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IsraelDesks

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ISRAEL

LEGALLY ISRAEL100
IsraelDesks League Tables
2023

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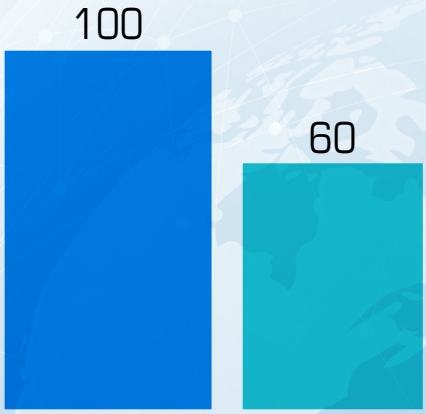
2022

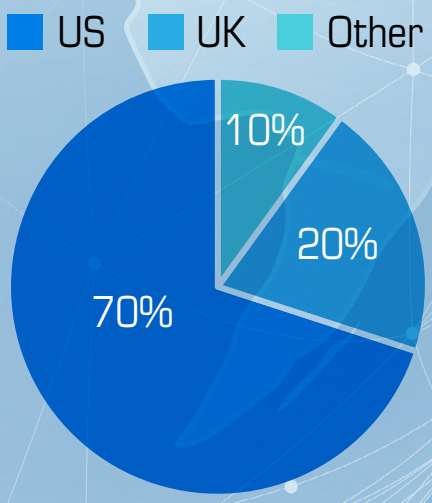


Israel Practice

Israel Capabilities

Law firms with presence on the ground

Lawyers Affiliated with Israel Practices



Israel Practice firms HQ

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League Tables

A Word from Israel Desks: Overview

We are pleased to bring you the 5th Israel Desks League Tables, showcasing international law firms that are major destinations for Israeli clients, and are a hub of valuable experience in Israel-related deals.

Today, there are an estimated 160 law firms with an Israel Desk, a striking 20% increase from the number of firms back in 2019. In 2022, Israel's economy grew 6.5%, slower than 2021's 8.6% expansion, but still much stronger than most Western countries, according to the Central Bureau of Statistics. With tech innovation continuing to scale new heights, the interest in deals and collaborations has far from waned, and the data bears that out in the Israel Desks League Tables.

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

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

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

Congratulations to all!

M&A Volume

Position	Law Firm	Volume
1	DLA Piper	26
2	Freshfields Bruckhaus Deringer	16
3	Greenberg Traurig	15
4	White & Case	14
5	Bryan Cave Leighton Paisner	8
5	Latham & Watkins	8
6	Gowling WLG	6
6	Goodwin	6
7	Allen & Overy	5
8	Bird and Bird	4
8	Cleary Gottlieb	4
8	Taylor Wessing	4
9	Davis Polk	3
9	CMS	3
9	Squire Patton Boggs	3
10	Clifford Chance	2
10	Dechert	2
11	Herrick	1
11	Carter Ledyard & Milburn	1
11	Ashurst	1
11	Herrick	1

Elite

M&A Value

Position	Law Firm	Volume	Value ($M)
1	Latham & Watkins	8	13,200
2	Freshfields Bruckhaus Deringer	16	10,307
3	Davis Polk	3	9,901
4	DLA Piper	26	8,992
5	White & Case	14	3,069
6	Greenberg Traurig	15	2,413
7	Cleary Gottlieb	4	1,925
8	Bryan Cave Leighton Paisner	8	840
9	Clifford Chance	2	500
10	Allen & Overy	5	480

TAX

Position	Law Firm	Volume
1	DLA Piper	26
2	Herrick	16
3	Bryan Cave Leighton Paisner	3
4	Fox Rothschild	2
5	Bird and Bird	1
5	Taylor Wessing	1

Elite

Real Estate

Position	Law Firm	Volume
1	Greenberg Traurig	42
2	Asserson	36
3	DLA Piper	19
4	Herrick	15
5	Taylor Wessing	12
6	Chapman and Cutler	9
7	CMS	8
8	Bryan Cave Leighton Paisner	7
9	Zeichner Ellman & Krause	4
10	Bird and Bird	2
11	Allen & Overy	1
11	Carter Ledyard & Milburn	1
11	Dechert	1
11	Howard Kennedy	1

Elite

IP

Position	Law Firm	Volume
1	DLA Piper	35
2	CMS	24
3	Greenberg Traurig	17
4	Bird and Bird	16
5	Freshfields Bruckhaus Deringer	12
6	Taylor Wessing	11
7	Pillsbury	6
8	Cleary Gottlieb	4
9	Bryan Cave Leighton Paisner	2
9	Goodwin	2
9	Gowling WLG	2

Elite

Litigation

Position	Law Firm	Volume
1	Asserson	61
2	Freshfields Bruckhaus Deringer	32
3	Greenberg Traurig	18
4	DLA Piper	15
4	Taylor Wessing	15
5	CMS	12
5	DAC Beachcroft	12
6	Bryan Cave Leighton Paisner	11
6	Zeichner Ellman & Krause	11
7	Fox Rothschild	8
8	Kobre & Kim	5
9	Allen & Overy	4
9	Cleary Gottlieb	4
10	Carter Ledyard & Milburn	3
11	Pillsbury	2

Elite

Patents

Position	Law Firm	Volume
1	Mathys & Squire LLP	29
2	Fox Rothschild	10
3	Pillsbury	9
4	CMS	8
4	DLA Piper	8
5	Greenberg Traurig	7
6	Bird and Bird	6
7	Goodwin	4
8	Bryan Cave Leighton Paisner	3
8	Allen & Overy	3
9	Taylor Wessing	2
10	Gowling WLG	1

Elite

Energy & Infrastructure

Position	Law Firm	Volume
1	Freshfields Bruckhaus Deringer	17
2	DLA Piper	9
3	CMS	7
4	Allen & Overy	4
4	Howard Kennedy	4
5	Pillsbury	3
6	Fox Rothschild	2
7	Ashurst	1
7	Clifford Chance	1
7	Dechert	1
7	Taylor Wessing	1

Elite

Capital Markets Volume

Position	Law Firm	Volume
1	Sullivan & Worcester LLP	26
2	White & Case	12
3	Freshfields Bruckhaus Deringer	10
4	Davis Polk	8
5	Carter Ledyard & Milburn	5
6	Bryan Cave Leighton Paisner	4
6	Chapman and Cutler	4
6	DLA Piper	4
6	Greenberg Traurig	4
7	Allen & Overy	3
7	Cleary Gottlieb	3
7	Gowling WLG	3
7	Taylor Wessing	3
8	Latham & Watkins	2
8	Skadden	2
9	Clifford Chance	1
9	Dechert	1

Elite

Capital Markets Value

Position	Law Firm	Volume	Value ($M)
1	White & Case	12	4,728
2	Latham & Watkins	2	2,862
3	Davis Polk	8	2,287
4	Allen & Overy	3	2,500
5	Clifford Chance	1	2,500
6	Sullivan & Worcester LLP	26	1,831
7	Cleary Gottlieb	3	1,620
8	Bryan Cave Leighton Paisner	4	1,422
9	Chapman and Cutler	4	1,396
10	Skadden	2	1,113
11	Freshfields Bruckhaus Deringer	10	1,097
12	Cleary Gottlieb	3	500
13	DLA	4	485
14	Taylor Wessing	3	474
15	Carter Ledyard & Milburn	5	195

Elite

Labor

Position	Law Firm	Volume
1	Greenberg Traurig	126
2	DLA Piper	124
3	Asserson	49
4	Squire Patton Boggs	23
5	Bryan Cave Leighton Paisner	16
5	CMS	16
6	Bird and Bird	15
7	Fox Rothschild	11
8	Taylor Wessing	4
9	Allen & Overy	2
9	Goodwin	2

Elite

Banking & Finance

Position	Law Firm	Volume
1	Freshfields Bruckhaus Deringer	10
2	DLA Piper	9
3	Zeichner Ellman & Krause	8
4	Allen & Overy	7
5	Greenberg Traurig	6
6	Clifford Chance	5
7	Bryan Cave Leighton Paisner	4
7	Taylor Wessing	5
8	Herrick	3
9	Bird and Bird	2
9	Dechert	2
10	Ashurst	1
10	Fox Rothschild	1

Elite

Hi-Tech

Position	Law Firm	Volume
1	DLA Piper	187
2	Greenberg Traurig	176
3	Bird and Bird	54
4	Lowenstein & Sandler	51
5	Sullivan & Worcester LLP	43
6	Goodwin	37
7	Taylor Wessing	34
8	Squire Patton Boggs	22
9	Bryan Cave Leighton Paisner	20
10	CMS	18
11	Fox Rothschild	17
12	Freshfields Bruckhaus Deringer	10
13	Pillsbury	8
13	Zeichner Ellman & Krause	8
14	Allen & Overy	7
15	Ashurst	3

Elite

Individual Rankings

Leading

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

Prominent

Name	Law Firm
Colin Diamond	White & Case
Louis Glass	CMS
Nathan Krapivensky	Taylor Wessing
Lee Noyek	Allen & Overy
Mark Selinger	Greenberg Traurig
Ben Strauss	McDermott Will Emery
Daniel Turgel	White & Case
Yossi Vebman	Skadden

Recognized

Name	Law Firm
Guy Ben-Ami	Carter Ledyard & Milburn
Ari Berman	Pillsbury
Gary Emmanuel	Greenberg Traurig
Meira Ferziger	Greenberg Traurig
Josef Fuss	Taylor Wessing
Etay Katz	Ashurst
David Metzger	Clifford Chance
Tali Sealman	White & Case

Notable

Name	Law Firm
Trevor Asserson	Asserson
Baruch Baigel	Asserson
Yariv Ben Ari	Herrick
Tom Beaudoin	Goodwin
Clarissa Coleman	DAC Beachcroft

Notable

Name	Law Firm
Adam Fleisher	Cleary Gottlieb
Michael Friedman	Chapman and Cutler
Steven Glusband	Carter Ledyard & Milburn
Oded Har-Even	Sullivan & Worcester LLP
Kenneth Henderson	Bryan Cave Leighton Paisner
Lee Hochbaum	Davis Polk
Daniel Ilan	Cleary Gottlieb
Odia Kagan	Fox Rothschild
Mayan Katz	Goodwin
Stuart Kurlander	Latham & Watkins
Miriam Lampert	Squire Patton Boggs
Adam Levin	Dechert
Daniel Rubel	Zeichner Ellman & Krause
Michael Sabin	Clifford Chance
Jason Saltzman	Gowling WLG
Chaim Seligman	Freshfields Bruckhaus Deringer
Richard Scharlat	Fox Rothschild
Bill Schnoor	Goodwin
Adam Snukal	Greenberg Traurig
Lawrence Sternthal	Greenberg Traurig
Michael Sweet	Fox Rothschild
Louis Tuchman	Herrick

Editorial

Allen & Overy

Active in the Israeli market for more than 25 years, Allen & Overy ("A&O") has one of the most formidable Israeli practices, acting for Israeli and international clients on strategic-level, cross-border transactions, projects and initiatives across many sectors. These include the energy and infrastructure, financial institutions, private equity, technology, real estate and life sciences fields.

Highly ranked in Banking, Capital Markets, and Energy, the Israel Group thrives under the leadership of senior corporate lawyer, **Lee Noyek** who brings significant experience of corporate finance, strategic M&A, divestments, joint ventures, public takeovers, refinancings and IPOs. This past year, the team advised on striking M&A transactions, acting for Israel's NeoGames S.A on its public offer to acquire Aspire Global for approximately USD 480 million, and Seattle-based Remitly on its acquisition of Israeli fintech company and payment institution Rewire. Among notable capital markets transactions, the Group also advised Delek Group on the admission of its Ithaca Energy Limited to the London Stock Exchange's Main Market.

A pillar of the firm's Israeli offering is its deep knowledge of the energy and infrastructure sector, with **Ed Moser** taking a prominent role. Luxembourg partner **Jacques Graas** and London-based **Will Samengo-Turner**, co-head of the EMEA Technology practice, also enjoyed an active 2022 with regards to Israel transactions.

Ashurst

With a strong understanding of the Israeli market, Ashurst's Israel Group has worked on transactions involving Israeli clients looking outward, as well as non-Israeli clients transacting in Israel. Heading the Israel Desk is **Etay Katz**, senior partner in the Financial Regulation practice and Co-chair of the firm's Bank sector. With more than 15 years' experience, Katz has represented the State of Israel in significant European capital market issuances and financial transactions, and the Bank of Israel on transactions and regulatory matters. The Group also comprises **Jake Green**, co-head of the firm's Finance Regulatory group and primary adviser for leading Israeli global fintechs, eToro and Plus500, as well as corporate partner **Jonathan Cohen**, who brings a particular focus in the Tech M&A space.

Asserson

UK-headquartered law firm Asserson continues to enjoy a strong presence in the Israeli market, with its largest office in Tel Aviv and a team comprising approximately 60 UK, U.S. and Israel qualified lawyers. Under the leadership

of the well-known shining light, **Trevor Asserson**, the team provides UK legal services to Israeli clients, taking the coveted top spot in Litigation, and flying high in the Real Estate and Employment rankings. The team earns widespread recognition for its involvement in commercial, real estate and construction-related litigation.

David Prais leads the 10-strong, Israel-based Real Estate team which advises on acquisitions and disposals. **Hadie Cohen** acts for Israeli companies on a raft of employment issues including settlement agreements, the impact of TUPE, collective redundancies and handling terminations. Clients also instruct on issues relating to the gig economy, the healthcare and care home sector. Jointly heading the Dispute Resolution practice is the highly active **Baruch Baigel**, whose track record includes several high profile and high value claims in the UK High Court, three of which have been listed by the Lawyer among the top 20 UK cases for the year, each of those cases for Israeli citizens, or people based in Israel. **Elliot Lister** has also enjoyed a busy year on real estate related litigation.
Visit: : Israel Page

Bird & Bird

Bird & Bird's instrumental figures in the Israel Group are **Adam Meisels** and **Frederique Dupuis-Toubol**, operating out of London and Paris, respectively, with a team of lawyers across its 31-office network. Prominent in the high-tech and IP space, the firm's experience cuts across many industry sectors and practice areas, such as venture capital, life sciences, technology and communications, retail and consumer, automotive, cybersecurity, financial services, fintech, energy, climate-tech and renewable energy.

The firm advised Israel-headquartered Guesty on multiple acquisitions in the Netherlands, Spain, Poland and Australia.

Bryan Cave Leighton Paisner

With almost 40 years' experience in the Israeli market, Bryan Cave Leighton Paisner ("BCLP") has one of the longest and most extensive practices, offering a raft of services to 200 plus Israeli financial institutions and corporates, including established public and private companies and start-ups in technology, infrastructure, real estate, manufacturing, finance, pharmaceuticals, energy and venture capital.

BCLP's noticeable rankings over the past year are in Real Estate – where the team acts for Israeli financial institution, Menora Mivtachim group, on its investment in London-based real estate investment and development firm, Brockton Everlast - as well as in high-tech and employment involving Israeli clients. London-based **Jonathan Morris** and Tel Aviv-based **Paul Miller** serve as Co-Chairs of the firm's Israel Desk, alongside **Ken Henderson** in the New York office. Among a number of flagship transactions, the firm acted for Tel Aviv based SPAC, Gesher I Acquisition Corp, in its headline acquisition of Freightos, a leading global freight booking and payment platform – with the merger listing Freightos publicly on Nasdaq. Partners **Jonathan Nesher** and **Amy Wilson** advised, from the Washington DC and Atlanta offices respectively. With particular experience in the technology, food and agribusiness, healthcare , real estate and other sectors, Morris, a partner in the firm's M&A and Corporate Finance team, advised Rafael Advanced Defense Systems Ltd. on the September 2022 acquisition of Pearson Engineering Ltd. (PER).

Carter Ledyard & Milburn

Built on the foundation of 160 years of legal service, one of New York's oldest law firms, Carter Ledyard Milburn ("CLM") has been representing Israel-based companies for over 20 years in corporate, securities, M&A, as well as litigation, intellectual property, employment, real estate and more.

The Israel practice group earned high rankings in Capital Markets, among others, and includes key figures Steven Glusband, who also co-chairs the firm's Corporate department and chairs the Securities practice group, and Israel-born Guy Ben-Ami, a leader of the firm's Israeli Cross-Border practice and licensed to practice in both the U.S. and Israel.

Both lawyers regularly act for Israeli parties in the M&A and capital markets space, recently advising on private placements and tender offers. The firm advised RADA Electronic Industries Ltd. in the all-stock merger between Leonardo DRS and RADA, advising on multiple securities matters.
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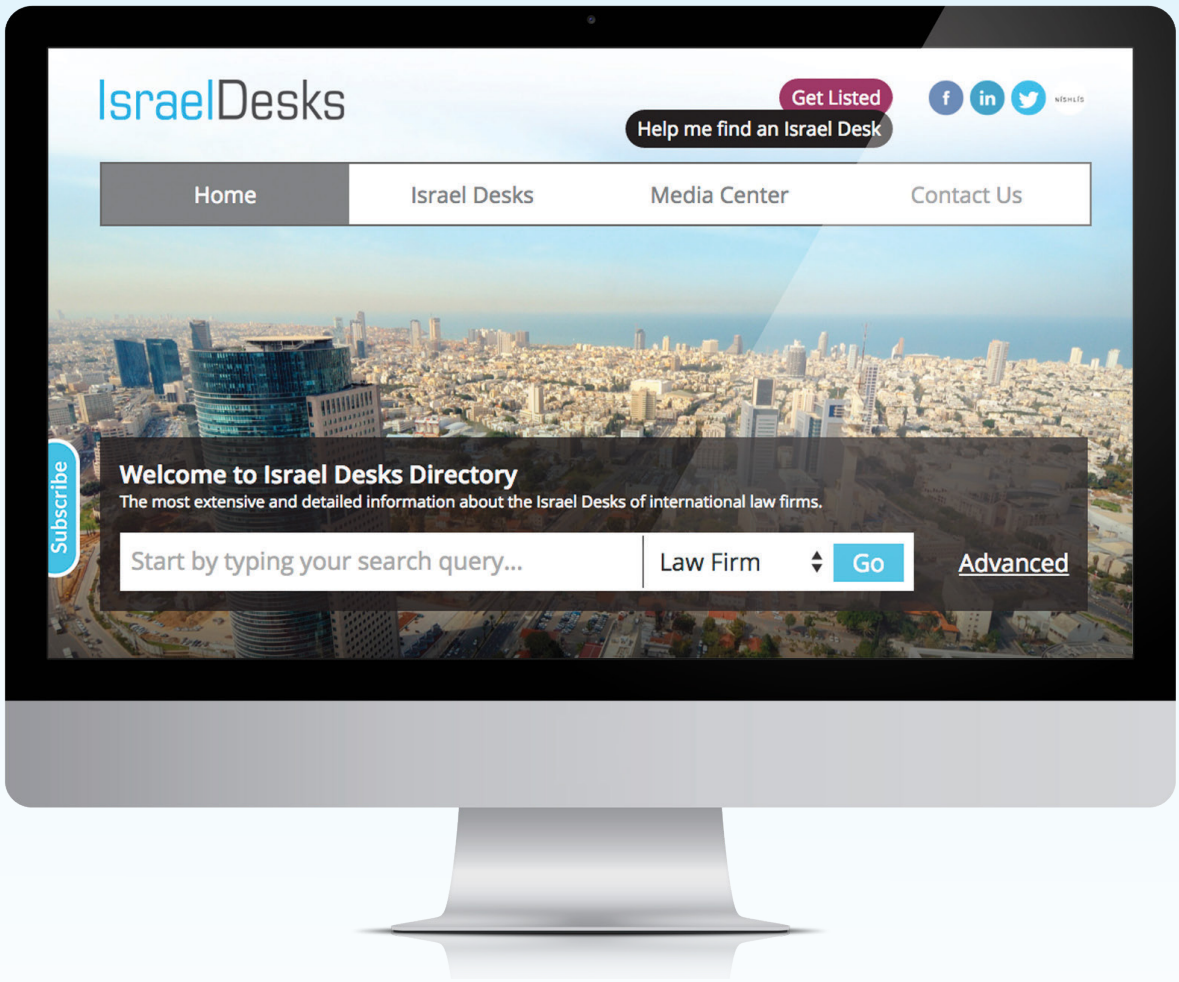
Chapman Cutler

Chapman builds on last year's debut in the Israel Desks rankings with another stellar showing. Recognized for its role as a platform for Israeli financial institutions and investors making investments in the U.S., the compact Israel Practice is led by partner Michael Friedman, who advises Israeli financial institutions, investment funds, trustees and law firms seeking US-based counsel in finance and restructuring matters.

If you are an International Law Firm with an Israel focus, IsraelDesks is your first destination



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For example, Chapman served as counsel to indenture trustee, Reznik Paz Nevo Trusts Ltd., in a USD 500 million international senior unsecured note financing issued by Bank Leumi—the first offering of international senior unsecured notes by an Israeli bank. The team also advised Israel-based Mishmeret Trust Company, Ltd. on bonds issued by GFI Real Estate Ltd., as well as the restructuring of bonds issued by All Year Holdings Ltd. Active in the real estate space, the team has advised Israeli parties on construction loans in 2022, among other things.
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Cleary Gottlieb

Headquartered in New York, international firm Cleary Gottlieb ("Cleary") is acknowledged for its solid track record in M&A, Capital Markets and Litigation over the past, year, notably advising International Flavors & Fragrances' USD 1.3 billion sale of its Microbial Control business unit to Lanxess AG, while in litigation, the team represented Frutarom Industries Ltd. (Frutarom) in successfully obtaining the affirmance of the dismissal of a putative securities fraud class action before the U.S. Court of Appeals for the Second Circuit.

The firm's Israel Group comprises the prominent capital markets lawyers, such as **Adam Fleisher**, who has represented numerous Israeli clients in the industrial, defense and tech sectors, as well as **David Gottlieb**, who acts for a roster that has included Bank Hapoalim, Bank Leumi and Israel Chemicals. Israeli clients also benefit from **Daniel Ilan**, whose IP focus saw him advise on those elements of the minority investment by CapitalG in a USD 400 million Series E fundraising for Fireblocks Ltd., an Israeli private company operating in the blockchain field.

Clifford Chance

A hugely active participant in the Israeli market for many years, Clifford Chance successfully harnesses its global reach to help Israeli clients reach international markets, and international clients access Israel.
David Metzger, **Michael Sabin**, and **Sam Clinton-Davis** are big-hitters in an Israel group, which has performed well in capital markets in the Israel Desks rankings, and works across many practice areas to offer clients immediate access to one of the widest international professional networks around.

Co-head of Clifford Chance's US Funds & Investment Management Group, Hebrew-speaking Michael Sabin has an active Israel practice, advising Israel-

based sponsors and investors on their fundraising and global investment activities. David Metzger, global head of Clifford Chance's Construction Group, has been advising bidders and lenders on light rail projects in recent years. With strong relationships with the world's banks and financial institutions, the team is renowned for M&A, banking and finance work, energy and infrastructure.

CMS

CMS is one of the few major European-focused law firms with senior equity partners on the ground in Israel, and has been instrumental for Israeli clients looking to invest or grow abroad, as well as those businesses and investors looking to enhance their business in Israel. Having served Israeli clients and international businesses with operations or investments in the country for over 25 years, CMS formalized its Israeli offering by opening a Tel Aviv office in 2021.

Within the Israel group, Louis Glass is a key figure, alongside the recommended **Andrew Besser**, members of a 70-strong team, which enjoys an Elite position in the Energy and IP categories of the Israel Desks rankings. CMS is actively involved in employment, commercial, IP and real estate work, as well as shareholder litigation advice for flagship clients. There was also a recognized forte in the regulatory advice given to gaming clients and legal advice given to Israeli energy companies. Highlights include the advice given to Equinor Ventures in its investment in Israeli carbon removal start-up, RepAir.

Clients also benefit from the firm's fluent Hebrew speakers and key relationships with Israeli banks and corporates, prominent start-ups, and key lawyers and accountants for more than two decades.

DAC Beachcroft

Israel is an important region for DAC Beachcroft, with the Israel Group advising clients across practice areas and sectors from AIM listings to major arbitrations to advising London Market insurers on claims in Israel.

The firm is particularly prominent in class action, litigation, product liability and contract disputes. The compact team features the experience of London-based trio **Clarissa Coleman**, **Chris Wilkes** and **Duncan Strachan**, especially active throughout 2022.

Davis Polk

Davis Polk soars high in the M&A: Value table in this year's Israel Desks rankings, especially active in some of the country's milestone M&A transactions and public offerings in 2022.

With a team of Hebrew speakers and graduates from Israeli law schools, the 37-strong group has shone in M&A and Capital Markets in the 12 months, with New York and Washington DC offices supporting the firm's co-head of the Israel Practice, Michael Kaplan on the USD 1.13 billion Nasdaq listing of Israeli company, Nayax in September 2022. Kaplan and the team also advised Ormat Technologies on its USD 375 million convertible senior notes offering, and a USD 338 million follow-on public offering. In 2022, the team also advised NewMed Energy, a key partner in every major gas discovery made in the last 30 years in Israel's offshore waters, on its USD 9.1 billion combination with Capricorn Energy plc, one of Europe's leading independent upstream energy companies with headquarters in Scotland.

Co-Heads of Davis Polk's Israel Practice are Lee Hochbaum, whose clients have included Israeli companies, such as ECI Telecom, Taboola, Attunity, NICE Systems, ADAMA and Mediamind, and Benjamin S. Kaminetzky, who acts for Israeli banks in civil and regulatory matters.
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Dechert

This Philadelphia-born firm Dechert has been involved in Israel-related matters for more than 40 years and offers a 24-strong team led by **Adam Levin**, who also co-heads Dechert's Corporate group in London.

In an extensive roster of international corporates, private equity groups and high net worth individuals, he advises on corporate structuring, governance, private equity and transactional matters. Fellow London partner, **Douglas L. Getter** brings experience in U.S. and cross-border M&A transactions in a diverse practice, and has, over the last 12 months, advised a leading sports company in the acquisition of an Israeli AI sports tech company.
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DLA Piper

The global knowhow and resources of DLA ensure that it is regularly involved at the top end of the Israeli market. From the U.S. to Latin America, Europe to Asia, the firm's Israel country group counts more than 100 lawyers and almost twice as many as Israeli clients.

With pole position in the M&A: Volume table, Tax, High-Tech and IP, the Group also flies high in Banking, Real Estate, Energy, Employment, among others.

The Israel Group is led by **Jeremy Lustma**n, who tapped into his wealth of experience in 2022 to advise Claroty on the USD 300 million acquisition of Medigate, a leading Israeli healthcare IoT security company, one of the largest local acquisitions in the Israeli cyber sector, and acted for ironSource, an Israel based global software company, on corporate and employment advice in connection with the USD 400 million acquisition of Tapjoy, a mobile advertising and app monetization platform. The Israel Group also features London-based **Jon Kenworthy**, Co-Chair of M&A Group, and New York corporate partner **Jon Venick**, who together advised Innovid on the USD 160 million acquisition of TV Squared Ltd., a measurement and attribution platform. Highly prominent in real estate, the team advised clients, such as El Al and Monday.com on a range of real estate issues, including acquisitions and leases.
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Fox Rothschild

A bridge between Israel and the U.S., Fox Rothschild 's 31-strong nationwide Israel practice group is a key destination for Israeli clients launching or expanding into U.S. markets. The group's work is driven by **Michael Sweet**, **Odia Kagan** and **Sarah Biser** in the San Francisco, Philadelphia and New York offices respectively, with technology and innovation at the heart of the firm's extensive client roster.

The firm performs well in litigation and employment, with Sweet, together with experienced Labor & Employment partner, **Richard Scharlat** defending management from U.S.-based companies and international companies with U.S. employees in employment and class action litigation. There is also recognition for its transactional and regulatory expertise, especially with regards to compliance work. Philadelphia-based partner **Odia Kagan**, the Chair of GDPR Compliance & International Privacy group, acts for Israeli clients from the agriculture, healthcare and software sectors, among others. The Group has also supported many Israeli parties in filing patents and trademarks in the past year.
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Freshfields Bruckhaus Deringer

As one of the most impressive names in the Israeli market, Freshfields' Israel Group emerges once again as an Elite firm in M&A, Banking and Energy. In a 20-strong team, with 3 principals, **Adir Waldman** is a key figure on the ground in Israel, leading a multijurisdictional team of Freshfields lawyers dedicated to advising Israeli clients and businesses with interests in Israel.

In 2022, Waldman advised on the investment by a private equity client into Vivion, the European real estate platform founded by the Dayan family. A core member of the Israel Group is Tel Aviv-based **Chaim Seligman** – who leads Tel Aviv office's tech initiative, and, together with Waldman, he provides legal advice on Basel Relief for sales guarantees to Bank Hapoalim and Bank Leumi.
During 2022, the team enjoyed an impressive record in the energy sector, advising ZIM on a liquified natural gas (LNG) take-or-pay agreement with Shell, as well as Siccar Point Energy and its sponsors, Blackstone and Bluewater, on the sale of the company to Ithaca Energy, a subsidiary of the Israeli firm NewMed Energy specializing in North Sea energy investments. In IP, the team has been acting for Israel's SodaStream on a series of actions to enforce the company's patents and designs against competitors selling knockoffs and falsely labeled products and to defend the company from false advertising claims brought by sellers of other beverages in certain key European jurisdictions, including Germany.

The Israel Group also performs extremely well in the Litigation and Arbitration table, with a successful track record in some of the highest-caliber dispute resolution matters in the Israeli market. Among a raft of matters, the team has been advising Israeli businessman Aaron Frenkel on a EUR 500 million claim against the City of Dubrovnik and the Republic of Croatia arising out of property development rights.

Goodwin

Attorneys in Goodwin's Israel Practice have significant experience working with Israeli businesses as well as internationally-based investors in Israeli companies. One of the landmark transactions was advising Singapore Telecommunications Ltd on its USD 239 million sale of Ad-Tech firm Amobee to dual-listed and Israel-headquartered Tremor, with partner **Katherine J Baudistel** (Santa Monica) advising.

The Israel Group also enjoys a successful track record in relation to start-ups and features prominently in the High-Tech table. In the past year,

the firm's Israel Group advised Israeli private company The Tomorrow Companies Inc., the developer of the leading platform for global weather and climate security, on the purchase of Remote Sensing Solutions, developers of radar technology, with Technology partner **Bill Schnoor** (Boston and London) advising. Life Sciences partner **Mayan Katz** (New York) led on the Series B investment by BASF Venture Capital and Orbia Ventures in Israeli biotech company, FortePhest, which is developing a technology to combat herbicide-resistant weeds. Boston partner, **Thomas Beaudoin** is also noted for his VC and private equity experience, with VC clients in Israel.

Gowling WLG

Multinational law firm Gowling WLG's Israel desk is co-led by London-based **Susannah Fink** and Toronto-based **Jason Saltzman**, who enjoys a diverse M&A and capital markets practice. Gowlings was formed from the merger of Canada-based Gowlings and UK-based Wragge Lawrence Graham & Co in February 2016, in the first multinational law firm merger co-led by a Canadian firm.

Saltzman recently advised Israel's Real Brokerage Inc., an international, technology-powered real estate brokerage, on the acquisitions of LemonBrew Lending Corp and Redline Real Estate Group (BC) Inc. The team also represented Canada-based IM Cannabis Corp., a leading medical and adult-use recreational cannabis company founded in Tel Aviv in 2010, in three strategic acquisitions in Israel: 51% of the outstanding ordinary shares of Revoly Trading and Marketing Ltd., formerly Vironna, all the outstanding ordinary shares of R.A. Yarok Pharm Ltd., and Rosen High Way.

Greenberg Traurig

With a multidisciplinary office in Tel Aviv, Greenberg Traurig's 100-plus Israel Practice is one of the larger hubs for Israel-related work. With first place in Real Estate and Employment, the group also earns lofty rankings in M&A, Capital Markets, and patent filing for Israeli companies, as well as in the high-tech and real estate sectors.

The Israel Practice thrives under the leadership of Managing Shareholder, **Joey Shabot**, who is frequently involved in a raft of M&A transactions involving Israeli parties. In 2022, he advised New York based industrial

machinery manufacturing company, ITT Inc. on its USD 140 million acquisition of Israeli valve manufacturer, Habonim Valves and Actuators Ltd., as well as acted for Volvo Group Venture Capital in its follow-up investment into Israeli automotive company NextGear. The Israel Group is packed with instrumental figures, such as Tel Aviv-based **Lawrence Sternthal**, who leads the International Real Estate department in Israel, as well as employment shareholder, **Meira Ferziger**, who advised on the employment issues facing Israeli fintech company, Melio, with its U.S.-based offices in New York City and Denver. **Adam Snukal** features in the rankings, with a wealth of high-tech experience across many industries, including fintech, cybersecurity, Ad-Tech, IT/cloud infrastructure, and more.

The Israel Group was boosted by new arrivals from McDermott Will & Emery in the last year – among them, corporate and securities partner **Gary Emmanuel**, who brings clients more than 20 years' experience, especially in relation to capital raisings and IPOs; **David Huberman**, who works closely with Israeli and domestic clients in capital raising transactions; and **Mark Selinger**, who represents public and private U.S., Israeli and other international technology and life sciences companies in public offering and M&A transactions.
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Herrick Feinstein

New York-based law firm, Herrick offers a robust Israel practice group, a key component of the firm's broader global experience. Connected with major Israeli law and accounting firms, the 15-lawyer group is recognized by Israel Desks rankings for a depth and diversity of experience, especially in the real estate sector.

Co-chairing the firm's Israel and Real Estate Hospitality practice groups, Real Estate partner **Yariv Ben-Ari** acts for real estate lenders, trustees, servicers, owners, operators, developers and contractors on a variety of sophisticated matters. He is backed by a team including seasoned veteran of New York City's commercial real estate market, **Belinda Schwartz**, Chair of the Real Estate practice – and now Executive Chair of the firm - as well as **Louis Tuchman**, partner and Chair of the firm's Tax department.

The team acted for Bank Hapoalim in the USD 52 million sale of a mortgage loan secured by real property and development rights near the High Line in Manhattan, as well as a senior co-lender in a USD 165

million acquisition and construction loan to Moinian Group to build a mixed-use residential and hotel property, also in Manhattan. The firm also advised NYSE-listed Datto Holding Corp., a leading global provider of cloud-based software and technology solutions for managed service providers (MSPs), in the purchase of Israeli cyber company, BitDam Ltd.
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Howard Kennedy

Howard Kennedy is recognized for its strong track record of advising Israeli clients, especially, recently, in relation to the energy sector. London-based and Hebrew-speaking **Charles Maxwell** heads the team and is supported by a network of strong connections.

The firm's Israeli clients are made up of high-net-worth individuals and families, entrepreneurs and corporates, and last year's workload includes a string of high-profile real estate matters, especially for a flagship Israeli investor and property developer client. With **Jonathan Cohen** leading on both matters, the firm is also representing Ashdod-headquartered Nofar Energy, which is developing the UK's largest planned battery energy storage project, with construction costs estimated at more than GBP 214 million, as well as Atlantic Green UK Ltd. (a JV between Nofar Energy and Interland) on their second grid-scale battery storage project located in Derbyshire, UK.

Kobre & Kim

Focused exclusively on disputes and investigations, Kobre & Kim enjoys a commanding reputation for representing Israeli clients in cross-border disputes involving Israel, the U.S., Europe, Asia and other jurisdictions. The firm is involved in a wide array of litigation for Israeli parties, including representing. Beny Steinmetz, a veteran Israel-based businessman with ventures across the globe. The team provided global strategic advice to Steinmetz in matters concerning his global dispute with Vale, a Brazil-based global corporation engaged in metals and mining, over a collapsed joint venture in Guinea.**Jeremy Bressman** features prominently in a compact, tight-knit team, and has represented Middle East-based corporate clients and individuals facing criminal allegations and enforcement proceedings, as well as in parallel civil litigation. Focused on IP litigation, San Francisco lawyer **Michael Ng** has represented Orckit Corp. in a Texas lawsuit involving the infringement of its patents, and also acted for Israeli ophthalmology company, Optical Imaging Ltd. in the enforcement of its global patent portfolio.
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Latham & Watkins

Latham & Watkins' ("Latham") Israel Practice leverages its global reach to provide strategic advice to Israeli clients on some of the highest profile and highest value transactions in the Israeli market, and takes top spot in M&A: Value, also enjoying a towering presence in the Israel Desks rankings in Capital Markets.

Joshua Kiernan in the London office is an instrumental figure in a large team spanning many offices and that takes center stage in the biggest M&A and capital markets transactions. Kiernan was a member of the multi-office team from London, Silicon Valley, Chicago, New York and Tel Aviv which advised on the USD 4.4 billion merger between ironSource, an Israel-based software company that focuses on app monetization and distribution, and Unity Software. The deal was completed in late 2022. He also advised on the approximately USD 1.3 billion business combination between HUB Cyber Security, an Israel-based developer of cybersecurity solutions and services, and Mount Rainier Acquisition Corp., a special purpose acquisition company.

Lowenstein & Sandler

This New Jersey-based national law firm with more than 300 lawyers makes its entry into the Israel Desks rankings, recognized in high-tech sector for more than 50 Israeli clients in that field. The roster comprises businesses, venture funds, hedge fund and private equity fund managers in cross-border transactions involving Israel and the U.S.

Almost 100 Israeli clients are served by the team, led by partners **Dotan Barnea** and **Max Karpel**, Co-Chairs of the Israel Practice. Working with companies at all stages and across a wide range of sectors, Barnea has been active in a range of corporate matters and investment rounds over the past 12 months.

Mathys & Squire

Having established its Israel team in 2011, Mathys and Squire, a hugely prominent European IP firm, enjoys a towering presence in the Patents and Trademarks category, grabbing first place in Filings/Prosecution.

The team works directly with and advising well-known Israeli clients, individuals and attorneys on filing patents and designs during the past year. The ten-strong team is headed up by London partner and UK & European Patent Attorney and UK Design Attorney, **Dani Kramer**, who

acts for clients ranging from start-ups to large corporations across a variety of technology sectors. He works closely with Munich partner **Andreas Wietzke** and **Anna Gregson**, a partner in London.

Pillsbury

The Israel team of this U.S. firm taps into its strengths across high-tech, life sciences, financial and energy industries. In addition to its activity in litigation, the firm has scored some notable successes in the M&A field in the past year, with a multi-office team advising Tremor International Ltd., a global advertising company headquartered in Israel, on its USD 239 million acquisition of Amobee.

Headed by **Ari Berman**, also the co-chair of Pillsbury's Securities Litigation & Enforcement practice, he focuses his practice on commercial litigation, with an emphasis on defending clients in shareholder disputes and investigations involving federal securities laws. He has acted for Teva Pharmaceuticals in high-stakes litigation matters (including M&A and insurance disputes) for over ten years. Deputy Head of the Israel Practice, **Nathan Renov** focuses on IP and patent portfolio development, among other things, and acts for U.S. and Israeli clients in many industries, including, among others, software, cryptocurrency and blockchain technologies, mobile communication, cybersecurity, acting for Israeli company Salt Security, Inc. in intellectual property matters over the past year.
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Skadden

As one of the leading global law firms with an Israel focus, Skadden's Israel Group has, for many decades, been advising Israeli companies doing business and raising capital outside Israel and advises non-Israeli companies and individuals doing business in Israel.

With a track record that has seen the firm act in many landmark M&A and capital markets transactions, the firm continues to be a force for issuers and underwriters in key IPOs for Israeli companies. On the issuer side, we represented Mobileye in one of the largest IPOs of 2022. We are currently representing the underwriters in an offering by Enlight renewable energy. **Yossi Vebman** leads an Israel Group, which includes **David Goldschmidt** and **Max Mayer Cessiano**.

Squire Patton Boggs

The spotlight shines brightly on the almost 40-strong Israel Desk at Squire Patton Boggs, which is widely recognized by Israeli clients for its comprehensive advice in the employment field, with work involving a significant advice on share options/benefits and data privacy. With two decades' experience in and understanding of the Israeli market, **Miriam Lampert** is recognized for UK employment advice to a raft of Israeli corporates on their UK operations, while Beijing-based **Sungbo Shim** continues to be one of only a small number of lawyers in China who has meaningful experience of advising Israeli companies doing business in the region.

Recognized for its expertise in the high-tech sector, the team advises high profile Israeli corporates, particularly in the tech and financial services sectors. In the past year, the UK and German Corporate, Data Protection, Employment and Regulatory teams advised Israeli software company, Illusive Networks on its sale to U.S. tech company, Proofpoint.

Sullivan & Worcester

U.S. headquartered and international firm, Sullivan's Israel expertise includes lawyers in the New York, Boston, Washington D.C and London offices. Taking the crown in the Capital Markets: Volume table, Sullivan acts as company counsel for publicly traded and pre-IPO companies, and represents and advises public companies and their directors, independent committees, and officers with respect to a wide range of capital markets and securities matters. With more than 18 years' experience, New York partner **Oded Har-Even** leads the global capital markets practice and has advised on many issues on Wall Street of Israeli private and public companies. He spends a significant amount of time as Co-Managing Partner in Sullivan & Worcester Tel Aviv, alongside **Reut Alfiah**.

Sullivan is recognized for its work as underwriter's counsel in public offerings of Israeli and U.S., and other foreign companies traded on TASE, NYSE or the Nasdaq, advising on a substantial portion of the offerings by Israeli companies that listed on Nasdaq for the first time since 2013. In 2022, the team advised Maris-Tech on its USD 17.8 million IPO on Nasdaq and acted for Jeffs' Brands, from inception until its listing for trading on Nasdaq in September 2022, including the company's registration, spin off assets into the company and other agreements.

Taylor Wessing

The Israel Desk of international law firm Taylor Wessing continues to make an impact with its focus on dynamic sectors, including high-tech, life sciences and healthcare, and flies high in real estate. While the firm is visible also in litigation, notably cryptocurrency disputes, there are also significant real estate and aviation financings involving Israeli parties.

The Israel Desk has advised on key M&A and capital markets transactions, under the guidance and experience of London-based **Josef Fuss**, who co-leads the international Technology, Media & Communications sector group. He co-heads the Israel Desk with Israel-based **Nathan Krapivensky**. Visit: Israel Page

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White & Case

One of the most preeminent firms with a commitment to Israel spanning several decades is White & Case, which is entrenched among the elite law firms in Israel related M&A and capital markets, both in volume and value. Through the depth of its expertise in the firm's London and New York offices, the team is a go-to group for sophisticated and high-quality instructions and is one of the go-to law firms in Israel related M&A. The team excels under the leadership of New York-based **Colin Diamond** – one of the lead lawyers on U.S. IPOs by Israeli issuers - and London-based **Daniel Turgel**, committed to the Israeli market for more than a decade.

Diamond advised Tufin Software Technologies on its USD 570 million acquisition by Turn/River Capital, as well as Tigo Energy, Inc. on its USD 600 million combination with a SPAC, under which Tigo Energy will become a publicly traded company. Meanwhile, Turgel's diverse practice saw him act for SoftBank Vision Fund II as the lead investor in the Series E financing round of Claroty Ltd., an Israeli industrial cybersecurity company. He also acted in the largest IPO on the London Stock Exchange in 2022, when representing Goldman Sachs and Morgan Stanley as joint global coordinators, HSBC Bank, Jefferies and BofA Securities as joint bookrunners, and ING Bank as co-lead manager on the IPO of Ithaca Energy Limited and its premium listing on the London Stock Exchange. The offering raised a total of £262 million (exclusive of the over-allotment option), valuing the company at £2.5 billion. Owned by Israeli-listed Delek Group, Ithaca Energy is one of the largest independent oil and gas companies with production and development activities in the UK Continental Shelf, ranking second by resources and third by production.

Silicon Valley partner, **Tali Sealman** is also one of the most prolific partners, in relation to Israel related work. In 2022, she acted for Hello Heart, the Israeli digital therapeutics company, on its USD 70 million Series D funding round and also advised Israeli company, Siemplify, on its sale to Google.
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Zeichner Ellman & Krause LLP

Based in Manhattan, the 42-year-old Zeichner Ellman & Krause LLP ("ZEK") law firm has approximately 45 lawyers spread across its New York, New Jersey, Connecticut, Washington DC, as well as a foreign office in Tel Aviv. In fact, ZEK was the very first law firm to be certified as a foreign attorney's office by the Israel Bar Association.

Litigation partner, **Daniel Rubel** is often involved in cross-border litigation and fronts an Israel Group acting for Israeli clients on a wide variety of U.S. legal issues, including acting for a raft of Israeli companies on commercial agreements, as well as disputes with U.S. vendors. In the past year, he advised on a dispute between client and Israeli entity over the control of USD 17 million in assets designated for charitable purposes. Frequently in Israel is executive partner, **Stuart Krause**, who leads cross-border (US/Israel) litigation in New York, California, Delaware, and other U.S. locations relating to commercial disputes. He has been handling almost 30 USC § 1782 discovery proceedings arising out of Israeli litigation, representing both parties seeking such discovery and those defending against such requests. During 2022, the Israel Group was also active in banking and finance – on behalf of Israeli lenders and borrowers, as well as in real estate finance, with **Fred Umane**, **Mark Schlussel** and **Ethan Schlussel** involved.

Congratulations to all!

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FAQ Re: Incentive Based Compensation – Understanding the NewClawback Rules

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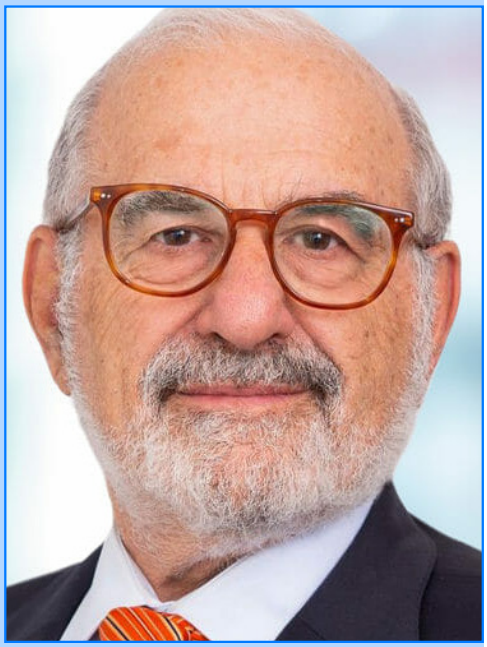
FAQ Re: Incentive Based Compensation – Understanding the New Clawback Rules



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February 08, 2023

In October 2022, the U.S. Securities and Exchange Commission (the "SEC") adopted rules implementing "clawback" provisions pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The rules directed national securities exchanges to establish listing standards that will require issuers to implement written clawback policies that satisfy related disclosure obligations.

In January 2023, the SEC staff issued new Compliance and Disclosure Interpretations providing further guidance about the rules. This memo answers many clawback related questions that public companies, including foreign private issuers ("FPIs"), are facing.

What is a clawback?

A clawback is the recovery of erroneously awarded incentive-based compensation received by current or former executive officers of an issuer.

What is "incentive-based compensation"?

The clawback rules define "incentive-based compensation" as "any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure… any incentive-based compensation recovered under the final rules is compensation that an executive officer would not have been entitled to receive had the financial statements been accurately presented."

Incentive-based compensation includes compensation that is granted, earned or vested based wholly or in part upon the attainment of any financial reporting measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements and any measures derived wholly or in part from such measures, as well as non-GAAP measures, stock price and total shareholder return.

Incentive-based compensation does not include: base salary; bonuses paid solely at a board or board committee's discretion that are not paid from a "bonus pool" determined by the satisfaction of a financial reporting measure performance goal; bonuses paid upon achievement of subjective standards and/or completion of a specified employment period; non-equity incentive plan awards earned solely upon achievement of strategic or operational measures; and equity awards that are subject only to time-based vesting conditions and/or satisfying one or more subjective, strategic or operational measures that are not financial reporting measures.

Do FPIs have to comply with the new rules?

Yes. Issuers (including smaller reporting companies, emerging growth companies, FPIs, controlled companies, and issuers of debt and non- equity securities) whose securities are listed on a national securities exchange other than issuers of security futures products, standardized options, unit investment trust securities and certain registered investment company securities are subject to the new rules.

What should a clawback policy include?

Issuers are required to adopt a clawback policy providing for recovery of incentive-based compensation erroneously received by current or former executive officers during the three completed fiscal years immediately preceding the year in which the issuer is required to prepare an accounting restatement due to material noncompliance with financial reporting requirements.

Incentive-based compensation is considered to be received in the period during which the applicable reporting measure is attained, even if the payment or grant occurs after the end of that period. If an award is subject to both time-based and performance-based vesting conditions, it is considered received upon satisfaction of the performance-based conditions, even if the award continues to be subject to time-based vesting conditions.

Erroneous payments must be recovered even if there was no misconduct or failure of oversight on the part an individual executive officer. The rules apply to both "Big R" and "little r" restatement filings:

- A "Big R" restatement is when an issuer is required to prepare an accounting restatement that corrects an error in previously issued financial statements which is material to the previously issued financial statements.
- A "little r" restatement corrects an error that would result in a material misstatement if the error was not corrected in the current period or was corrected in the current period and generally does not require a special disclosure filing.
- What are the new disclosure requirements?

- An issuer is required to file its clawback policy as an exhibit to its annual report on Form 10-K, Form 20-F or Form 40-F. An issuer is required to disclose in its annual report or proxy statement how it has applied its clawback policy including:

- the date on which the issuer was required to prepare an accounting restatement and the aggregate dollar amount of erroneously awarded incentive-based compensation attributable to such accounting restatement;

- the aggregate amount of the compensation that was erroneously awarded to all current and former named executive officers that remains outstanding at the end of the last completed fiscal year;

- any outstanding amounts due from any current or former executive officer for 180 days or more, separately identified for each named executive officer; and

- if recovery would be impracticable, the amount of recovery forgone and a brief description of the reason the issuer decided in each case not to pursue recovery.

Amounts recovered pursuant to an issuer's clawback policy must reduce the amount reported in the applicable compensation table column and the "total" column for the fiscal year in which the amount recovered initially was reported and must be identified by footnote.

New checkboxes on the cover pages of Form 10-K, Form 20-F and Form 40-F require issuers to indicate separately (a) whether the financial statements included in the filing reflect correction of errors to previously issued financial statements, and (b) whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the issuer's executive officers during the relevant recovery period. As indicated further below, issuers are not required to mark the check boxes in 2023 before the deadline requiring the adoption of a clawback policy and compliance with the applicable listing standards.

Which officers are covered under the new rules?

The rules apply to all current or former "executive officers." The clawback recovery is not limited to the issuer's top five "named executive officers." "Executive officers" includes the issuer's president, principal financial officer, principal accounting officer ("PAO") or controller if there is no PAO, any VP of the issuer in charge of a principal business unit, division or function (e.g., sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

The rules do not require recovery of incentive-based compensation in circumstances where (i) the compensation was received by a person before

beginning service as an executive officer or (ii) if that person did not serve as an executive officer at any time during the three-year lookback period to which the clawback rules apply.

Disclosure on Form 20-F

Form 20-F will now include a new item, 6.F. "Disclosure of a registrant's action to recover erroneously awarded compensation." The new Item 6.F provides for individualized disclosure for an issuer's named executive officers. FPIs that file on domestic forms and provide executive compensation disclosure under Item 402 of Regulation S-K should provide individualized disclosure for their named executive officers to the extent required by Form 20-F. For FPIs that use Form 20-F, individualized disclosure is required about members of their administrative, supervisory, or management bodies for whom the issuer otherwise provides individualized compensation disclosure in the filing.

What happens if an issuer fails to adopt a compliant policy?

An issuer could be subject to delisting if it does not adopt a clawback policy that complies with the applicable listing standard, disclose the clawback policy and any application of the policy in accordance with SEC rules, or enforce the clawback policy's recovery provisions. The new rules may also lead to increased shareholder derivative lawsuits seeking to force issuers to pursue clawback.

When will the clawback rules become effective?

Although the Form 10-K/20-F/40-F checkbox requirement became effective January 27, 2023, the listing standards are not required to be effective until November 28, 2023 and issuers will not be required to adopt a clawback policy for 60 days following the effective date of the applicable standards. In the adopting release, the SEC made clear that issuers will not be required to comply with the disclosure requirements before they have adopted clawback policies under the applicable exchange listing standard. Accordingly, while the rules and forms will include the checkboxes and other disclosure requirements in 2023, the SEC staff does "not expect issuers to provide such disclosure until they are required to have a recovery policy under the applicable listing standard."

When does the 3-year look-back period begins?

The three-year look-back period starts on the earlier of (i) the date the issuer's board of directors, committee and/or management determines that a restatement is required or (ii) the date a regulator, court or other legally authorized entity directs the issuer to restate previously issued financial statements.

Are there any exceptions to recovery?

The rules provide for limited exceptions to the issuer's requirement to enforce the application of the clawback policy. The limited exceptions apply when:

- pursuing such recovery would be impracticable because the direct expense paid to a third party to assist in enforcing the policy would exceed the recoverable amounts and the issuer has (A) made a reasonable attempt to recover such amounts and (B) provided documentation of such attempts to recover to the applicable national securities exchange;

- pursuing such recovery would violate the issuer's home country laws and the issuer provides an opinion of counsel to that effect to the applicable national securities exchange ; or

- recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the issuer, to fail to meet the requirements of the Internal Revenue Code.

Are benefits to executive officer retirement plans excluded?

No. Incentive compensation contributed to plans limited only to executive officers, supplemental executive retirement plan ("SERP") or other nonqualified plans and related benefits would still be subject to recovery.

Would the rules affect compensation that is in a plan, other than tax-qualified retirement plans, including long term disability, life insurance, SERPs, or any other compensation

that is based on the incentive-based compensation?

SEC Staff confirmed that the rules are intended to apply broadly. For plans that take into account incentive-based compensation, an issuer would be expected to claw back the amount contributed to the notional account based on erroneously awarded incentive-based compensation and any earnings accrued to date on that notional amount.

What is the effect on indemnification and insurance?

The rules prohibit an issuer from providing insurance or indemnification to any executive officer or former executive officer for the loss of erroneously awarded compensation. An executive officer may be able to purchase a third-party insurance policy to fund potential recovery obligations. However, the indemnification provisions prohibit an issuer from paying or reimbursing the executive officer for premiums for these policies.

How do you calculate recovery amounts?

The SEC adopted a principles-based definition of "erroneously awarded compensation". Issuers are generally required to recover the amount, calculated on a pre-tax basis, of any incentive-based compensation received that exceeds the amount that otherwise would have been received had the compensation been calculated based on the restated amounts. In instances where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, the amount must be based on a reasonable estimate of the effect of the accounting restatement on the applicable measure, and the issuer must maintain documentation of the determination of that reasonable estimate and provide it to the applicable exchange.

Generally, for equity awards, the erroneously awarded compensation is the number of shares received in excess of the number that should have been received applying the restated financial reporting measure. If the underlying shares have not been sold, the erroneously awarded compensation is the number of shares underlying the excess options.

Could CEO or CFO's be subject to duplicative reimbursement?

Chief executive officers (CEOs) and chief financial officers (CFOs) remain subject to the clawback provisions of the Sarbanes-Oxley Act of 2002 ("SOX"), which provide that if an issuer is required to prepare an accounting restatement because of "misconduct," the CEO and CFO are required to reimburse the issuer. Under the new rules, the CEO or CFO would not be subject to duplicative reimbursement. Recovery under the new rules will not preclude recovery under SOX to the extent any applicable amounts have not been reimbursed to the issuers.

Could issuers seek recovery in different ways?

The rules allow boards to seek recovery through means that are appropriate or specific to the circumstances, including, for example, establishing a deferred payment plan that allows executive officers to repay the amounts owed without unreasonable economic hardship.

What steps should be taken now?

Issuers must start discussions within their boards and audit and compensation committees to plan for new clawback policies, evaluate existing agreements and plans, and review their internal controls. By the time the national securities exchanges adopt the listing standards, it is important to already have working drafts and an understanding of the issues. By February 24, 2023, the national securities exchange must file proposed listing standards that comply with the rules. November 28, 2023, is the latest date for NYSE and Nasdaq's listing standards to become effective and therefore January 27, 2024 (60 days after listing standards become effective) is the latest potential date for issuers to adopt a compliant clawback policy. The timetable could be accelerated depending on the date when the applicable national securities exchange take action. Accordingly, issuers should continue to monitor developments.

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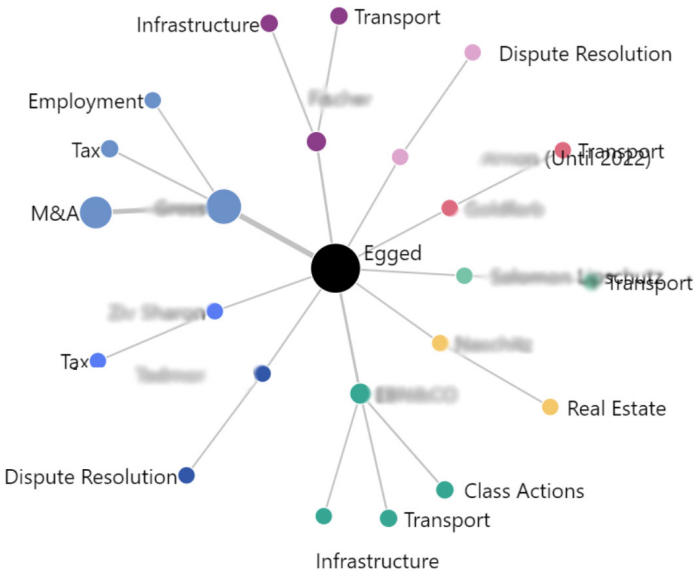

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Going Private Transactions

Dan Sella
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INTRODUCTION

The Israeli M&A market, which is heavily reliant on foreign investment and on its local high-tech market, has not been immune to the global slowdown in M&A activity in 2022. After several years of record-breaking deals in terms of both deal size and company valuations, the cautiousness of buyers has increased due to international trends of inflation and rising interest rates. Additionally, local factors, such as the Israeli government's plan to overhaul the judiciary, which has sparked strong public protests, have added uncertainty to the market. As the Tel Aviv Stock Exchange indices lag behind other stock markets, some investors have recognized the potential opportunities amidst the crisis. Over the past year, there has been a growing interest in going private transactions, where publicly traded companies become privately owned, delisting their shares from the exchange.

Going private offers several benefits to companies, including increased flexibility, reduced regulatory requirements, and the potential for higher long-term profits by prioritizing long-term growth over short-term shareholder interests and market pressures. These transactions are appealing to investors seeking to focus on long-term growth and strategic changes. While most Israeli publicly listed companies are registered on the Tel Aviv Stock Exchange (TASE), others are traded on NASDAQ and other global exchanges (or dually listed). However, the corporate laws governing a going private transaction of an Israeli

company will always be Israeli law. In this article, we will outline the main Israeli corporate law implications of a going private transaction.

There are two primary alternatives for effecting a going private transaction of an Israeli company. The most common method is a reverse triangular merger, in which the acquiring company forms a new Israeli entity (NewCo) that merges with the target company (Target), with the Target surviving the merger. Another option, though less common, is a full tender offer, in which the purchaser acquires all of the shares of the Target. Both methods result in the same outcome.

According to annual summaries published by the TASE, in the five-year period between 2018-2022, 45 companies were delisted from the TASE through a transaction – 26 of them have done so through a merger and 19 through a full tender offer (not all where "going private" transaction per se, as some of them were with another public company). The data from 2021 and 2022 presents a trend of preference to the merger alternative: of the 14 companies that were delisted during that period, only three have done so through a tender offer and 11 of the delisting transactions were effected through a merger.

REVERSE TRIANGULAR MERGER

Structure: Under this structure, the purchaser establishes NewCo, a wholly owned company, which then enters into a merger agreement with the Target. NewCo then merges with and into the Target, resulting in the Target surviving the merger. After the merger, the Target's shareholders receive the agreed-upon per-share merger consideration (usually cash), and the purchaser, previously the sole shareholder of NewCo, becomes the sole shareholder of the Target.

Corporate approvals: The merger requires approval from the board of directors and shareholders of both merging entities. The Target's board of directors must ensure that the merger will not jeopardize the Target's ability to meet its obligations to creditors. In fulfilling their fiduciary duties, the Target's board members should conduct a thorough review of the transaction, consider alternative options to maximize value for public shareholders, and engage a reputable accounting firm to conduct a valuation analysis of the Target. A fairness opinion may also be sought to confirm the adequacy of the offered per-share merger consideration. In a merger of two unrelated companies, the approval by a majority of the shareholders (50.01%) in each of the merging entities will suffice.

The approval process becomes more complicated where the controlling shareholder of the Target has a personal interest in approving the merger. Israeli case law commonly defines "personal interest" as the existence of a material "excess interest" that a controlling shareholder (or any other person in which such controlling shareholder has an interest) possesses, compared to the common interest of other public shareholders. The most common circumstances of personal interest are transactions in which a controlling shareholder attempts to "squeeze-out" the minority shareholders and become the sole-shareholder of the Target. Where a controlling shareholder has a personal interest, the merger will require a set of three-level approvals: (i) approval by the Target's audit committee, (ii) approval by the Target's board of directors (acting on the recommendation of a special independent board committee formed for this purpose as further set forth below), and (iii) approval by a super-majority of the Target's shareholders, which consists of either the affirmative vote of the majority of the shareholders who are not controlling shareholders and have no personal interest in the transaction (the "Disinterested Shareholders"), or that the votes of such Disinterested Shareholders do not exceed 2% of the aggregate voting rights of the Target.

A going private transaction involving a squeeze-out by the controlling shareholder that is effected via a merger transaction is generally viewed by Israeli courts as inherently suspicious and subject to increased scrutiny. This type of transaction is usually challenged in court by dissenting minority shareholders, arguing that the directors who approved the merger have done so not in the best interest of the Target, but for the benefit of the controlling shareholder. Because of the inherent conflict of interest, the directors would not benefit from the "business judgment rule". The courts would rather review such a transaction by applying the "entire fairness" standard, which reviews the three main aspects of the transaction: full disclosure, due process and fair value of the consideration. As part of that review, the court would examine the process by which the board approved the transaction and its implementation of due process and would also apply its own discretion as to the sufficiency of the considerations. In scrutinizing the sufficiency of the considerations, the court would rely on expert opinions submitted by the parties and may also rely on market indicators. For example, if some of the Disinterested Shareholders who voted in favor of the merger were sophisticated institutional investors, this would be an indication that the consideration was reasonable.

In order to alleviate the court's increased scrutiny, it is of utmost importance that the board of directors of the Target forms a special committee, comprised solely of independent directors unrelated to the controlling shareholder, to examine the transaction, negotiate the terms of the transaction, and recommend to the board of directors whether to enter into the merger agreement and whether the merger consideration proposed to the shareholders is reasonable and fair. An effective and comprehensive process by a special independent committee would imitate an arms-length negotiation between the Target and its controlling shareholder and would ease the concerns of conflict of interest. In a recent Supreme Court opinion, the court ruled that if the approval of the merger was based on the recommendation of a special independent committee which acted effectively, the decision of the board of directors would be scrutinized according to the "business judgment rule", meaning that if the directors made an informed good faith decision, with no personal interest, the decision itself would not be subject to scrutiny. This standard would apply also if there were minor immaterial defects in the conduct of the special independent committee. If, on the other hand, the special independent committee breached its fiduciary duties, acted for the benefit of the controlling shareholder or simply neglected to apply due process (e.g. did not retain advisors or did not review alternative transactions or structures), the transaction would be scrutinized according to the "entire fairness" standard, and the court would review all the terms of the transaction to ensure that they are fair to all shareholders. In intermediate cases, where there were substantial defects in the process of the special independent committee which do not rise to the level of breach of fiduciary duty, the court would apply an "enhanced scrutiny rule", an elastic standard of review, which is adjusted to the magnitude of the defects in the conduct of the special independent committee. In applying the "enhanced scrutiny rule", the court would review the terms of the merger to ascertain whether they were reasonable. The more serious the defects in the conduct of the special independent committee, the wider this review would be, and vice versa.

Case law provides guidance on how to ensure that the process at the special independent committee be adequate enough to ensure that its decision is warranted the "business judgment rule" treatment. The special independent committee must be constituted of independent board members and must be authorized to retain its own independent legal counsel, who will participate on its behalf in all related discussions and negotiations between the controlling shareholder and the Target, alongside other economical advisors and experts on its behalf. Moreover,

the committee must be authorized to negotiate the terms of the deal proposed by the controlling shareholder, to examine alternatives, and protect the interests of the company and its minority shareholders. The committee is required to keep its deliberations confidential and not to reveal its business strategy to the controlling shareholder or its advisors. Furthermore, all its meetings must be properly documented, and the minutes of such meetings should properly reflect the discussions. Additionally, the committee must act based on complete information, especially information which relates to the determination of the fair value of the company.

Creditors' rights: Creditors also have a position to challenge a merger. The creditors of a merging company have the right to apply to the court and request to hold or delay the merger, or to request other protections of their rights. A creditor must show the court that there is a reasonable concern that, following the merger, the surviving entity will not be able to pay the debts of the surviving entity when they become due. Upon the application by a creditor of either party to the proposed merger, the court may delay or prevent the merger.

Procedure: The merger is effected through a formal process conducted by the Israeli Registrar of Companies. In order to effect a merger, the parties are to submit to the Registrar, a Merger Proposal - a form signed by both parties which outlines the terms of the merger and includes a declaration of each of the board of directors of the merging entities that the merger does not give rise to a reasonable concern that the surviving entity will not be able to meet its debt obligations towards creditors as a result of the merger, the rationale for the merger and a description of the merger consideration. The merger may not occur unless at least 50 days have elapsed from the submission of such Merger Proposal to the Registrar and at least 30 days have elapsed from the approval of the merger by the shareholders of each of the merging parties. Taking into consideration, in addition to the abovementioned waiting periods, the 35 days period needed for summoning a general meeting, the minimal waiting period between the signing of a merger agreement and its closing is 65 days. Once these waiting periods have elapsed, the Registrar of Companies will issue a merger certificate, which would mark the closing of the merger.

FULL TENDER OFFER

Structure: A controlling shareholder holding more than 45% of the issued and outstanding share capital of an Israeli company may acquire

additional shares in the company, so long as its holdings do not exceed the 90% threshold. In the event that the controlling shareholder wishes to reach 100% holdings (i.e., effect a going private transaction as a result of which such entity would become wholly owned by the purchaser and its shares would be delisted from the exchange), the shareholder would have to launch a full tender offer for all of the Target's share capital. Such an offer would be addressed directly to the shareholders and published on the applicable exchange. Because this is an offer to the shareholders, the approval of the board of the Target would not be required.

Under this alternative, a full tender offer will be deemed accepted if either (i) the shareholders who did not positively accept the tender offer hold less than 5% of the issued and outstanding share capital of the Target, and more than 50% of the shareholders that do not have a personal interest in the tender offer, have accepted the tender offer; or (ii) the shareholders who did not accept the tender offer hold less than 2% of the issued and outstanding share capital of the Target.

If the tender offer is accepted as set forth above, then all the shares of the Target (even those held by shareholders who voted against the tender offer) will be transferred to the purchaser by operation of law. If the tender offer is not accepted, the purchaser may not acquire additional shares from shareholders who accepted the tender offer if, following such acquisition, the purchaser would hold over 90% of the Target's issued and outstanding share capital.

Appraisal rights: A shareholder that had its shares transferred to the purchaser as a result of a successful full tender offer, may, within three months following the tender offer acceptance date, petition the court to determine that the tender offer was not made in fair value and that the purchaser must pay the fair value, as shall be determined by the court. The offeror (i.e., the potential purchaser) may, under the terms of the tender offer, limit the right of appraisal only to shareholders who refused to accept the full tender offer, thereby hedging its potential exposure to only the 5% (or less) dissenting shareholders. This hedge would not be applicable if the consenting shareholders prove that the disclosure provided by the offeror in the tender offer was insufficient, which in such case, the appraisal rights may be granted also to shareholders who accepted the tender offer.

According to case law, the appraisal will generally be done by using the DCF (Discounted Cash Flow) valuation model, which values the company based on the discounted cash flow of its current assets, as well as the

discounted cash flow that its future investment opportunities would have generated. The appraisal should also consider information available to the offeror regarding the future investment options in the company as they are known to it at the time of purchase, and thus eliminating its informational advantage over the minority shareholders.

PROS AND CONS OF EACH STRUCTURE

Effecting a going private transaction under the full tender offer alternative does not require board approval of the Target and can be done unilaterally, without negotiating the terms of the deal and without support from the board of the Target. However, the requirement to obtain the affirmative support of at least 95% of the shareholders makes it not feasible in many cases. In some companies, especially those with a longer history, it is a challenge to locate all shareholders and a shareholder who did not respond to the offer would be practically viewed to have objected to the offer. From an economic standpoint, obtaining such a high percentage of support would often require the purchaser to offer a very significant premium. Even if the full tender offer is successful, the purchaser remains at a risk of the court awarding appraisal rights and increasing the consideration.

Effecting a going private transaction by way of a reverse triangular merger will provide a higher certainty for consummation of the transaction, since only the approval of shareholders holding a majority of the voting rights is required (if the transaction involves a controlling shareholder, the majority should be of the Disinterested Shareholders). A reverse triangular merger requires engagement and often negotiation with the board of the Target. A going private merger with a controlling shareholder would be viewed by the courts as suspicious, but the formation of a special independent committee and adherence to strict due process at such committee would minimize the risk of the court intervening in the deal.

Recent Market Trends

Innovation and Regulation: Finding the Balance for AI

GORNITZKY

THERE IS ALWAYS A WAY

Innovation and Regulation: Finding the Balance for AI

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In the fast-paced world of artificial intelligence (AI), countries around the globe are struggling to create suitable legal frameworks. Israel, renowned for its dynamic tech industry, has frequently found itself following the lead of other jurisdictions, particularly Europe and the United States, and adjusted its regulatory strategies to match global trends, rather than proactively adopting its own internal guidelines. This pattern seems to be persisting with AI legislation, where a clear position has yet to be declared by the Israeli legislator. However, in an active effort to create some certainty for developers of AI products and to boost innovation within its world-renowned tech sector, the Israeli Ministry of Justice published a few months ago an opinion on the complex relationship between copyright law and machine learning (ML).

Natural Language Processing (NLP) is a branch of artificial intelligence that focuses on the interaction between computers and humans through language. The learning process of NLP involves training algorithms on large volumes of text data, enabling them to understand, interpret, and generate human language in a meaningful and useful way. The necessity for vast databases in this process stems from the complexity and variability of human language. The larger and more diverse the database, the better the algorithm can understand and generate human language. This learning process results in a "trained model", a separate file where relevant information is stored. However, the creation of these databases often involves copying large amounts of text from various sources, which can potentially infringe on copyright laws as a direct result of its creation process.

The opinion of the Ministry of Justice suggests that the creation of ML databases or datasets could potentially be considered "fair use" under the Copyright Law, falling under the categories of "self-learning" and "research". This interpretation aligns with the spirit of the law, as ML is essentially a form of inductive self-learning. The only difference between human learning and ML is the technical process of learning, which should not be a barrier to the application of "fair use".

The Ministry's opinion further discusses potential market failures and prohibitive transaction costs that could arise in AI enterprises due to copyright issues. The creation of an effective dataset would require negotiating with each copyright owner, a process that could be time-consuming, costly and practically impossible. Delays imposed by any single rightsholder could completely frustrate the entire project, given the competitive constraints and ambitious milestones common in entrepreneurial ventures.

The Ministry's opinion suggests shielding from liability the creation of ML datasets that include vast and diverse copyrighted works, since, arguably, in such event each individual work included in the dataset holds a relatively immaterial weight in the dataset. The result of this approach is a solution whereby an ex-ante statement is made, declaring that the creation of datasets for ML, in most cases, falls under the fair use doctrine. An ex-ante statement might seem unusual, as fair use decisions are typically made retroactively after the unauthorized use of copyrighted content, but it could be a necessary statement, given the unique challenges posed by ML.

While the Ministry's opinion may mark the direction of the Ministry's

approach of the ML/copyright issue, it is important to remember that this is only a guideline, and the final legislation may take a different approach. As such, the opinion serves as an interesting starting point for a broader conversation about the intersection of AI and copyright law, rather than a final word on these matters.

In addition, while the Ministry's opinion provides valuable insights into the implications of copyright law on the creation of machine learning datasets, it stops short of addressing the question of who holds the copyrights to the outputs of the NLP process. This is a significant area of concern that warrants further exploration.

The outputs of NLP raise several intellectual property questions. For instance, who owns the copyright of a text generated by an AI? Is it the developer of the AI, the user who provided the input, or, strangely enough, is it the AI itself (despite the fact that, as of now, AI systems are not recognized as legal entities capable of holding copyrights)? Furthermore, if an AI generates a text that infringes on someone else's copyright, who is liable? These questions become even more complex when considering that AI can generate outputs that were not explicitly programmed by its developers, making it difficult to predict and control the AI's actions and the NLP output and results.

As we delve deeper into the realm of AI and NLP, it is also crucial to address the significant privacy concerns that accompany these technological advancements. These concerns primarily stem from the extensive data collection and processing required for AI and NLP systems to function effectively. The vast amounts of data, often encompassing personal information, raise questions about user awareness and consent. Furthermore, the potential misuse of personal information, through detailed profiling of individuals based on their online behavior, preferences, and interactions, is another area of concern. Adding to these issues is the lack of transparency often associated with AI systems, sometimes referred to as "black boxes" due to their complex and opaque decision-making processes. This lack of transparency can make it difficult for individuals to understand how their data is being used and processed.

The existing privacy laws may not be fully equipped to handle the unique challenges posed by AI and NLP, as they were simply regulated during times in which AI and NLP were almost science fiction. The Privacy Protection Authority (within the Ministry of Justice) recently published an opinion addressing the privacy concerns associated with "deep fake" technologies, which can create convincingly realistic but entirely

fabricated audio and video content. This publication provides much-needed guidance on a particularly controversial aspect of digital technology. Furthermore, the Authority has announced its intention to publish an opinion specifically focused on the privacy aspects of artificial intelligence. This forthcoming opinion is expected to provide further clarity on the unique privacy challenges posed by AI technologies.

This trend towards proactive guidance through publication of opinion letters, rather than reactive legislation, could potentially enable Israel to effectively navigate the complex intersection of technology, privacy and intellectual property rights, which could have significant implications for the country's tech sector.

In conclusion, the landscape of AI regulation in Israel is in a state of flux. The Ministry of Justice's opinion on copyright law and the creation of machine learning datasets is a significant step forward, providing much-needed guidance for the Israeli tech sector. However, there are still many unanswered questions, particularly concerning the ownership and liability of AI-generated content and the privacy implications of AI and NLP. As Israel continues to navigate this complex landscape, it will be crucial to strike a balance between fostering innovation, protecting intellectual property rights, and ensuring privacy. The world will be watching closely as Israel, known for its innovative and leading tech sector, charts its course in this uncharted territory.

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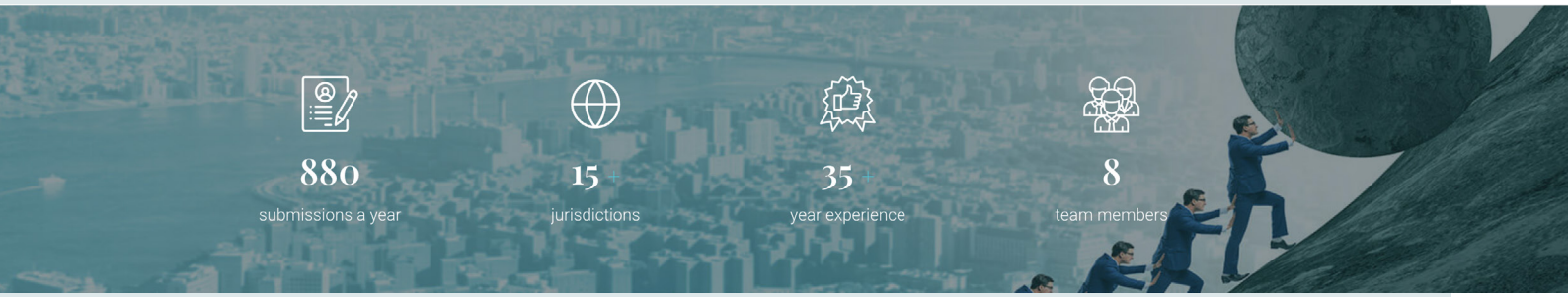

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Recent Market Trends

SEC Adopts New Share Repurchase Disclosure Rules

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SEC Adopts New Share Repurchase Disclosure Rules

EXECUTIVE SUMMARY

Effecting On May 3, 2023, the U.S. Securities and Exchange Commission (the "SEC") adopted, by a 3-to-2 vote, amendments (the "Amendments")1 to its existing rules (the "Existing Rules") regarding disclosures about purchases of an issuer's equity securities by or on behalf of the issuer or an affiliated purchaser, commonly referred to as "buybacks." The Amendments require quantitative and qualitative disclosure of buybacks on a day-by-day basis but, in a significant change from the SEC's original proposal that would have required next business day reporting, this disclosure will be required on either a quarterly or semi-annual basis, depending on the type of issuer. The amendments also revise and expand the existing periodic disclosure requirements for buybacks.

The Amendments apply to issuers that repurchase securities registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), including smaller reporting companies, emerging growth companies, foreign private issuers ("FPIs") and registered closed-end investment management companies that are exchange traded ("Listed Closed-End Funds"). The Amendments require disclosure for all buybacks, without a materiality threshold.

BACKGROUND

An issuer may undertake repurchases through a number of methods, including through open market purchases, tender offers, privately negotiated repurchases or accelerated share repurchase programs. Currently, SEC filings are not required to, and typically do not, disclose the specific days on which buybacks pursuant to an announced repurchase plan or program were executed. The Amendments revise and expand the buyback disclosure currently required by Item 703 of Regulation S-K, Item 16E of Form 20-F and Item 14 of Form N-CSR by requiring additional information with respect to buybacks, including quantitative and qualitative details of daily trades. According to the adopting release, the SEC believes that the Amendments

"will provide investors with enhanced information to assess the purposes and effects of repurchases, including whether those repurchases may have been taken for reasons that may not increase an issuer's value."

The SEC originally proposed share repurchase disclosure amendments on December 15, 2021. The SEC re-opened the comment period for this rulemaking twice, once in order to allow more time following a technological error in the SEC's internet comment form that potentially affected comments on a number of SEC proposals, and a second time in connection with an SEC staff report analyzing the potential economic effects of the new excise tax on buybacks contained in the Inflation Reduction Act of 2022.

The following table summarizes key aspects of the Amendments compared to the Existing Rules:

	Existing Rules	Amendments
I. Disclosure Requirements		
Total number of shares repurchased	Disclose amounts purchased each month in an issuer's regular periodic filings, reported month by month for each month covered by the periodic filing	Issuers that file on domestic forms must report purchases on a day-by-day basis, quarterly on Form 10-Q and, with respect to the fourth quarter, on Form 10-K FPIs that report on Form 20-F and Form 6-K ("FPI Forms") must report purchases on a day- by-day basis, quarterly on new Form F-SR Listed Closed-End Funds must report on a day- by-day basis, semi-annually on Form N-CSR.
Average price paid per share	Required	Disclose this information on a daily basis for each buyback transaction, quarterly or semi-annually depending on type of issuer
Total number of shares repurchased as part of publicly announced plan or program	Required	Required
Maximum number of shares that may yet be purchased under plans or programs	Required	Required

Objectives or rationales for the buyback and process/criteria used to determine repurchase amounts	Not required	Required
Policies and procedures relating to transactions by officers and directors during a buyback program	Not required	Required
Whether buyback was made pursuant to a plan intended to satisfy the Rule 10b5-1(c) affirmative defense	Not required	Required
Whether buyback was intended by the issuer to qualify for the Rule 10b-18 non-exclusive safe harbor	Not required	Required
Disclosure of principal terms of buyback transaction	Required by footnote	Required narratively in more detail than the Existing Rules
II. Timing of Disclosure		
Disclosure of buyback information	Disclose in periodic filings, reported month by month for each month covered by the periodic filing Frequency depends on type of issuer and form used	Disclose on a daily basis for each buyback transaction, quarterly or semi-annually depending on type of issuer: • On Forms 10-Q or 10-K for issuers using those forms • On new Form F-SR for FPIs that report on FPI Forms. • On Form N-CSR for Listed Closed-End Funds.
III. Mode of Disclosure		
Machine-readable data language required	Issuer can disclose using non-machine readable data languages (e.g., ASCII or HTML).	Issuer must use machine-readable data language (Inline XBRL).

AMENDMENTS TO BUYBACK DISCLOSURE REQUIREMENTS

The table above summarizes the information that issuers are required to disclose under the Existing Rules and the additional disclosure required by the Amendments.

Below, we discuss certain of the expanded disclosure requirements in more detail.

Quarterly or Semi-annual Disclosure. The proposed rules would have required next business day disclosure for buybacks. In a significant change, the Amendments, as adopted, require quantitative and qualitative information regarding buybacks on a day-by-day basis, but such disclosure is required quarterly or semi- annually, depending on the type of issuer.

The Existing Rules require issuers to disclose buybacks in their periodic reports. For Section 12 issuers reporting on Forms 10-Q and 10-K, any purchase made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer's equity securities registered under Section 12 of the Exchange Act must be disclosed quarterly, on a month-by-month basis. FPIs are generally required to disclose buybacks annually, and Listed Closed-End Funds are required to disclose buybacks semi-annually. In the adopting release, the SEC states that the current reporting regime "in which investors receive information only about the monthly aggregate repurchases of issuers, fails to provide enough detail for investors to draw informed conclusions about the purposes and effects of many repurchases."

The Amendments replace the current month-by-month disclosure on Forms 10-K and 10-Q with a day-by-day requirement, set forth in new Exhibit 26 for such periodic reports. FPIs that file on FPI Forms will be required to provide day-by-day disclosure for buybacks, quarterly on new Form F-SR, which will be due 45 days after the end of each issuer's fiscal quarters. Listed Closed-End Funds will be required to provide day-by-day disclosure for buybacks, semi-annually on Form N-CSR. The adopting release states that the "purpose of these amendments is to improve the information investors receive to better assess the efficiency of, and motives behind, an issuer repurchase." It is unclear whether investors really sought out, or will benefit from, daily quantitative repurchase data. In this respect, the adopting release argues that "daily repurchase data, in combination with other data, would allow investors to infer when repurchases may have been timed to benefit managers or otherwise at the expense of some investors."

Location of Disclosure. While the SEC originally proposed that issuers would provide daily buyback disclosure on new Form SR, the Amendments require disclosure of daily buyback information on either a quarterly or semi-annual basis, depending on the type of issuer:

- Issuers filing on domestic SEC forms must provide buyback disclosure quarterly on new Exhibit 26 to Forms 10-K and 10-Q.
- FPIs reporting on FPI Forms must provide buyback disclosure quarterly on new Form F-SR. According to the adopting release, "if an FPI's home country disclosures furnished on a Form 6-K satisfy the Form F-SR requirements, it can incorporate by reference its Form 6-K disclosures into its Form F-SR."
- Listed Closed-End Funds must provide buyback disclosure annually and semi-annually on Form N-SCR.

Affirmative Defense to Insider Trading – Exchange Act Rule 10b5-1(c). Exchange Act Rule 10b5-1(c) provides an affirmative defense to insider trading claims relating to an issuer's purchase of securities. An issuer's buyback plan must conform to the requirements of Rule 10b5-1 in order for an issuer to assert this defense. Under the Existing Rules, there is no specific requirement for an issuer to disclose whether a particular repurchase was undertaken pursuant to a plan intended to benefit from Rule 10b5-1(c)'s affirmative defense. The Amendments introduce a new requirement that an issuer must now disclose in tabular form the aggregate total number of shares purchased in reliance on the plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). In addition, the Amendments require issuers to disclose, by footnote to the daily repurchase table, the date of adoption or termination of any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) for the buybacks.

The Amendments also adopt new Item 408(d) of Regulation S-K, creating new narrative disclosure requirements with respect to issuer Rule 10b5-1 trading arrangements. For example, Item 408(d) requires quarterly disclosure in periodic reports on Forms 10-Q and 10-K (for the fourth quarter) of the issuer's adoption or termination of Rule 10b5-1 trading arrangement. In addition, Item 408(d) requires a description of the material terms of the Rule 10b5-1 trading arrangement, including the date on which the issuer adopted or terminated the Rule 10b5- 1 trading arrangement, the duration of the Rule 10b5-1 trading arrangement and the aggregate number of securities to be purchased or sold pursuant to the Rule 10b5-1 trading arrangement. However, this new item does not require disclosure with respect to the price at which the party executing the Rule 10b5-1 trading arrangement is authorized to trade.

Safe Harbor for Common Stock Repurchases – Exchange Act Rule 10b-18. Exchange Act Rule 10b-18 provides conditions that, if met, provide a non-exclusive safe harbor for repurchases of common stock from market manipulation claims under Section 9(a)(2) and Rule 10b-5 of the Exchange Act. Under the Existing Rules, there is no additional, specific disclosure required for repurchases made pursuant to Rule 10b-18. The Amendments introduce a new requirement that an issuer must disclose in tabular form the aggregate total number of shares repurchased that were intended to qualify for the safe harbor of Rule 10b-18.

Checkbox. The Amendments require a checkbox above the tabular daily buyback disclosures indicating whether directors or Section 16 reporting officers (or, in the case of FPIs, senior management) purchased or sold shares that are the subject of the issuer's share repurchase program four business days before or after the announcement of such program or the announcement of an increase of an existing share repurchase plan or program.
In assessing whether the checkbox disclosure is needed, the Amendments allow an issuer to rely on the following, unless the issuer knows or has reason to believe that a form was filed inappropriately or that a form should have been filed but was not:

- A review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto filed electronically with the SEC during the issuer's most recent fiscal year;
- A review of Form 5 (17 CFR 249.105) and amendments thereto filed electronically with the SEC with respect to the issuer's most recent fiscal year;
- Any written representation from the reporting person that no Form 5 is required, which representation must be maintained in the issuer's records for two years, with a copy made available to the SEC or its staff upon request; and
- For FPIs, any written representations from the directors and senior management who would be identified pursuant to Item 1 of Form 20-F, provided that the reliance is reasonable, and the issuer maintains the representation in its records for two years, with a copy made available to the SEC or its staff upon request.

Objectives or rationales for the buyback and policies and procedures for issuer's directors and officers. Under the Amendments, an issuer will be required to narratively disclose in its periodic reports the objectives or rationales for its buybacks and the process or criteria used to determine the repurchase amounts. It also must disclose policies and procedures relating to purchases and sales of the issuer's securities by its directors and officers during a repurchase program, including any restriction on such transactions.

Disclosure of principal terms of buyback transactions. The Existing Rules require footnote disclosure of the principal terms of all publicly announced repurchase plans or programs, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction. The Amendments continue to require this information, but in more detail and, in some cases, in the main text of the narrative discussion instead of a footnote. The disclosure required by the Amendments includes the number of shares purchased other than through a publicly announced program and the nature of the transaction (e.g., whether the purchases were made in open market transactions, tender offers, in satisfaction of the issuer's obligations upon exercise of outstanding put options issued by the issuer, or other transactions), and certain other disclosures for publicly announced repurchase programs, as well as the information described in the preceding paragraph.

Required Tabular Disclosures. Issuers will be required to disclose for each day shares were repurchased:

a. The date of the repurchase;
b. The class of securities purchased;
c. The total number of shares (or units) purchased, including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;
d. The average price paid per share (or unit);
e. The total number of shares (or units) purchased as part of a publicly announced repurchase program;
f. The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the publicly announced repurchase programs;
g. The total number of shares (or units) purchased on the open market, which includes all shares (or units) repurchased by the issuer in open market transactions (excluding tender offers and put options);
h. The total number of shares (or units) purchased that are intended by the issuer to qualify for the Rule 10b-18 safe harbor; and
i. The total number of shares (or units) purchased pursuant to a plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c).

As noted above, issuers must disclose by footnote to the table the date of adoption or termination of any plan intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) for the buybacks.

Filed Information. In the SEC's original proposal involving next business day reporting of buybacks on Form SR, the SEC proposed that such daily buyback disclosure would be "furnished" rather than "filed." However,

when revising the disclosure requirement to a quarterly or semi-annual basis, the SEC determined that the buyback disclosure will be considered "filed," meaning that issuers will be subject to liability for misleading statements under Section 18 of the Exchange Act for this new disclosure, and such information will be incorporated by reference into other filings under the Securities Act of 1933, which are subject to Securities Act Section 11 liability.

Machine-Readable Data Language. The Existing Rules do not require that a machine-readable data language be used for buyback disclosures, allowing issuers to use non-machine-readable data languages such as ASCII or HTML. The Amendments require buyback disclosures to be made using a structured, machine-readable data language in Inline XBRL.

COMPLIANCE DATES

The Amendments become effective 60 days after publication in the Federal Register. However, even though the Amendments will be effective at that time, the SEC provided the following transition periods, allowing additional time before the new disclosures will be required.

Except as provided below, issuers will be required to comply with the Amendments on Forms 10-Q and 10-K (for their fourth fiscal quarter), beginning with the first filing that covers the first full fiscal quarter that begins on or after October 1, 2023. For calendar year-end companies, this means the first disclosures will be in the Form 10-K for the year ending December 31, 2023, with such disclosure covering repurchase activities that occurred in the fourth quarter of 2023.

FPIs that file on FPI Forms will be required to comply with the Amendments in new Form F-SR, beginning with the Form F-SR that covers the first full fiscal quarter that begins on or after April 1, 2024. The Form 20-F narrative disclosure that relates to the Form F-SR filings will be required starting in the first Form 20-F filed after the FPI's first Form F-SR has been filed. For calendar year-end companies, this means the first Form F-SR will be required with respect to the second quarter of 2024, which will be due on or before August 14, 2024, and the narrative disclosure will be required in the Form 20-F for the year ending December 31, 2024.

Listed Closed-End Funds will be required to comply with the Amendments, beginning with the Form N-CSR that covers the first six-month period that begins on or after January 1, 2024. For calendar year-end companies, this means the first disclosures will be in the Form N-CSR for the semi-annual period ending June 30, 2024.

PRACTICAL CONSIDERATIONS

Companies may be more reluctant to rely on Rule 10b5-1(c) and Rule 10b-18, or may want to give closer consideration to their decisions with respect to reliance on the affirmative defense and/or the safe harbor. The adopting release notes concerns expressed by commenters regarding disclosures relating to reliance by issuers on the affirmative defense and the safe harbor leading to speculation or cause for negative inference; however, in the adopting release, the SEC states, "we believe that any unwarranted inferences from disclosure that an issuer did or did not use such safe harbor or defense would be limited." Certainly, going forward, there will be closer scrutiny, whether or not warranted (including from plaintiffs' law firms) of specific buyback decisions, as well as of the use of trading plans.

Companies should begin preparing disclosure controls to implement the new buyback disclosure requirements. For example, companies need to have a process in place to gather and maintain buyback information to be presented in the required tabular daily buyback disclosure. It would be useful for companies to prepare this buyback disclosure information throughout the particular quarter to allow time for the report to be accurately gathered from brokers and then compiled and checked. Similarly, companies will need a process to assess the narrative buyback disclosure, keeping in mind that objectives and rationales may change from filing to filing based on circumstances impacting the period. Companies will want to consider carefully the degree of detail that they choose to include in their filings regarding their buyback strategies and the alternatives to buybacks that may have been employed, as discussed below. In addition, there should be disclosure controls in place with respect to the checkbox for director and officer trades within four business days before or after the announcement of a share repurchase program or an increase to a share repurchase agreement, which should include reviewing Section 16 reports and/or obtaining representations and assessing whether such reliance is reasonable. For FPIs, implementing a process with respect to obtaining director, officer and senior management certifications may be more challenging. The policies also will require addressing the recordkeeping requirements.

The Amendments do not require that company insider trading policies contain any specific restrictions, but they do require narrative disclosure of any policies and procedures relating to purchases and sales of the company's securities by its officers and directors during a company buyback program, including any restrictions on such transactions. Because of this disclosure requirement, some companies may consider the circumstances under which to permit officers and directors to trade in company shares

while a company buyback program is ongoing. However, this interplay may be difficult to monitor with director and officer Rule 10b5-1 plans. To the extent that companies follow any informal procedures for such trading, they may want to assess documenting these.

Companies should begin planning for their new disclosures regarding objectives, rationales and processes for share repurchases and consider what impact these disclosures may have on investors, research analysts and others. It would be useful for companies to draft sample language well in advance of the compliance date for such disclosure to allow for input from their investor and/or public relations departments, finance department, law department, outside counsel, senior management and directors.

The new disclosure requirements regarding objectives, rationales and processes must be tailored to the specific issuer. Among the possible ways to avoid boilerplate disclosure, the adopting release highlighted the following suggestions from commentators as being helpful:

- Discussing other possible ways for the issuer to use the funds allocated for the repurchase;
- Comparing the repurchase with other investment opportunities that the company would ordinarily consider, such as capital expenditures and other uses of capital;
- Discussing the expected impact of the repurchases on the value of remaining shares;
- Discussing the factors driving the repurchase, including an issuer's belief as to whether its stock is undervalued, prospective internal growth opportunities are economically viable or the valuation for potential targets is attractive; and
- Discussing the sources of funding for the repurchase, where material, such as, for example, in the case where the source of funding results in tax advantages that would not otherwise be available for a repurchase.

Companies and their boards of directors may want to consider how they document their decisions regarding buybacks and whether they seek more formal advice of their financial intermediaries that act as repurchase agents, whether in the form of a presentation or otherwise, addressing the expected impact of the repurchases, other uses of cash and similar matters.

While the buyback rationale disclosure must be tailored for each company's particular circumstances, a sample rationale and disclosure is set forth below:

> The company's board of directors, in accordance with its fiduciary duties under state corporation law, considers share buybacks to be one of several valuable ways our company can deploy capital. The first way is to reinvest in existing businesses, from employee training and customer support to repaying lenders. An alternative is to acquire new businesses. After considering these deployments, next is either to repurchase shares if they can be acquired cheaply or, if not, pay a dividend. We may undertake share buybacks when we lack better ways to deploy capital and our shares are priced below value. Since 2023, we also take into account the excise taxes imposed on share buybacks and other administrative costs. In addition, to assure that selling shareholders are not disadvantaged by selling at a discount, we comply with all of our disclosure obligations designed to enable shareholders to make a reasonable estimate of share value in deciding whether to sell. We believe that our share buyback policy is in the best interests of our corporation and its shareholders and is also consistent with the interests of our other stakeholders.

With respect to shares withheld to satisfy tax withholding upon exercise or vesting of equity awards, the adopting release acknowledges that at least one commenter sought clarification regarding whether the requirement to disclose share repurchases extends to shares withheld to cover tax withholding obligations. The SEC declined to provide such clarification, noting only that "terms, times, and transactions used for, and applicable to, the current Item 703 disclosure requirements should be applied to the final amendments." In this regard, it is worthwhile to reexamine existing compliance and disclosure interpretations (e.g., 149.01) and consider whether the company's routine withholding of shares upon the exercise or vesting of equity awards must be included in the new quarterly disclosure tables.

The Amendments prescribe many specific disclosure requirements. However, when preparing these disclosures companies should also consider whether any additional information in connection with their buyback disclosures is material. As noted by the SEC in the adopting release, "[t]o the extent further material information is necessary to make such disclosures not misleading, the issuer will be required to provide that information under existing Rule 12b-20."

For Canadian issuers that file SEC reports using the Multijurisdictional Disclosure System ("MJDS"), the SEC clarified in footnote 219 to the adopting release for the Amendments that it is "not imposing the amended

repurchase disclosure requirements on Canadian issuers that file using the MJDS because those issuers are subject to a separate reporting regime." As explained in this footnote, "Under the MJDS, eligible Canadian issuers may satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities."

Financial intermediaries that act as stock repurchase agents may want to review their form issuer repurchase agreements for necessary amendments. While the proposed rules would have raised a number of issues for accelerated share repurchase programs ("ASRs"), the Amendments will pose fewer practical challenges for ASRs. Nonetheless, derivatives dealers may want to review their form ASR documentation, and companies that rely on ASRs for their buybacks may, in light of the new narrative disclosure requirements, find it necessary to discuss the rationale for having chosen an ASR versus another execution format. Financial intermediaries that recently updated their issuer Rule 10b5-1 trading plan documentation also will want to review these again in light of these Amendments.

Because the Amendments require disclosures related to Rule 10b5-1 trading arrangements, they should be considered in the wider context of the amendments to Rule 10b5-1. For more information, see Mayer Brown's Legal Update, "SEC Adopts Amendments to Rule 10b5-1's Affirmative Defense to Insider Trading Liability & Related Disclosures, dated December 19, 2022."

Finally, for companies, the Amendments are in addition to requirements under applicable stock exchange regulations to promptly disclose material news, such as major repurchase announcements.

ENDNOTES

1. The adopting release containing the Amendments is available at https://www.sec.gov/rules/final/2023/34-97424.pdf
2. Available at https://www.mayerbrown.com/en/perspectives-events publications/2022/12/sec-adopts-amendments-to-rule-10b5-1s-affirmative-defense-to-insider-trading-liability-and-related-disclosures

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Recent Market Trends

AI as an Inventor

10 Years S. Horowitz & Co.
A Century of Excellence

AI as an Inventor

Ran Vogel,
Partner, IP Practice Group

The Israeli Commissioner of Patents ("the Commissioner"): Artificial intelligence (AI) cannot be considered an "inventor" within the meaning of such term in the Israeli Patents Law, 1967 ("the Patents Law"); therefore, AI cannot own or transfer an invention.

Similar to court holdings in the USA, England, Europe and other jurisdictions around the world, the Commissioner also did not see it fit to accept Dr. Stephen Thaler's patent applications for an AI-generated invention.

The named inventor in patent applications filed by Dr. Thaler is stated to be an AI machine known as DABUS (Device for the Autonomous Bootstrapping of Unified Sentience). In support of the applications, Dr. Thaler filed a declaration attesting to the fact that the inventive process was arrived at solely by DABUS without any human involvement whatsoever.

The starting point for statutory construction is the language of the law and, particularly, the plain, natural meaning of the stated language.

Thus, after reviewing the language of the Patents Law, and the dictionary definition of the term "inventor", the Commissioner determined that the term "inventor" in the Patents Law is intended to refer in its usual and ordinary sense to a natural person (a human being).

Moreover, the term “owner of an invention” is expressly defined in the Patents Law to mean "The inventor himself or persons who derive title under him, being entitled to the invention by operation of law, by transfer or by agreement".

The Commissioner accordingly held that every invention begins with an "inventor", who is a human being, and from him the invention is passed down whether by operation of law, transfer or agreement to the "owner of the invention".

Therefore, Dr. Thaler cannot indicate his source as the "owner of the invention" in the sense of the Patents Law. The source "by virtue of transfer" as indicated by Dr. Thaler in the patent Application Form cannot be accepted since, by law, DABUS does not have the legal capacity to engage in an act amounting to the transfer of rights in the patent applications.

Thaler's main argument in challenging the above assertion was that due to the underlying purpose of patent law - encouraging innovation and encouraging disclosure of inventions to the public, in exchange for time-limited monopoly - the law must be interpreted in a way allowing for the patent protection of AI-developed inventions, and that thwarting the grant of the sought patent protection could impair the incentive to develop AI machines or to protect their products only by Trade Secrets.

The Commissioner noted that these are all weighty arguments, but that expanding the protection accorded under the Patents Law raises questions of policy, and therefore it must be left to the legislator to consider and decide the issue.

As remarked in the Commissioner’s decision, most of the courts in the countries deliberating the identical subject-matter refused to register a patent for an invention made without any human interaction and involvement. Therefore, even if Dr. Thaler’s view is correct that protecting, through established patent law, the products of AI machines that conceive inventions is the right policy tool to encourage the invention of these machines and the public disclosure of their products, it is doubtful whether the protection garnered to such inventions by a small number of countries will indeed satisfy the purpose of intellectual property laws as asserted by Dr. Thaler.

TAKEAWAY POINTS:

It is important to note that the Commissioner's decision did not address the question of the extent of human interaction and involvement required for a person to be considered an inventor of an invention conceived with the assistance of AI or using AI.

Therefore, and since in all cases it is plausible to establish the existence of some degree of human involvement or interaction, including AI-training, the development of algorithms or the definition of parameters for AI to operate, it seems that it will be possible to successfully obtain patent protection for AI-generated invention.

Recent Market Trends

Involuntary Bankruptcy as a Remedy for Unsecured Creditors

CHAPMAN
Focused on Finance

A Recent Bankruptcy Court Decision Upheld a Petition Filed by Holders of Israeli Publicly Traded Bonds

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Given the increasing number of defaults on mortgages, mezzanine debt and other loans in the real estate market today, creditors are going to be faced with decisions on how to effect remedies in the most efficient way possible, and recover the maximum (if not the full) amount of their claims. Secured creditors holding a mortgage always have the option of foreclosure, which allows them to take possession of a borrower's assets in a judicially supervised process. However, depending on the facts and jurisdiction, creditors initiating a foreclosure process may wind up in a protracted litigation rather than swiftly recovering value.

Another option available to unsecured creditors, including undersecured creditors, especially if there are other creditors whose claims also need to be addressed, is to file an involuntary bankruptcy petition against the

borrower. Involuntary bankruptcy petitions are governed by section 303 of the Bankruptcy Code, which provides that an involuntary case may be commenced under chapter 7 or chapter 11 of the Bankruptcy Code. If the debtor has more than twelve creditors, the petition must be filed by three or more entities, each holding at least $18,600 of unsecured claims against the debtor. If the debtor has fewer than twelve creditors, only one creditor need file the petition. In both cases, the petitioning creditors' unsecured claims cannot be contingent as to liability or the subject of a bona fide dispute.

An involuntary bankruptcy may provide an efficient forum to deal with all of the debtor's creditors, including the secured and unsecured debt, mechanic's lien claims, lease-related claims and provide for a mechanism to either refinance the existing debt or sell the debtor's property in a transparent, value-maximizing sale process.

A recent case in the Bankruptcy Court for the Southern District of New York sheds light on the requirements to successfully commence an involuntary bankruptcy and challenges that may be raised. On October 6, 2022 (the *"Petition Date"*), Mishmeret Trust Company Limited (*"Mishmeret"*), as trustee for certain bond claims secured by a mortgage and as holder of an unsecured guaranty claim on those same bonds, and three bondholders (together with Mishmeret, the *"Petitioning Creditors"*) filed an involuntary chapter 11 petition against Wythe Berry Fee Owner LLC (the *"Debtor"*), the entity that owns and leases the popular William Vale Hotel in Brooklyn, New York.

Prior to the Petition Date, the Debtor had defaulted on both its mortgage and its guaranty of the bonds as a direct result of the failure by the lessee, an entity controlled by Zelig Weiss, a Brooklyn-based real estate developer and the operator of the William Vale, to make annual rent payments of $15 million since February 2020, which rent payments were used by the Debtor to pay its mortgage and guaranty obligations. At the time of the filing of the petition, the Debtor owed $188,739,000 on its guaranty of the bonds, which, as unsecured claims, entitled the Petitioning Creditors to file the involuntary case against the Debtor.

Owing to certain restrictions in the Debtor's organizational documents, the Debtor could not consent to the involuntary petition, but it did not object. Indeed, the Debtor filed a response to the involuntary petition explaining that though it was prevented from consenting, the Debtor's position was that a chapter 11 case was the correct forum to resolve the various claims of its creditors and other stakeholders.

Weiss, who, in addition to his position as the manager of the lessee and hotel operator, is also the indirect 50% shareholder of the Debtor, challenged the involuntary petition, urging the Court to either dismiss it or abstain from taking the case.[1] Weiss's challenge hinged on (i) whether the bondholders were really involved in a two-party dispute with Weiss and therefore should be required to enforce their remedies in New York State courts, and (ii) whether the bankruptcy case is in the overall best interests of creditors and the Debtor.

On January 17, 2023, the Honorable Martin Glenn, Chief Bankruptcy Judge for the Southern District of New York, held an evidentiary hearing on Weiss's challenge. At the conclusion of evidence, Judge Glenn ruled from the bench, and later issued a memorandum opinion, denying Weiss' challenge to the involuntary petition. Following his bench ruling, Judge Glenn entered an order for relief, allowing the bankruptcy case to move forward.

THE COURT RULED AGAINST DISMISSAL AND ABSTENTION

In its decision in favor of the Petitioning Creditors, the Court found that the filing of the involuntary petition was proper, on the basis that (i) the Petitioning Creditors were not a party to any dispute with Weiss and therefore the filing was not, in reality, a "two-party dispute," (ii) the Petitioning Creditors met the numerosity requirement for filing an involuntary petition against a debtor with more than twelve creditors[2] and (iii) seeking bankruptcy jurisdiction over the Debtor and the claims of its various creditors would promote a more equitable recovery for the various parties in interest. In short, the factors supporting the adjudication of the claims against the Debtor in bankruptcy outweighed any factors that supported dismissal.

Chief Judge Glenn's ruling is an important decision that both affirms the rights of unsecured creditors to seek a bankruptcy proceeding when they satisfy the requirements of the bankruptcy code vis-à-vis unsecured claims and demonstrates that parties challenging such petitions will be held to their evidentiary burden.

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[1] See 11 U.S.C. §§ 1112(b) and 305(a), respectively.

[2] Mishmeret, as trustee for the bond claims against the Debtor, filed the petition on behalf of the holders of bond claims, as well as on its own behalf. The other Petitioning Creditors, as holders of bond claims, were able to participate in the filing of the involuntary petition on their own behalf. Mishmeret's presence as trustee did not deprive them of individual standing.

NEXT STEPS IN THE BANKRUPTCY

As a Chapter 11 debtor, the Debtor is evaluating how to generate the most value for its creditors and other stakeholders, which will take the form of either a refinancing of the existing debt or a sale of the property. If the Debtor opts to sell the property, that sale will take place pursuant to either a bankruptcy sale process involving a stalking horse purchaser and a potential auction, or as part of a plan of reorganization, which will also govern distributions to the Debtor's creditors.

Mishmeret Trust Company Limited and the other Petitioning Creditors are represented by Michael Friedman, David T. B. Audley, Eric S. Silvestri and Helena Honig of Chapman and Cutler LLP.

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