide the MOD with advance notice of an intended foreign acquisition of a defence exporter to ensure that it takes no issue with the proposed transaction.

Authorised MOD suppliers

Many companies wish to become an authorised supplier of the MOD, as this enables such companies to participate in some of the largest and most important (and potentially lucrative) projects in the country.

However, the MOD is highly sensitive to foreign ownership over such authorised suppliers, requires full disclosure of all such foreign interest (including all changes thereto) and imposes strict limitations on the sharing of information with such foreign owners. Consequently, a change of control over an authorised MOD supplier could (if viewed as a national security threat) lead to enhanced limitations with respect to that company, or even to the revocation of its authorised supplier status.

7.2 Criteria for Review

As noted previously (eg, in **1.2 Regulatory Framework for FDI**), Israel does not have a comprehensive investment/national security review regime, and there are no unified criteria, considerations or analyses that cut across specific sectors that have their own forms of FDI oversight.

That said, when it comes to national security-based FDI oversight, certain factors may play an important role in the risk assessments conducted by regulators. Examples of these factors include:

- whether a foreign investor will have access to intellectual property/know-how that is owned or developed by the target;
- whether such intellectual property/know-how is sensitive (eg, dual use);
- whether the target is part of a critical industry (eg, a bank, pension fund or defence company);
- whether the investment will be in the specific company that develops or owns sensitive intellectual property/know-how or is part of a critical industry, or whether it will be made at the level of the parent or above;
- whether the investment will grant the foreign owner insight into sensitive Israeli government policies;
- whether the target has access to the private data of Israeli citizens or data concerning Israeli government authorities;
- whether the target has contracts with government authorities in the Israeli defence establishment;
- whether the foreign investor is connected to a foreign government, and if so, which one; and
- whether the investment will make the foreign investor a controlling shareholder or provide it with certain veto or access rights.

Of course, this is not an exhaustive list of factors and the most relevant criteria, considerations and analyses would depend on the target sector for FDI.

7.3 Remedies and Commitments

As noted above, the specific types of remedies or other commitments required or requested by the relevant authorities will depend on the specific target sector for investment. Broadly speaking, since FDI oversight tends to exist in regulated sectors of the Israeli economy, commitments imposed on targets of foreign investment will often take the form of licensing conditions. In certain cases, targets of FDI may be able to engage regulators in a discussion regarding potential foreign investment and reach an agreement regarding commitments that will assuage the national security concerns of the regulator and will allow the target to continue functioning on a commercial level.

For example, a defence company with controlled defence exports (that require export control licences from the MOD) may notify the MOD ahead of an FDI transaction that will impact its shareholdings. The purpose of such notification would be to gauge how comfortable the MOD is with the potential equity investment and the rights that the equity investors will acquire for themselves in the target. This discussion may involve commitments on the part of the target to the regulator (eg, limiting access by the foreign investor to certain sensitive intellectual property/know-how) so that the target can ensure (continued) favourable conditions in its export control licences.

7.4 Enforcement

As noted previously, FDI oversight-related enforcement is sector specific and there are no unified enforcement rules that cut across all sectors of the Israeli economy. It should be emphasised that, currently, there are no sectors in which a general prohibition on FDI exists.

While regulators in each sector have their own individual powers to oversee (and effectively block) foreign investment, there is some commonality in the mechanisms through which such enforcement is accomplished. Two key enforcement mechanisms used by regulators to effectively block FDI are the revocation of regulatory licences (or refusal to issue further licences) and the amendment of existing licences in a manner that all but undermines the target's ability to continue functioning on a commercial level (eg, where the MOD disapproves of FDI in

a regulated defence exporter, it has the power to block all future exports by ceasing to issue export control licences).

Furthermore, and as noted above, regulators are required to consult with the FDI oversight committee in the PMO regarding national security considerations, and it is important to underscore the standing of the PMO and the strength of its position with respect to these issues.

8. Other Review/Approvals

8.1 Other Regimes

The following are examples of key sectors or mechanisms that allow for FDI oversight in Israel beyond the national security and defence sector.

Telecommunications

Israeli telecommunications laws require obtaining a telecoms licence (or being covered by a general licence or permit) to engage in "telecommunications activities" – a concept that is broadly defined as the broadcasting, transfer or reception of signs, signals, writing, visual forms, sounds or information by means of wire, wireless, optical system or other electromagnetic systems. When it comes to issuing regulatory licences, the minister of communications (which regulates this sector) has broad power to prevent or seriously limit FDI in Israeli telecoms companies or the industry in general. For example, licences may be issued in a manner that either restricts or includes conditions concerning the appointment of officers, shareholdings, and the transfer or acquisition of means of control in a telecoms licensee or licence applicant. Such restrictions and conditions do not have to be made proactively; rather, existing licences may be amended at the discretion of the minister of communications. Moreover, when issuing (or amending) a regulatory licence, the consideration of the "public good" must be taken into account – an amorphous consideration that is widely read as including national security considerations. Thus, the minister of communications can restrict foreign acquisition of holdings in Israeli telecoms companies, and can encumber their activities by amending existing licences following foreign investment in a licence holder.

Regulated Financial Services

As a general rule, Israeli financial services laws and regulations do not limit a foreigner's ability to own shares of a company that is licensed to provide financial services in Israel. However, if a licence is required to engage in providing services in financial assets, then a control permit must be issued to the controlling shareholder of the Israeli entity that holds such licence. In this regard, the regulator may take into account broad considerations when issuing such a control permit, including national security considerations.

Real Estate

As a general rule, the transfer of rights in Israeli government-owned real estate (which is most of the land in Israel) to foreign persons (as the term is defined in the law) requires approval from the chairman of the Israel Land Council (who is usually also the minister of construction and housing). This rule applies to transfers of ownership rights, long-term lease rights exceeding five years (whether in the first instance or in the aggregate), as well as options to grant such ownership or lease rights. Transfers are not valid without such approval. In addition, lease agreements with the Israel Land Authority may contain restrictions on total foreign investor ownership. Considerations which are taken into account in the approval process include: public interest and its security; the foreigner's connection to Israel; the purpose for acquiring the real estate; the scope of real estate acquired by the foreigner prior to the request for approval; and the nature of the real estate in question (eg, size, location and designation). In certain specific lower-risk cases (eg, with respect to the transfer of rights in a single residential unit to a natural person, to a foreign state in connection with an Israeli undertaking under an international treaty, etc) the authority to approve the transfer of rights in real estate is granted to the director of the Israel Land Authority instead.

Government Procurement Contracts

In addition to the regulatory oversight mechanisms described above, another important method for FDI oversight is the use of government procurement contracts by government bodies. This mechanism specifically has been touted in recent years by the MOD, which is a key customer or target customer for many companies in the defence sector.

9. Tax

9.1 Taxation of Business Activities

Most businesses conducting business activities and trade in Israel are incorporated either as companies limited by shares and respected as separate entities from their owners, or as partnerships.

The Israeli corporate tax regime is based on two-tier taxation (firstly, at the company level and secondly, at the shareholder level, upon distributions to the shareholders). Israeli companies are taxed on a worldwide basis while foreign companies are only subject to Israeli tax with respect to their Israel-sourced income. Incorporated businesses are subject to regular capital gains tax upon taxable transactions. In certain transactions, value added tax (currently at 17%) may also apply.

Transparent entities, such as partnerships, are treated as pass-through entities for Israeli tax purposes and, thus, are not sub-

ject to two-tier taxation. The partners in the partnership are subject to tax with respect to its income based on the pro rata rights in the partnership's income.

9.2 Withholding Taxes on Dividends, Interest, Etc

Generally, dividends distributed to "non-substantial" shareholders (holding less than 10% of the means of control of the paying company) are subject to 25% withholding tax, increased to 30% for substantial shareholders.

Interest paid to non-Israeli individuals is generally subject to 25% withholding tax, increased up to 50% (47% marginal tax rate and 3% surtax beyond a certain applicable threshold) when paid to substantial shareholders. Certain interest payments to non-resident investors are generally exempt from withholding tax, such as interest on certain traded government bonds. Interest payments to non-Israeli corporations are subject to withholding tax based on the standard corporate income tax rate (23% in 2020).

Different tax rates may apply when the company is publicly traded and its shares are held by a registration company, or when the distribution is by a preferred enterprise or technology enterprise.

Israel is party to more than 50 double-taxation treaties, most of them based on the OECD Model Convention and many of these treaties provide for lower withholding rates for interest and dividends, often tied to meeting certain threshold and holding period conditions.

The ITA applies a somewhat strict approach with respect to prevention of treaty shopping and generally checks the beneficial ownership and economic substance of persons claiming benefits under an income tax treaty.

9.3 Tax Mitigation Strategies

Intercompany financing is often done via "capital notes", which provide for a relatively efficient financing method. For an instrument to qualify as a capital note, the financing must not be linked to an index or carry any interest or yield. There is a maximum five-year maturity period and its repayment is subordinate to all other obligations of the company receiving the financing.

Generally, there is no branch profits tax in Israel and profits may be distributed by the branch to the overseas headquarters without an additional layer of tax.

Following acquisitions of Israeli target companies, there are generally no limitations on utilising the net operating losses of the acquired company subject to certain anti-avoidance rules.

Consolidated tax returns are generally not allowed under Israeli law.

9.4 Tax on Sale or Other Dispositions of FDI

Capital gains of non-Israeli residents on the sale of stocks in public companies traded on TASE are generally tax-exempt, provided that the capital gains do not stem from the permanent establishment of such non-Israeli resident in Israel, from investments in certain real estate funds or from the sale of certain short-term bonds or loans.

Capital gains of non-Israeli residents on the sale of shares in private companies which were purchased on or after 1 January 2009 are also generally exempt under domestic law, as long as:

- the capital gains are not attributable to the permanent establishment of the non-Israeli resident in Israel;
- the shares were not purchased from a related party or by way of certain Israeli tax-free reorganisations; or
- the primary value of such shares on the day of their acquisition and during the two years prior to their sale or transfer, was not derived, directly or indirectly, from real estate rights, rights in a "real estate association" (generally, a company, the value of which is mostly attributable to real estate or real estate rights in Israel, including long-term leases), rights to use real estate or any asset attached to real estate in Israel, a right to exploit natural resources in Israel, or a right to benefit from real estate situated in Israel.

A non-Israeli entity will not be eligible to benefit from domestic law exemptions or other relief under the Tax Ordinance otherwise granted to non-Israeli residents, if Israeli tax residents are, directly or indirectly, taking into account applicable attribution rules, the "controlling holders" of such entity, or the beneficiaries of, or entitled to, 25% or more of the income or gross revenues of such entity.

Certain treaties provide partial or full relief with respect to capital gains taxes on non-Israeli residents, subject to satisfying certain conditions.

9.5 Anti-evasion Regimes

The Tax Ordinance includes a general anti-avoidance provision which allows a tax-assessing officer to ignore transactions that are deemed to be artificial or fictitious, or if one of the main motivations of such a transaction is tax avoidance. In addition, the "substance over form" doctrine is a generally accepted principle of local case law.

While not too many tax treaties include limitation on benefits clauses, under Israeli case law, Israel is entitled to implement domestic anti-avoidance legislation when interpreting tax treaty

provisions. Foreign corporations conducting business activity in Israel must operate in accordance with accepted transfer pricing standards and, in particular, the arm's length principle.

In an international transaction where, due to special relationships between the parties, less profit is derived in Israel as compared to the price or conditions in transactions between unrelated parties, the transaction must be reported according to the market conditions and will be taxed accordingly.

In regulations and circulars, the ITA provides guidance for determining market value, identifying the most appropriate transfer pricing method and the activity's part in the global business.

Currently there are no "anti-hybrid" rules governing cross-border investments.

10. Employment and Labour

10.1 Employment and Labour Framework

Labour Law

Israeli labour law is generally governed by a number of sources, including labour legislation, collective agreements (which may govern the terms and conditions of employment of all or certain groups of employees in a particular workplace or industry), extension orders (extending the application of general collective agreements to the entire industry or nationwide) and personal employment agreements. In the event that a number of sources simultaneously apply to an employee, generally the source which includes the provisions most favourable to the employee prevails.

Employment Law

In principle, Israeli employment law applies only to employees, and not to workers who have other forms of engagement. Additionally, specific legislation and rules apply to certain groups of workers (such as foreign employees). Therefore, it is essential to determine the status of engagement of each specific worker. This task is not always easy, for the following reasons: (i) there is no statutory global definition of the term "employee" (rather, only specific definitions for specific legislation); and (ii) this is a question of status, and as such, it is not subject solely to the parties' contractual agreement. Any contractual agreement may be subject to re-classification by the relevant judicial authorities.

10.2 Employee Compensation

Israeli employment law is comprehensive, and grants employees a wide range of mandatory minimal terms and conditions of employment. Employers may, and in certain circumstances are required, under various sources, to provide their employees with beneficial entitlements that exceed the mandatory minimum.

The minimum mandatory employment entitlements are as follows:

- minimum wage;
- annual leave;
- religious/public holidays;
- sick leave;
- recuperation pay (this is an annual cash payment);
- travel expenses;
- pension insurance; and
- study fund contributions (this saving mechanism is not mandatory, but very common).

There are two primary types of acquisitions.

- Asset transactions, which result in a change of employers; in such case, Israeli law provides employees with certain protections regarding their rights in the workplace, primarily when the employees continue to be employed in the same workplace, but by a different employer. In practice, there are two methods of transferring employees:
  - (a) fire and rehire – the employees' employment is terminated by the original employer, and they are re-hired by the new employer; or
  - (b) continuation of entitlements – the employees' continuity of employment is maintained, and the new employer "steps into" the original employer's position as employer for all intents and purposes.
- Share transactions (including mergers), which are not considered a change in legal personality, and therefore, all of the obligations and rights of employees are generally preserved as they existed before the sale (unless agreed otherwise).

As a general rule, an employee cannot be transferred to another employer without the employee's consent.

10.3 Employment Protection

As noted in **10.2 Employee Compensation**, as a rule, an employee cannot be transferred to another employer without the employee's consent. Therefore, if an employee does not give his or her consent to the transfer, the original employer would need either to continue to employ the employee, or to terminate his or her employment (with all the relevant implications).

If the employees belong to a "protected group" (such as pregnant employees), the original employer may have to apply for a permit to terminate their employment or to make certain changes to the terms and conditions of their employment.

Labour Courts have imposed three main obligations on employers undergoing structural changes in their business, including following an exchange of employers:

- the obligation to provide employees with relevant information regarding the forthcoming structural change;
- the obligation to consult with the employees regarding maintaining their rights during the structural change; and
- the obligation to negotiate with employees regarding the terms of their employment after the structural change.

Although these obligations apply, in general, to all employers, where there is no active workers' organisation or committee, the performance of these obligations is usually not observed or enforced.

In the event of termination of employment (including under the "fire and rehire" transfer method described in **10.2 Employee Compensation**), the (original) employer is required to conduct a hearing process, prior to reaching a decision to terminate the employees' employment, and upon reaching such decision, settle all accounts with the employee, including providing a prior notice (or payment in lieu, where applicable), paying severance (and releasing the pension arrangements, which include some, and in certain cases, all of the entitlement to severance), redeeming accrued annual leave days, and any further contractual entitlements.

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

Depending on the target sector for inbound investment, intellectual property can be an important consideration for FDI screening.

As noted in the overview provided under **1.2 Regulatory Framework for FDI**, FDI oversight in Israel is sector specific and, therefore, there is no general rule relating to IP specifically as a consideration for FDI screening. Thus, where foreign access to IP poses heightened risk in a given sector, it will play a more central (and important) role in FDI oversight. In this context, the criteria used in conducting a review will differ between sectors.

In general, access to IP will be subject to greater scrutiny in more sensitive industries. A key sector in this regard is the defence sector, where there is heightened sensitivity surrounding know-how (which can include IP), the export of which from Israel would usually be regulated, as well as IP underlying technology sold to and used by the Israeli defence establishment (eg, the Israeli Defence Force). Generally speaking – the Israeli MOD imposes strict limitations on foreign access to such IP.

11.2 Intellectual Property Protections

Intellectual property is both protected and enforced in Israel. Patents, designs, trade marks, and plant breeders' rights are all registrable, while copyrights, mask-works and trade secrets are protected without registration. Israel is a member of the Paris Convention, the Berne Convention, the Rome Convention, the Madrid Agreements and the TRIPS Agreement.

The time required to achieve registration of IP rights in Israel is not much longer than the time required for the same purpose in the US, the UK, or the EU.

Finally, ownership by non-Israeli entities of any IP derived from Israeli Innovation Authority funding requires the approval of the IIA.

11.3 Data Protection and Privacy Considerations

Israeli data protection laws and regulations regulate both general privacy aspects and computerised databases, including matters such as registration requirements, consents, data security, international transfers of data, access and correction rights, etc. Additionally, there are specific guidelines issued by the Israeli Protection of Privacy Authority regarding specific privacy matters (eg, surveillance cameras, outsourcing activities, etc).

In principle, Israeli privacy laws are territorial, however, they may apply extraterritorially based on cumulative linkages to Israel (eg, the controller of the data is Israeli, the data is processed in Israel, the data subjects or servers are Israeli, etc). Furthermore, Israeli data controllers may impose certain obligations on foreign investors under Israeli privacy laws in order for such controllers to be in compliance with their obligations under law (eg, with respect to the international transfer of data or outsourcing activities).

The enforcement of the privacy laws includes, inter alia, criminal sanctions and administrative sanctions (including administrative fines in amounts of up to ILS25,000). In practice, administrative sanctions are more common, while criminal enforcement is rare and is applied only on occasions where serious violations of the privacy laws occur.

12. Miscellaneous

12.1 Other Significant Issues

There are no other significant issues at present.

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Trends and Developments

Contributed by:
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2021 - Israel at a Crossroads While Its Technology Ecosystem Continues to Bloom

The tumultuous global events of 2020 – the COVID-19 pandemic, the resultant global economic crisis, and the consequential rise of nationalistic (rather than global or regional) interests – have pushed many issues which were previously perceived as being central agenda-toppers to the background.

Primary examples of these temporarily deferred issues, from the public Israeli perspective, include – the Israeli-Palestinian dispute; the ongoing conflict with Iran; and the future of Israel-China trade relations.

However, 2021, brings prospective "winds of change". The combination of the beginning of widespread COVID-19 vaccinations, together with the advent of a new US administration, has the potential to change the agenda yet again, and possibly reinstate some of these relegated issues to their former prominence.

Of primary importance will be the creation of a meaningful dialogue with the new US president and his team. Having been publicly perceived to have gone almost "all in" with the previous Republican regime, the Israeli government will have to work hard to ensure that US-Israel relations remain strong and interests remain aligned. Such efforts will obviously be hampered by the fact that the US administration will almost certainly focus its initial efforts on dealing with the domestic crises exacerbated by the events of 2020. An additional complication is Israel's own internal political instability, with the country facing its fourth national election within less than two years in March 2021.

In addition to the obvious geo-political issues, which are central to Israel's existence, such as the Israeli-Palestinian dispute, and the ongoing conflict with Iran, the Israeli and US governments will also need to re-align on a wide range of commercial and financial issues.

A primary example of such an issue is Israeli trade with China. Unbeknown to most, China is already Israel's largest source of global imports, and the second largest market for Israeli exports. This second statistic is all the more impressive, given the fact that the US has imposed strict limitations on exports of sensitive technologies from Israel to China, which would have otherwise greatly increased the scope of Israeli Chinese trade.

The Trump administration, recognising that Israeli technology could help the Chinese bypass US-imposed technology-sharing limitations, made a concerted effort to ensure that Israel would not become the "weak link in the chain". The December 2019 Israeli government decision to establish an inter-ministerial Foreign Direct Investment Oversight Committee, was the direct result of such US pressure, aimed at preventing the Chinese from taking control of potentially sensitive Israeli companies.

The question today is – will the new US administration continue the policies of its predecessors, or will Israel be allowed greater freedom to pursue its own economic agenda (which has identified China as Israel's largest future potential trading partner)?

Similar questions arise with respect to the regional peace process and the Israeli-Palestinian conflict. The Trump administration initially adopted the same strategy as previous US presidents, viewing the resolution of the Israeli-Palestinian conflict as a necessary milestone for any significant regional agenda. However, when the US administration realised that the Palestinian leadership was totally unwilling to accept it as an "honest broker", and refused even to comment on the Trump peace plan (published in January 2020 under the formal title – "Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People"), the US rapidly changed course, and decided instead to promote a new regional peace initiative, which led to peace and "normalisation" agreements being hurriedly reached between Israel and an ever-increasing list of regional countries (as of writing – the UAE, Bahrain, Sudan, Morocco and Bhutan).

Thus, the Israeli-Palestinian dispute, which for decades had been viewed as the keystone of any possible regional peace initiative, appears to have now been relegated to secondary status. So much so, that questions are now being raised as to whether an Israeli-Palestinian agreement is even a necessary precondition for the resolution of the Arab-Israeli conflict in its entirety.

The new US administration may decide to again change course and to attempt to revitalise the "Palestinian track". However, without the backing of many of the Arab states, which now appear more focused on cementing commercial and security ties with Israel, it remains to be seen how the ageing and ever-more isolated Palestinian leader will react to such efforts.

And finally – Iran. The Iranian-Israeli conflict has remained simmering throughout 2020, with isolated "flare-ups" in both Syria and other locations. Reeling from the effects of the pandemic, nothing would make the EU member states happier than the US reversing its position on the Joint Comprehensive Plan of Action (JCPOA) and coming back to the table for renewed talks with Teheran, thus potentially recreating a huge market for European goods.

Israel, on the other hand, will almost certainly continue to advocate fiercely for ongoing sanctions and limitations, tightening the noose around the already weakened Iranian economy.

These brief examples (of which there are many more) show that 2021 will be a year of numerous "forks in the road", each with enormous potential for economic and political change, both in Israel and globally.

It remains to be seen if the paths chosen this year will be viewed, in retrospect, as part of a post-pandemic revitalisation, or will alternatively leave us all yearning for the "road not taken".

Has "start-up nation" become "scale-up nation"?

Notwithstanding the COVID-19 pandemic and the political turmoil described above, 2020 turned out to be a promising year for the Israeli technology sector. Israel remains a technological powerhouse. A formidable combination of innovation and entrepreneurial drive, as well as thousands of repeat founders and investors, continues to attract the world's leading technology companies, venture capital funds and private equity funds, and more recently SPAC (special purpose acquisition company) sponsors, all of whom are looking for the disruptive idea, the development, the product that is ahead of the field, either for financial return or for strategic synergies.

While Israel experienced a noticeable decline in the level of M&A activity during 2020, which might be attributable primarily to the COVID-19 pandemic and its influence on global M&A activity during 2020, Israeli private tech companies were able to raise a record USD10.6 billion in venture capital and private equity financings (compared to USD7.8 billion in 2019), including a significant uptick in the number of investments, in general, and in growth investments, in particular.

More Israeli and Israeli-related companies (ie, companies founded by Israelis) have reached a size and level of maturity that have enabled them to turn both to local and global capital markets as viable exit alternatives. The year 2020 was a record year for offerings of Israeli companies in the international capital markets (especially on Nasdaq). A comprehensive annual survey conducted by our firm and others found that in 2020, Israeli companies raised an aggregate amount of approximately USD12.8 billion in 87 offerings in international markets. This is compared to 35 international offerings in 2019 in which Israeli companies raised an aggregate amount of approximately USD5.3 billion. Of the 87 offerings, 72 were equity offerings, and 15 were debt offerings. Of the equity offerings, 11 were initial public offerings (IPOs), compared to six IPOs completed in 2019, including the notable listings of Amwell, JFrog, Lemonade Fiverr and NeoGames.

The Tel Aviv Stock Exchange (TASE), which was traditionally viewed by investors as a primarily debt-friendly market, leading to the issuance of tradable bonds to the public by both Israeli and non-Israeli companies, has also experienced exponential growth during 2020 in the number of IPOs on TASE, with more than 25 companies (in the aggregate), primarily in the tech and energy sectors, listing their shares for trading.

With respect to debt offerings in the international capital markets, 2020 was also characterised by a number of straight and convertible bonds issuances of companies such as Amdocs, Leviathan, Varonis, Nice, SolarEdge, Wix and others, which issued bonds and convertible bonds at significant volumes and at relatively low interest rates. In 2020, there were 15 such offerings totalling approximately USD16.2 billion, compared to nine such transactions made in 2019 totalling approximately USD7.6 billion. Of the debt offerings, the State of Israel has raised an aggregate amount of approximately USD7.7 billion in four debt offerings.

Furthermore, despite the decline in M&A activity, some of the world's largest private equity funds continue to look closely at Israel for mature opportunities (in most cases, companies with proven revenue and attractive EBITDA levels). Notable examples during 2020 were the acquisition of Forescout by Advent, the acquisition of Checkmarx by Helman & Friedman, and the acquisition of Armis by Insight Partners. Another significant acquisition, which came to completion during the past year, was the acquisition of Mellanox by Nvidia for approximately USD7 billion.

The maturation of the Israeli technology ecosystem could also be evidenced by the exponential growth we have experienced in the number of Israeli and Israel-related unicorns (privately held tech companies with a valuation of at least USD1 billion). As 2020 came to an end, Israel could count close to 50 tech unicorns (most unicorns per capita in the world according to publications, and including double, triple and quadruple unicorns) and a similar number (if not larger) of companies which are yet to be recognised as unicorns but have already been viewed as unicorns-to-come or companies with valuations of above USD400–500 million.

Last year also marked the return of the Special Purpose Acquisition Company (SPAC) transactions to Israel. The two main SPAC transactions consummated in the Israeli market were the combination of SBTech and Draftkings, and the Innoviz transaction. As SPAC transactions gain momentum in the US, many Israeli tech unicorns have begun to explore the availability of such alternative to them and we expect that phenomenon to continue during 2021.

Lastly, the peace and "normalisation" agreements reached between Israel and the UAE, Bahrain and Morocco (as well as Sudan and Bhutan to a lesser extent), have contributed to increasing the level of optimism as we begin 2021. The Israeli business community has embraced these agreements wholeheartedly and has been extensively exploring business opportunities in these countries.

We expect many of these trends, and in particular, the "scale-up era" of Israeli technology companies to continue during 2021.

Contributed by: Daniel Reisner and Aviram Hazak, ***Herzog Fox & Neeman***

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