

# Israel

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## Protection of non-controlling shareholders in Israel's Companies Law, and the establishment of proxy voting and proxy statements

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Israel's Companies Law 1999 (the Companies Law) contains a number of provisions designed to protect the rights of non-controlling shareholders. This article reviews some of the more salient provisions of the Companies Law in this regard as well as a recently promulgated regulation enabling proxy voting and proxy statements, which are likely to enhance the participation of non-controlling shareholders in corporate governance.

### Outside directors

Each public company must appoint at least two outside directors to its board of directors, and each outside director must serve on every board committee empowered to exercise board functions. By ensuring that outside directors are appointed to the board, the Companies Law seeks to limit mismanagement by the controlling shareholders that would occur at the expense of non-controlling shareholders.

The Companies Law seeks to ensure that the appointment and removal of the outside directors are not determined solely by the controlling shareholders. The outside directors must be approved by a majority of shareholders at a general meeting, the majority must include one-third of the votes of non-controlling shareholders, and the total opposing votes from non-controlling shareholders cannot exceed 1% of all voting rights in the company.

The Companies Law also contains specific provisions to ensure that outside directors do not have any conflicts of interest resulting from interests in the company or relationships with controlling shareholders.

### Duty of fairness

Beyond the duties of care and loyalty imposed on officers and directors, the Companies Law imposes a duty of fairness upon (i) controlling shareholders; (ii) shareholders who know their votes will be decisive; and (iii) shareholders who, according to the bylaws, have the ability either to appoint or prevent the appointment of an officer. A violation of the duty of fairness is deemed to be a breach of contract.

### Court action to prevent deprivation

If a company action deprives a shareholder of its rights or if there is a substantive suspicion that the company will do so in the future, the shareholder can apply to the court, and the court can issue instructions to correct or prevent the deprivation. The court can also require the company to include the court's instructions in the company's by-laws.

### Interested party transactions

For both public and private companies, the Companies Law regulates various corporate transactions with interested parties, including transactions with controlling shareholders, directors and officers. For example, interested party transactions involving controlling shareholders must be approved by the audit committee, the board and the shareholders. The shareholder approval must include one-third of the votes of non-interested shareholders and the total opposing votes from shareholders without an interest in the transaction cannot exceed 1% of all voting rights in the company.

An officer or a controlling shareholder of a public company with a self-interest must disclose it to the company no later than the first board meeting dealing with the transaction in question. An officer who does not disclose his self-interest breaches his duty of loyalty to the company. A controlling shareholder who fails to disclose his self-interest breaches his duty of fairness. Any interested party who fails to disclose his self-interest can also be sued for damages.

### Derivative and class actions

The Companies Law provides that shareholders and directors can bring derivative actions on behalf of the company. To encourage such actions, the Companies Law limits the nominal plaintiff's court fees and, if the action is certified, the nominal plaintiff is reimbursed for any fees paid. Unless the court specifically decides otherwise, the company must pay the legal fees. Finally, if the court finds in the company's favour, the court can order remuneration of the nominal plaintiff.

With regard to class actions against public companies, the lead plaintiff can request that the Securities Authority bear its costs. If the Securities Authority is satisfied that there is a public interest in the action and it expects the derivative action to be certified, it may bear the lead plaintiff's costs. Similarly, the recently enacted Class Action Law 2006 ordered the establishment of the Class Action Fund to finance class action suits. The Class Action Law provides that even if the court fails to certify a class or if it rules against the class, it can order the remuneration of the lead plaintiff based on various factors, including the labour and the risk that the lead plaintiff undertook.

### Proxy voting and proxy statements

With the expanding number of individuals holding equity in public companies, and with the growing accessibility to global markets, there is a growing need to facilitate participation in shareholder votes. This concern is particularly acute for shareholders with only small holdings, as they will most likely not attend shareholder meetings. This phenomenon is known as *rational apathy*, as the time and expense of attendance simply do not provide enough of an incentive for attendance.

A regulation effective April 2 2006, enacted under the Companies Law, enables greater shareholder voting by requiring public companies to provide shareholders with proxy forms for voting on certain issues considered at general meetings. The proxy votes are to be mailed to the company. Proxy voting via the Internet is allowed, although not required. The regulation also allows shareholders and directors to disseminate proxy statements to shareholders for these matters.

While the Companies Law contained provisions for proxy voting and proxy statements, the provisions remained dormant because they were conditioned upon the issuance of regulations on procedural issues. It should be noted that proxy voting and proxy statements were already before the issuance of the 2006 regulation with regard to general meetings on compromise arrangements (such as reorganizations in bankruptcy and insolvency) because a detailed regulation on the matter was issued in 2002.

Under the new regulation, the company is required to provide for proxy votes and to enable shareholders to circulate proxy statements with respect to the following issues when they are on the agenda at general meetings: (i) appointing and dismissing directors; (ii) approving interested party transactions; (iii) approving mergers; (iv) other votes as required by the by-laws; and (v) matters specified by the minister of justice.

Proxy voting and proxy statements are required only with regard to public companies that are registered in Israel. For companies that have dual listing, proxy voting under Israeli law is not required if the company issues proxy forms under the laws of the foreign country.

The Companies Law provides that the board, and the person at whose demand the board calls a general meeting can, at the company's expense, issue proxy statements to convince shareholders how to vote. A shareholder can then require the company to send a proxy statement on the shareholder's behalf to all of the company's shareholders. The board has the last word, and can send a proxy statement in response to a shareholder's proxy statement or in response to some other approach of a shareholder.

Proxy voting and proxy statements have long been used in the US. Among other things, they provide a tool for hostile bidders to recruit shareholder votes, often inducing company management to respond with its own proxy statement – a so-called proxy fight.

The provisions for proxy voting and proxy statements will likely encourage proxy fights in Israel. It is also likely to heighten the ability of company management and ownership to express their views, to enhance diversity of opinions, and to encourage activity and coalition building among passive shareholders.

## Banking

### Recommended firms

#### Tier 1

Herzog Fox & Neeman  
Kantor Elhanani Tal & Co  
S Horowitz & Co

#### Tier 2

Caspi & Co  
Gornitzky & Co  
Gross Kleinhendler Hodak Halevy Greenberg & Co  
Yigal Arnon & Co

#### Tier 3

Goldfarb Levy Eran Meiri & Co  
Naschitz Brandes & Co  
Shiboleth Yisraeli Roberts Zisman and Moshe H Ne'eman,  
Ben-Artzi & Co  
Weksler Bregman & Co  
Yaacov Salomon Lipschutz & Co  
Yehuda Raveh & Co  
Zellermayer Pelossof & Co

## Capital markets

### Recommended firms

#### Tier 1

Goldfarb Levy Eran Meiri & Co  
Gross Kleinhendler Hodak Halevy Greenberg & Co  
Herzog Fox & Neeman  
Meitar Liquornik Geva & Leshem Brandwein  
Naschitz Brandes & Co  
Yigal Arnon & Co

#### Tier 2

Caspi & Co  
Gornitzky & Co  
S Horowitz & Co  
Zellermayer Pelossof & Co

#### Tier 3

Efrati Galili & Co  
Fischer Behar Chen Well Orion & Co  
Sharir Shiv Friedman & Co  
Shiboleth Yisraeli Roberts Zisman and Moshe H. Ne'eman,  
Ben-Artzi & Co  
Weksler Bregman & Co  
Yaacov Salomon Lipschutz & Co  
Yehuda Raveh & Co

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Caspi & Co  
 Goldfarb Levy Eran Meiri & Co  
 Gross Kleinhendler Hodak Halevy Greenberg & Co  
 Herzog Fox & Neeman  
 Meitar Liguornik Geva & Leshem Brandwein  
 Naschitz Brandes & Co  
 Yigal Arnon & Co

#### Tier 2

Fischer Behar Chen Well Orion & Co  
 Gornitzky & Co  
 S Horowitz & Co  
 Zellermayer Pelossof & Co

#### Tier 3

Rosen & Co  
 Shibolet Yisraeli Roberts Zisman and Moshe H Ne'eman  
 Weksler Bregman & Co  
 Yaacov Salomon Lipschutz  
 Yehuda Raveh

## Project finance

### Recommended firms

#### Tier 1

Herzog Fox & Neeman  
 Gornitzky & Co  
 S Horowitz & Co  
 Yehuda Raveh & Co  
 Yigal Arnon & Co

#### Tier 2

Caspi & Co  
 Gross Kleinhendler Hodak Halevy Greenberg & Co

#### Tier 3

Goldfarb Levy Eran Meiri & Co  
 Melcer & Co  
 M Firon & Co Advocates and notaries  
 Goldfarb Levy Eran & Co  
 Yaacov Salomon Lipschutz & Co  
 Zellermayer Pelossof & Co

#### Tier 4

Shibolet Yisraeli Roberts Zisman and Moshe H. Ne'eman,  
 Ben-Artzi & Co  
 Weksler Bregman & Co

### Goldfarb Levy Eran Meiri & Co

Goldfarb Levy Eran Meiri & Co's corporate practice is very well regarded by Israeli market observers, with partners Oded Eran and Ashok Chandrasekhar coming in for most praise for their strong M&A work.

The practice serves a wide range of Israeli and foreign clients, with special emphasis on international transactions, financing, securities, and mergers and acquisitions. Clients

include leading Israeli companies operating in Israel and abroad, major foreign companies active in Israel, and local government entities. The firm has particularly extensive experience in counselling and representing the high-technology sector, including industrial firms and their venture capital backers, and representing large Israeli construction companies in projects in Israel and abroad.

The firm also has broad experience with public offerings and private placements in Israel, the US and Europe, and a big part of the firm's work consists of advising on purchases, sales, mergers and acquisitions of businesses and business assets, public and private equity and debt offerings. M&A transactions are an important part of the firm's expertise, including mergers among Israeli corporations and mergers of foreign corporations with Israeli corporations.

In the past year the firm has handled several public offerings, including listings for Nice Systems on Nasdaq valued at \$212 million, IDB Development on the Tel Aviv stock exchange for \$68 million, Formula Telecom Solutions on London's Alternative Investment Market for £4.2 million, and Discount Investment on the Tel Aviv stock exchange for \$495 million.

Goldfarb Levy Eran Meiri & Co has also represented a number of companies in multinational transactions, including acting for IDB in a purchase of shares in Cellcom from Safra and Bell South for \$1.3 billion, advising the Migdal Group in relation to a joint venture with Bear Stearns to manage Migdal Capital Markets, guiding Kidum Enterprises and Publishing through a \$33 million sale to Kaplan, and acting for Tessera in relation to its purchase of Shellcase for \$34 million.

#### Leading lawyers

Ashok Chandrasekhar  
 Oded Eran

#### Key contact partners

Ashok Chandrasekhar  
 Oded Eran  
 Yehuda M Levy

### Gornitzky & Co

Gornitzky & Co is recognized as one of the largest and leading law firms in Israel, and has a reputation for providing its clients with an assortment of legal services in most areas of civil and commercial law. The firm has considerable experience in all aspects of company law, and has acted for a number of high-profile clients in M&A transactions over the past year. Among the standout deals, the firm closed the acquisition of the New York Plaza Hotel by Yitzhak Tshuva, represented Bank Hapoalim in relation to the sale of Bank Otsar Hahayal to First International Bank, and advised Goldman Sachs on various transactions in Israel over recent months.

In the area of securities and capital markets, Gornitzky & Co has represented many companies in preparation for flotation on stock exchanges in Israel and abroad. Over the past year the firm has acted for a number of companies in public offerings, including bond issues by Strauss-Elite (worth \$100 million), Melisron (worth \$65 million) and Milomar and Marlag (both worth \$20 million).

The firm is also proficient in banking and finance, and offers advice on complex local and cross-border transactions on all such matters. Recent finance instructions have included providing its expertise to a desalination facilities project, acting for Elad-Canada in relation to a bond issue, and assisting with the financing of the acquisition of Israeli shipping company Zim by the Israel Corporation.

**Leading lawyer**

Pinhas Rubin

**Key contact partner**

Pinhas Rubin

**Gross Kleinhendler Hodak Halevy Greenberg & Co**

Gross Kleinhendler Hodak Halevy Greenberg & Co (GKH) boasts one of Israel's leading corporate practices, and is described by a rival lawyer as "an extremely reputable firm".

The firm has six partners and 10 associates dedicated to banking and finance work, and the team has been kept busy by a raft of instructions from high-profile clients over the past year. In one highlight, GKH handled the merger between Bank Tefahot, Israel's largest mortgage bank, and Mizrahi Bank, and represented Mizrahi in the sale of its mutual and providence funds activities. The firm also provided legal advice to Fibi Holdings and its subsidiary, the First International Bank of Israel, in various areas relating to finance, capital markets, mutual funds and securities.

The firm also represented Otsar Hashilton Hamakomi, part of the Dexia Group, in its financing of local municipalities, with regard to the institution's related dealings with the Ministry of Finance, and in relation to a \$550 million new senior credit facility. Elsewhere, the firm acted for Leumi & Co in a strategic cooperation with Jefferies & Co, and guided York Capital Management through the financing of its acquisition of the rights of Bank Hapoalim in a loan to Gilat valued at \$70 million.

GKH also retains a strong presence in the corporate and M&A sector, and recently represented Matisse Capital in its acquisition of the Yapan-auto Group, an importer of Subaru automobiles, represented Whitepoint on the privatization of Bezeq, an Israeli telecommunications company, and acted for Temasek Holdings on a proposed investment in Cellcom. The firm also represented Orex Computed Radiography, an Israeli private company, in relation to its acquisition by Eastman Kodak Holdings for \$50.5 million, and acted for Partner Communications in a \$250 million share repurchase from certain major shareholders.

The firm has again been a keen player in the securities market, and recently advised Electronics Line 3000 on its initial public offering (IPO) in Germany, represented Partner Communications in a NIS2 billion debt offering, and acted for Tefron in a \$20 million equity offering. In other noteworthy mandates, GKH was retained by Merrill Lynch to act on all its capital markets activities in Israel, and represented Fibi as the selling shareholder in Shamir Optical's \$56 million IPO.

Project finance mandates, meanwhile, have included advising a large Indian infrastructure company on regulatory matters in Israel in preparation for its participation in an energy-related project in Israel, and representing one of the parties bidding to take part in the privatization of Israel's oil refineries.

**Key contact partners**

Amir Halevy

David Hodak

Gene Kleinhendler

**Herzog Fox & Neeman**

Herzog Fox & Neeman is a broad commercial law firm that provides expertise in all areas of commercial law. The firm has 34 partners and 86 associate lawyers, making it Israel's largest law firm.

Over the past year the firm has undertaken a period of rapid growth in terms of personnel, and also greatly strengthened its

capabilities in securities and capital markets by recruiting a specialist capital markets group headed by Ilanit Landsman.

Herzog Fox & Neeman, led by the "outstanding and very experienced" Alan Sacks, retains a wide-ranging and impressive list of banking clients including Bank Hapoalim, Bank Leumi, Citibank, HSBC, ABN Amro and Deutsche Bank. The firm has recently advised a consortium of Israeli banks on a \$550 million loan facility to Partner Communications.

Herzog Fox & Neeman also retains a strong presence in the corporate and M&A markets, and recently acted for Koor Industries with regard to the sale of 35% of Koor's issued share capital to Discount Investments for \$450 million. The firm also acted for VeriFone Holdings in relation to its pending acquisition of Lipman Electronics Engineering, a provider of electronic payment systems, for \$793 million, and advised the Zabudowicz/Tameres Group on its acquisition of an 8.5% stake in Knafaim, the controlling shareholder of El Al Airlines. Elsewhere, Herzog advised Sick, one of the world's leading manufacturer of sensors, with regard to its €10 million acquisition of the assets of Netzer Precision Technology. Of the firm's M&A practice, market observers single out Ehud Sol for the strength of his work.

Herzog Fox & Neeman also boasts a strong project finance team, which over the past year has acted for the new lenders in the financing of the northern extension to the Cross Israel Highway, advised the bidders in regard to the tender for Road 531, and represented the Metro Rail Consortium, one of the three remaining potential bidders in the Tel Aviv light rail tender.

Meanwhile, capital markets instructions over the past year have included representing Bank Hapoalim and the United Mizrahi Bank in connection with the first-ever offering and sale of a large tranche of senior debt in Derech Eretz Highways to Israeli institutional investors raising NIS404 million. The practice also won a role advising 888.com in relation to its London IPO, which raised \$250 million at a market capitalization of \$1 billion, and acted for the underwriters, led by UBS Securities, on the \$49 million public offering of ordinary shares of Aladdin Knowledge Systems on Nasdaq.

**Leading lawyers**

Mark Phillips

Alan Sacks

Ehud Sol

**Key contact partner**

Mark Phillips

**Kantor Elhanani Tal & Co**

Kantor Elhanani Tal & Co has developed a great reputation for banking in Israel, both in terms of transactional expertise and regulatory aptitude.

Name partner Dalia Tal is "very well thought of" and is widely considered by market observers to be "among the best and most experienced banking lawyers in Israel". Four partners and seven associates are dedicated to banking, M&A and finance work at Kantor, and the firm regularly acts for Bank Leumi.

Among the year's highlights, Kantor advised Bank Leumi on three matters – firstly, the sale of 10% of the issued shares of Migdal Holdings, valued at \$142 million; secondly, the NIS550 million sale of Leumi PIA Funds, Israel's third-largest mutual management group, to Harel Investments; and thirdly, the sale of Ofek-Psagot to York Capital for NIS1.3 million. The firm also represented Bank Leumi in relation to the sale of its holdings in Africa Israel to Lev Leviev for NIS1.1 million.

Other clients include First International Bank, Fibi Holdings, Mayer's Cars and Trucks and Otzar Hashilton.

#### Leading lawyer

Dalia Tal

#### Key contact partner

Dalia Tal

### S Horowitz & Co

S Horowitz & Co is one of Israel's most renowned firms, known for its strength across the board in corporate work. The firm also has one of the leading banking practices in the country, and market opinion suggests that Anthony Bloch is one of Israel's most accomplished banking lawyers.

The firm recently acted for Bank Hapoalim and Bank Leumi on the \$500 million financing of the Jerusalem light railway to the tune of \$500 million, acted for the banks on the financing of the Alagem Group/Phoenix bid for the government's controlling interest in Bezeq, Israel's national communications company, and advised the banks again in connection with Spacecom's offering of debentures and notes, issued to finance the construction, launch and operation of Israel's third commercial satellite. Other prominent deals saw S Horowitz & Co act for Bank Hapoalim on its proposed financing of the Tel Aviv Light Railway, valued at \$650 million, and guide Bank Otsar Hahayal on the financing of the acquisition from the Municipality of Tel Aviv of Israel's largest municipal savings fund.

The firm is also heavily active in capital markets and securities work, and recently advised Credit Suisse First Boston, Goldman Sachs, JP Morgan and Morgan Stanley on various legal aspects arising from securities offerings in Israel, as well as on a variety of structured note programmes. Other highlights include acting for the Municipality of Tel Aviv on an issue of debt securities listed on the Tel Aviv stock exchange and on securitizations of receivables from the city's parking lots, and advising the Israel Electric Company on issues arising from its possible privatization.

In mergers and acquisitions, meanwhile, the firm has also been extremely active. Among the year's highlights, it acted for Bell South which, together with Safra, sold its controlling shareholding to IDB for \$1.3 billion, and advised Supersol, Israel's largest food retailer, on its acquisition via an auction sale process of Clubmarket, Israel's third-largest food retailer, for NIS1.2 billion. S Horowitz & Co also worked with the European Aeronautic Defence and Space Company on a joint venture with a major Israeli aeronautical company valued at \$100 million, guided Bank Hapoalim through its acquisition of a 57% stake in C Kredi ve Kalkinma Bankasi, advised Star Kist Foods on the \$35 million purchase and subsequent sale of its interest in Star Kist Food D'Or, acted for Reshet on its successful bid for one of the Channel 2 terrestrial television franchises, and advised YNet, Israel's major news site portal, on its various corporate and commercial activities.

Project finance mandates have included representing the Israeli government in relation to the build-operate transfer project relating to the extension of the Cross Israel Highway, Israel's only toll road, acting for Shafir in a number of major road expansion and construction projects, and advising Danya-Cebus in connection with the NIS2 billion construction of a major connecting road in central Israel. Elsewhere, the firm represented Feuchtwanger Industries and Ondeo Degremont in its bid to construct and operate a water filtration plant.

#### Leading lawyers

Anthony Bloch  
Clifford Davis  
Ruth Oren

#### Key contact partner

Clifford Davis

### Yaacov Salomon Lipschutz

"They have not been seen on as many deals but have a reputation for being very professional," is how one competitor described Haifa firm Yaacov Salomon Lipschutz. The firm retains its ranking this year as a result of market opinion to that effect; its drop in visibility is most likely to be nothing but a temporary blip.

Yaacov Rivanowitch heads up the firm's banking department, which this year advised the Israel Electric Corporation on a \$250 million loan and three syndicated loans worth a total of €220 million. Bank Leumi is another prominent banking client of the firm.

In a major mergers and acquisitions deals, meanwhile, the firm advised the Stryker Corporation in relation to its acquisition of Sightline Technologies, a Fortune 500 company, valued at \$150 million.

#### Key contact partners

David Goldenblatt  
Raanan Rawitz

### Yigal Arnon

Yigal Arnon is one of Israel's leading firms with 80 lawyers, 20 of which are from English-speaking countries. It has offices in Tel Aviv and Jerusalem, the only leading firm in Israel with offices in both cities, and is recognised as being a "one stop shop" that covers every field of financial law and is widely considered to be "one of the best business law firms in the country".

In corporate and commercial work, Yigal Arnon has been involved in some of the largest deals in Israel this year, including Warren Buffet's groundbreaking \$4 billion purchase of an 80% stake in the privately held Galilean company Iscar Metalworking, a deal described by one market commentator as being "a milestone in Israeli economic history".

Capital markets continues to be a robust area for the firm, and it recently advised Tower Semiconductors in a rights offering – a simultaneous dual offering of debt securities on the Tel Aviv stock exchange and Nasdaq worth \$50 million and an initial public offering (IPO) of Biocancel, a Delaware company, worth NIS25 million. Yigal Arnon also advised One Software Technologies on an IPO on the Tel Aviv stock exchange worth NIS30 million, and on the IPO of Azorim, worth NIS350 million. Other capital markets clients include WorldGroup Holdings, BVR Systems, Nexus and Magic Software.

The banking practice is also strong, and over the past year the firm has advised Israel Discount Bank on a sale of mutual funds valued at NIS580 million and a deal of pension funds worth NIS710 million. The practice also advised Israel Discount Bank and First International Bank on a creditor arrangement worth NIS160 million. These deals involved Yigal lawyers Amnon Lorch, Gil Oren, Yoav Caspi and Boaz Fiel. The firm's other banking clients include Deutsche Bank, UBS, Morgan Stanley, Templeton and Old Mutual.

Yigal Arnon, led by Barry Levenfeld, has been involved in several large M&A deals over the past year, including acting for eBay in relation to its acquisition of Shopping.com for \$628 million,

advising RSA Security on its \$141.5 million acquisition of Cyota, and guiding Hutchison Whampoa through the repurchase of its shares from minority shareholders for \$248 million.

The firm also has substantial project finance capabilities, run by the “impressive” David Shapiro. The projects team proved this year that it is equally comfortable advising any party to large-scale projects. For example, it recently represented the bidders for the Tel Aviv light railway, acted for the state in the Jerusalem light railway project, and advised Bank Hapaolim in one of the largest desalination projects in Israel worth \$75 million.

**Leading lawyers**

Yigal Arnon  
Harry Kirsch  
David Shapiro  
Barak Tal

**Key contact partners**

Adrian Daniels  
Barry Levenfeld