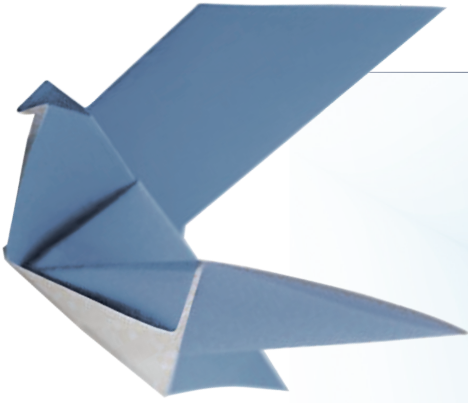


UNFOLDING

Israeli Market Developments



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HFN Highlights

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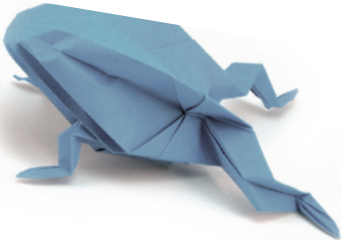
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Welcome to the third issue of Unfolding, the quarterly newsletter of Herzog Fox & Neeman, Israel's leading international law firm. Once again, Unfolding provides updates on developments in the Israeli market place, including legal and regulatory developments. Unfolding also highlights significant business trends and notable transactions taking place in Israel or with a particular Israeli flavour.



HERZOG FOX & NEEMAN
LAW OFFICE

Unique Aspects of Israel's M&A Laws and Implications for Cross-Border Deals



ABOVE THE FOLD

Business Trends & Market Developments - Vital Information for Investors in Israel

Israel's Companies Law provides for statutory mergers, takeovers of public companies and forced sales of minority interests in private companies, but there is no statutory regime for asset sales. The Companies Law, in effect since the year 2000, has been greatly criticised for providing more questions than answers.

Statutory mergers have many technical requirements, with strict deadlines that must be followed. The requirement to wait at least 50 days from filing a Merger Request with the Companies Registry to close a merger, and at least 30 days from the general meeting of the merger parties, creates not only time delays, but exposes the companies involved to a lengthy period of uncertainty after a transaction has been announced before it can be closed.

Recent case law has validated the reverse triangular merger as a legitimate technique for effecting a takeover of a public company. The question of whether debt assumed for the purposes of the takeover can be pushed down into the target company remains open.

Israeli law allows a company (especially a private company) great flexibility in composing its Articles of Association, for example regarding appointment of directors and rights for different classes of shares. This enables investors to adopt creative forms of control. For example, a minority investor would be permitted by contractual arrangement to control the board and direct the activities of the company.

The timetable for antitrust approval tends to overlap with the waiting periods for a merger, including a 30-day period to receive an answer from the Antitrust Director to an application to approve a merger (a term which covers, inter alia, any acquisition of more than 25 per cent of the ownership interest in an entity).

Employment issues must not be ignored in the context of an M&A transaction. The presence of organised labour can dictate protracted negotiations with unions as a preliminary to completing a purchase. In the hi-tech industry, the "driver" of Israel's economy, key employees are considered vital assets. Employee consent is always required before an employee is transferred to a different company (in the event of a purchase of assets), and even if the employees remain within same (acquired) company, those key employees must be incentivized to remain loyal to the new owners.

Legal Implications for M&A Deals in Israel

A relatively new Companies Law, a dearth of jurisprudence concerning directors' duties and the takeover provisions in the Companies Law that are not always clearly drafted, mean that boards of directors must sometimes take a position on issues where validity cannot be guaranteed. The difficulty facing directors of public companies are particularly acute, in light of the increased powers of scrutiny on the part of Israel's Securities Authority.

At HFN, we are lucky to have some of the best legal minds among our partners, with unparalleled experience in handling cutting-edge M&A transactions. Their advice can be trusted to be both practical and well-founded on legal reasoning.

In the unlikely event that issues are challenged in court, our firm has an enviable rate of success in defending the positions of our clients. In M&A transactions, legal proceedings are unusual; matters proceed on the good practice developed in the legal market in Israel. As a large leading firm, we have experience in more transactions than perhaps any other firm in Israel. This gives us insight into more deals and helps us to build a set of best practice guidelines for any legal issue that may arise.

Investing in a regulated industry without knowledge of local rules is perhaps the biggest risk in an M&A transaction in Israel, as with anywhere else, when global businesses are entering new jurisdictions.

While sophisticated investors understand their own regulations and thus will assume that they should check for similar rules abroad, for example in the financial sector or telecommunications, some buyers may not realise that they are entering into an area where government approvals are needed. Pharmaceuticals and medical devices are a great example of this, as is the defense industry. Another example is any transaction that involves products that contain any encrypted code. A client may not be aware that encryption means the need to check for export license issues. In addition, Antitrust issues must always be checked.

In the area of R&D, Israel has a government funding regime, operated through the Office of the Chief Scientist at the Ministry of Labor, Industry and Commerce ("OCS"). This is an important source of funding for research and development, but comes with restrictions on the use and transfer of the resulting technology that can complicate a global company's plans when it seeks to acquire an Israeli hi-tech company. An overseas acquirer of an Israeli company that has received OCS funding must make sure that the technology can be exploited overseas in a manner that fits into the acquirer's business plans.

The Investment Center at the Ministry of Labor, Industry and Commerce provides tax benefits for various projects, but these also have conditions imposed. Tax advisors – who are a must in any transaction where "structuring" is an important component – should also check whether a company has received any 'Approved Enterprise' status from the Investment Center and check the implications in a transfer of control or sale of assets.

Businesses with environmental permits – for hazardous substances, radioactive material etc., will also require government approvals in any significant M&A context.

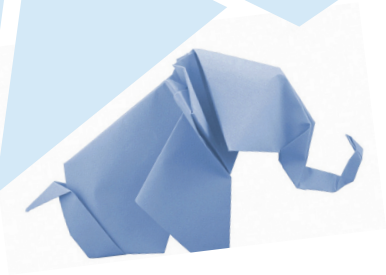
Main Tax Implications for Investors in Israel

No-one should contemplate investing in Israel without considering the tax implications. A sale of shares in an Israeli company is generally subject to capital gains tax. Certain exemptions apply to foreign residents who invest in an Israeli company. These exemptions are subject to certain conditions and limitations which should be examined prior to the investment being made. In addition, there is a very broad withholding tax regime. Consequently, a sale of shares is in many cases, subject to a duty on the purchaser to withhold tax at source, unless a specific exemption applies under either domestic law or an applicable Double Tax Treaty. In most cases, the seller should obtain a special tax ruling or certificate which determines the withholding tax arrangement.

Transferring assets between related companies is a tax event, despite the common ownership. Following a long procedure with many restrictions, it is possible to construct tax free reorganisations but good tax advice is essential. Generally, such reorganisations require a tax ruling which should be obtained prior to the reorganisation.

Israel is a party to many Treaties for the Avoidance of Double Taxation. However, the Israeli tax authorities do not like "treaty shopping". Using a company that is little more than a mailbox in a tax-advantageous jurisdiction will be viewed with suspicion (at best). So efficient tax planning is permitted, but there must be real business to back up the structure.

The above is a revision of a Lawyer Monthly Magazine interview with Janet Levy Pahima, Senior M&A partner, about the state of M&A in Israel and the key legal implications for investors to be aware of. To read the full Mergers & Acquisitions – Israel article, please click [here](#) (pages 56-58)



New Legislation to Increase Taxes

New Voluntary Disclosure Procedure

CENTER FOLD

Groundbreaking Legal Developments - Tax

Will this summer's social protests result in tax increases for individuals and corporations? Plus, Israel unveils new voluntary disclosure procedure for undeclared foreign assets.

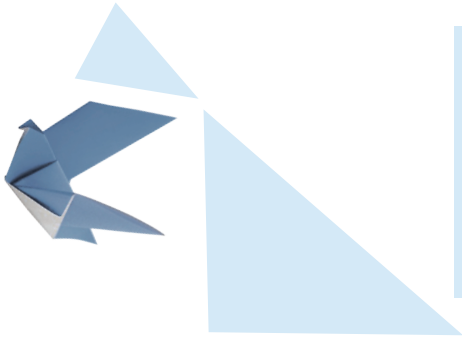
Throughout the past summer, a significant number of social protests took place in Israel against the high cost of living and the growing socio-economic gaps within Israeli society. As a response to the protestors' demands, a committee headed by Prof. Manuel Trachtenberg was appointed by the Prime Minister to examine, inter alia, revisions in the tax system. As a result of the Committee's recommendations, new legislation was approved. This new legislation repeals the current scheduled tax rate reduction with respect to individuals and corporations and instead will set higher tax rates. Pursuant to the new legislation, which is to become effective as of 1 January 2012, the highest marginal tax rate for individuals will be 48% (instead of the current 45%). With respect to corporations, the corporate tax rate will be set at 25% (instead of the current 24%). In addition, tax rates on dividends, interest payments and capital gains will generally be raised to 25% (instead of 20%) and in certain cases to 30% (instead of 25%). This new legislation also contains certain changes with respect to National Security contributions.

On 15 November 2011, the Israeli Tax Authority published a new voluntary disclosure procedure with respect to undeclared foreign assets. This procedure is considered revolutionary since, for certain taxpayers, the Tax Authority agreed to waive applicable penalties and interest charges. Subject to certain conditions under this procedure, Israeli residents that hold assets outside of Israel (the income derived from which has not been reported in Israel) will be permitted to apply for certain reliefs. If such application is approved, the taxpayer will be entitled to immunity from criminal proceedings (with respect to tax evasion), and to other reliefs from penalties and interest charges (and in certain cases also a relief from indexation to the Israeli Consumer Price Index). The relief provided under this procedure will be granted only with respect to applications submitted by 30 June 2012, and are far more significant than those included in the current Voluntary Disclosure Procedure dated 10 April 2005.

This new procedure creates opportunities for individuals and companies that own undeclared assets outside of Israel. To read a more detailed description of this new revolutionary voluntary disclosure procedure, please [click here](#).

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Makhteshim-Agan: The Largest M&A Transaction in the Middle East in 2011

THE FOLD OF THE MATTER

High Profile Case Study:


HFN advised Makhteshim-Agan Industries Ltd. (“MAI”), the world’s leading manufacturer and distributor of branded off-patent crop and non-crop protection products, in a reverse triangular merger transaction, in which a subsidiary of China National Chemical Corporation, a major Chinese group controlled by the Chinese government, purchased 60% of the issued and outstanding share capital of MAI, for a total consideration of approximately USD 2.508 billion. This was the largest transaction of the year in the Africa/Middle East region, according to mergermarket.

This was a large-scale transaction for the Israeli market, and it is considered a significant milestone in economic relations between Israel and China.

The transaction was very unusual – a partial reverse triangular merger. In the classic form of a reverse triangular merger, the purchaser forms a wholly-owned subsidiary, which merges into the target company. The wholly-owned subsidiary ceases to exist, and all of the shares of the target are transferred to the purchaser. In the case of the MAI transaction, the purchaser, China National AgroChemical Corporation, purchased only 60% of the MAI shares, and Koor Industries Ltd., (“Koor”) which held 47% of the shares of MAI prior to the transaction, remained with 40% of the shares after the transaction. This arrangement has almost no precedent in Israel.

This unusual nature of the transaction raised fundamental questions of corporate law in Israel, especially as to the required procedure for approval of the transaction. HFN’s knowledge and expertise in advising clients with regard to various types of transactions, combined with our team’s creative thinking, played a significant role in guiding the client through the transaction.

HFN represented MAI in highly publicised litigation proceedings that threatened to disrupt the transaction. The minority shareholder filed the claim (as a class action) in the Tel Aviv District Court, arguing that the public shareholders of MAI were deprived of the opportunity to share in an additional benefit that was given to Koor in the transaction (over and above the basic price per share paid for the MAI shares). As part of the transaction, the China National Chemical Corporation arranged for Koor to receive a non-recourse loan, backed only by Koor’s remaining 40% interest in MAI.



In a controversial intermediate decision given by the Court, the Court decided that Koor Industries was not entitled to retain the excess consideration (the economic value of the non-recourse loan), and that the value of such excess consideration must be divided between all MAI's shareholders in MAI. Eventually, the parties reached a settlement.

Leading M&A lawyers from all over the world have requested HFN to send them details of the Court's decision. The issue of principle here was the question of whether the value of a "control premium" belongs exclusively to the controlling shareholder or whether the public shareholders are also entitled to share in any "control premium". This is an issue of major interest to M&A lawyers around the world.

The purchase of a large Israeli company by a Chinese governmental corporation is a historic event, and HFN is proud to have been a part of such a large scale transaction.

The transaction was led by Ehud Sol and Ilanit Landesman Yogev, heads of HFN's Capital Markets and Securities department.

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HFN Highlights

Former General Counsel of Antitrust Authority Joins HFN

HFN is pleased to announce the appointment of Boaz Golan as partner and head of HFN's Antitrust and Competition department. Boaz is a highly respected antitrust and competition lawyer with significant experience in international issues within this field. He recently completed five years as the General Counsel of the Israeli Antitrust Authority. In this role, he led numerous antitrust and competition cases, both civil and criminal, was in charge of major legislative amendments and took a leading role in shaping the Authority's policies. During his tenure at the Authority, Boaz was selected to speak on behalf of the OECD in a seminar for competition agencies.

HFN - Israel's Law Firm of the Year

The Financial Times and the mergermarket Group have named HFN Israel's Law Firm of the Year for 2011. HFN was also awarded the prestigious honour in 2010, the first year mergermarket introduced a category for Israel.

HFN Leads IFLR Rankings

IFLR1000, the guide to the world's leading financial law firms, has published its 2012 edition. HFN remains in the top band of Israeli firms for all categories for another year Capital Markets, Banking, Project Finance. Moreover, HFN is the only Israeli firm to appear in the first tier in each category.

Herzog Fox & Neeman - The Most Desirable Law Firm in Israel

HFN was selected as the most coveted law firm to work at in Israel, according to the "Ten Best Places to Work" study conducted by Pilat and Globes. The firm was chosen based on its prestigious reputation, rich working conditions, which include some of the highest salaries among Israeli law firms, and diverse events.

Breakfast Seminar with Senior IMF Advisor

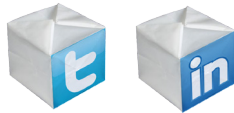
HFN, in co-ordination with Bloomberg and UK ISRAEL BUSINESS, hosted a breakfast seminar featuring Max Alier, a senior advisor to the International Monetary Fund (IMF). Mr. Alier spoke in depth about the economic challenges presently facing the Euro bloc, and the role of the IMF in its amelioration.





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