

SHIBOLETH

ADVOCATES & NOTARIES

Shiboleth, Yisraeli, Roberts, Zisman & Co.
and Moshe H. Ne'eman, Ben Artzi & Co.

Dear Clients and Friends,

Re: **Survey On Legal Terms of Venture Capital Transactions – Second Half of 2006**

We are pleased to present the results of our survey for the second half of 2006, analyzing the legal terms commonly used in venture capital financings in Israeli and “Israeli related” hi-tech companies and comparing these terms to those commonly used in the Silicon Valley, United States.

This survey is presented this time on a six-month basis and provides an analysis of the legal terms of venture capital transactions closed during the second half of 2006, as compared with the results covered by our earlier surveys.

In preparing our survey for the second half of 2006, we examined the terms of 55 venture capital investment transactions of Israeli and “Israeli-related” hi-tech companies, each for an investment amount in excess of US \$500,000. The survey relates only to equity transactions in which venture capital funds participated, and not bridge loan transactions or investments made solely by “angels”.

The number of surveyed Israeli transactions constitutes approximately 50% of the relevant transactions that closed during the covered period and that met our qualifying criteria, and includes a majority of the more significant transactions in terms of funds invested.

As always, this survey was produced in coordination with Fenwick & West LLP., a leading Silicon Valley law firm. Our cooperation with Fenwick & West in producing this survey has enabled us also to present to you the results of their corresponding survey covering Silicon Valley venture capital investment transactions during the covered period, and, thus, to draw an interesting comparison between the terms commonly used in Israel and those commonly used in the Silicon Valley.

The results of this survey also indicate that the vast majority of investment rounds continue to be “Up-rounds” in comparison with the previous investment rounds.

The results of this survey indicated an increase in the number of first round (“Series A”) investments. The number of first round investments has risen to 35% in the second half of 2006, compared to approximately 20% in the first half of 2006.

Another interesting finding of this survey is the decrease in usage of the “Senior Liquidation Preference” right (i.e. a senior right of the preferred shares of the new round to receive distributions prior to the preferred shares of the previous round). For the first time since we began conducting our survey of venture capital transactions, the rate of usage of this right was 72%. During the first half of 2006 this rate stood at 80%. This decrease was mainly observed during the last quarter of 2006, which results on this point substantially impacted the overall decrease in the usage of this right during the entire second half of 2006, with this right of senior liquidation preference being employed during such quarter in less than half of the investment rounds! Nevertheless, since the absolute number of transactions surveyed during the fourth quarter was too low to form a solid basis for a reliable analysis, we shall wait for the results of the subsequent survey in order to confirm if

these results indeed indicate a trend. It should be noted that according to the results of the Silicon Valley survey, the rate of usage of this right was a mere 41%.

The survey has also indicated less stringent requirements with respect to the anti-dilution terms, whereby the usage of the “Weighted Average” formula has significantly increased, on account of the “Full Ratchet” formula (82% “Weighted Average” in the results of this survey as opposed to 65% during the first half of 2006 and 18% “Full Ratchet” in the results of this survey as opposed to 28% in the first half of 2006).

In general the results of this survey indicate a level of optimism on the part of the venture capital funds that invested during the second half of 2006, with respect to future funding of portfolio companies in which they have invested.

We hope that you find this survey useful and interesting. **To be placed on an email list for future editions of this survey, please go to www.shibolet.com.**

To receive a copy of the Fenwick & West Venture Capital Survey summarizing venture capital terms in the Silicon Valley, please go to www.fenwick.com/vctrends.htm.

For additional information about this report, please contact Mr. Lior Aviram at L.Aviram@shibolet.com or Ms. Limor Peled at L.Peled@shibolet.com, Tel: +972 (3) 7778333.



SHIBOLETH
in cooperation with
FENWICK & WEST LLP

Trends in Legal Terms in Venture Financings
in Israel
(Second Half of 2006)

- **Background** – We have analyzed the terms of venture financings for 55 Israeli and Israeli-related technology companies that reported raising money in the second half of 2006. Our survey does not include financing rounds of less than US \$500,000. The tables below also show, for purposes of comparison, the results of our previously released surveys.
- **Financing Round** – The financings closed in the second half of 2006 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
A	35%	21%	34%	28%	35%	20%	22%
B	27%	28%	27%	22%	21%	36%	30%
C	24%	19%	12%	26%	25%	26%	22%
D	7%	19%	17%	9%	11%	8%	19%
E and higher	7%	13%	10%	15%	8%	10%	7%

- **Price Change** – The financings closed in the second half of 2006 and in the periods covered by our previous surveys may be broken down by the directions of the change in price as compared to each company's respective previous round, as follows:

Price Change	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
Down	32%	26%	30%	19%	43%	42%	62%
Flat	6%	9%	4%	16%	12%	3%	28%
Up	62%	65%	66%	65%	45%	55%	10%

The percentages of financing transactions that were down-rounds, broken down by series, were as follows:

Series	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
B	7%	31%	36%	0%	25%	24%	73%
C	54%	27%	20%	33%	56%	62%	55%
D	25%	18%	29%	25%	43%	0%	56%
E and higher	50%	14%	25%	14%	40%	80%	50%

- **Liquidation Preference** – Senior liquidation preferences were used in the following percentages of financings:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
72%	80%	81%	76%	80%	78%	82%

The percentages of financing transactions with senior liquidation preference, broken down by series, were as follows:

Series	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
B	67%	75%	73%	80%	85%	61%	82%
C	77%	73%	100%	75%	75%	92%	75%
D	75%	91%	71%	75%	71%	75%	82%
E and higher	75%	86%	100%	71%	100%	100%	100%

- **Multiple-Based Liquidation Preferences** - The percentage of financing transactions with senior liquidation preferences that included multiple preferences was as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
4%	9%	18%	16%	24%	23%	44%

Of the financings in which there were senior liquidation preferences based on multiples, the range of the multiples may be broken down as follows:

Range of multiples	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
>1x- 2x	100%	100%	75%	25%	88%	100%	88%
>2x - 3x	0%	0%	0%	75%	0%	0%	6%
> 3x	0%	0%	25%	0%	12%	0%	6%

- **Participation in Liquidation** - The percentage of transactions, out of the total number of financing transactions, which included participation rights in liquidation were as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
89%	93%	85%	91%	79%	90%	91%

Out of those financing transactions the terms of which provided for participation, the percentages of those in which no cap was placed on the investors right to participation were as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
51%	57%	57%	69%	60%	67%	59%

- **Cumulative Dividends and/or Accrued Interest as Part of the Liquidation Preference** – Cumulative dividends and/or accrued interest constituted part of the liquidation preferences in the following percentages of financings:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
56%	56%	68%	78%	52%	62%	54%

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in the second half of 2006 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
Full Ratchet	18%	28%	39%	31%	30%	28%	38%
Weighted Average	82%	65%	61%	65%	64%	66%	55%
None	0%	7%	0%	4%	6%	6%	7%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in the second half of 2006 and in the periods covered by our previous surveys may be broken down as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
2%	9%	15%	0%	13%	14%	9%

- **Redemption** – The percentage of transactions in the second half of 2006 and the periods covered by our previous surveys, out of the total number of financings in each respective period, in which the terms provided for mandatory redemption or redemption at the option of the venture capitalist was as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
18%	14%	20%	17%	21%	26%	27%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the second half of 2006 and the periods covered by our previous surveys, out of the total number of financings in each respective period, which involved the conversion of senior securities into more junior securities was as follows:

H2'06	H1'06	H2'05	H1'05	H2'04	H1'04	H2'03
2%	2%	2%	7%	2%	10%	14%

For additional information about this report please contact Lior Aviram – l.aviram@shibolet.com or Limor Peled – l.peled@shibolet.com, at SHIBOLETH, 972-3-7778333; or Barry Kramer at 650-335-7278; bkramer@fenwick.com or Michael Patrick at 650-335-7273; mpatrick@fenwick.com at Fenwick & West. To be placed on an email list for future editions of this survey please go to www.shibolet.com or to www.fenwick.com/vctrends.htm.



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and Moshe H. Ne'eman, Ben Artzi & Co.

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SHIBOLETH
Analysis of Legal Terms of Venture Financings
of Israeli Companies
and a Comparison of Those Terms with the Terms of Venture Financings
in the Silicon Valley
(Second Half of 2006)

- **Background** – We have analyzed the terms of venture financings for 55 Israeli based/related technology companies that reported raising at least \$500,000 in the second half of 2006, and compared those terms to the terms of venture financings for 233 technology companies headquartered in the Silicon Valley (the San Francisco Bay Area) that reported raising money in the same period.
- **Financing Round** – The Israeli financings may be broken down according to type of round as follows:
 - Series A – 35% (compared to 22% in the Silicon Valley)
 - Series B – 27% (compared to 31% in the Silicon Valley)
 - Series C – 24% (compared to 24% in the Silicon Valley)
 - Series D – 7% (compared to 14% in the Silicon Valley)
 - Series E and higher – 7% (compared to 9% in the Silicon Valley)
- **Price Change** – The financings during the second half of 2006 may be broken down by the directions of the change in price as compared to the each company's respective previous round, as follows:

Price Change	Israel	Silicon Valley
Down	32%	23%
Flat	6%	10%
Up	62%	67%

The percentages of financing transactions that were down-rounds, broken down by series, were as follows:

Series	Israel	Silicon Valley
B	7%	10%
C	54%	20%
D	25%	39%
E and higher	50%	48%

- **Liquidation Preference** – Senior liquidation preferences were used in the following percentages of post-Series A financings:

Israel	Silicon Valley
72%	41%

The percentages of financing transactions senior liquidation preference, broken down by series, were as follows:

Series	Israel	Silicon Valley
B	67%	26%
C	77%	40%
D	75%	58%
E and higher	75%	67%

- **Multiple-Based Liquidation Preference** – The percentages of financing transactions with senior liquidation preferences that included multiple preferences was as follows:

Israel	Silicon Valley
4%	20%

Of the financings in which there were senior liquidation preferences based on multiples, the range of the multiples may be broken down as follows:

Range of Multiples	Israel	Silicon Valley
>1x - 2x	100%	74%
>2x - 3x	0%	26%
>3x	0%	0%

- **Participation in Liquidation** –The percentage of transactions, out of the total number of financing transactions, that provided for participation rights in liquidation were as follows:

Israel	Silicon Valley
89%	69%

Out of those financing transactions the terms of which provided for participation, the percentages of those in which no cap was placed on the investors right to participation were as follows:

Israel	Silicon Valley
51%	61%

- **Cumulative Dividends/Interest Accrual** – Cumulative dividends or interest accruals (which is an Israeli concept similar to cumulative dividends) constituted part of the liquidation preferences under the terms of the following percentages of financings:

Israel	Silicon Valley
56%	5%

- **Anti-dilution Provisions** – The use of anti-dilution provisions in the financings were as follows:

Type of Provision	Israel	Silicon Valley
Full Ratchet	18%	4%
Weighted Average	82%	95%
None	0%	1%

- **Pay-to-Play Provisions** – The use of pay-to-play provisions in the financings was as follows:

Israel	Silicon Valley
2%	10%

- **Redemption** – The percentages of financings providing for either mandatory redemption or redemption at the option of the venture capitalist were as follows:

Israel	Silicon Valley
18%	26%

- **Corporate Reorganizations** – The percentages of post-Series A financings involving a corporate reorganization (conversion of senior securities) were as follows:

Israel	Silicon Valley
2%	6%

For additional information about this report please contact Barry Kramer at 650-335-7278; bkramer@fenwick.com or Michael Patrick at 650-335-7273; mpatrick@fenwick.com at Fenwick & West; or Lior Aviram – l.aviram@shibolet.com or Limor Peled – l.peled@shibolet.com, at SHIBOLETH 972-3-7778333. To be placed on an email list for future editions of this survey please go to www.fenwick.com/vctrends.htm or to www.shibolet.com.