

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – Second Half of 2008**

We are pleased to present the results of our survey for the second half of 2008, 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 2008, as compared with the results covered by our earlier surveys.

In preparing our survey for the second half of 2008, we examined the terms of 43 venture capital investment transactions of Israeli and “Israeli-related” hi-tech companies, each for an investment amount of at least US \$500,000. The survey relates only to equity transactions in which venture capital funds participated, and not to bridge loan transactions or investments made solely by “angels”.

The number of surveyed Israeli transactions constitutes more than 40% of the relevant transactions that were closed during the surveyed period and that met our qualifying criteria, and includes a majority of the more significant transactions in terms of the scope of amounts 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 the results of their corresponding survey covering Silicon Valley venture capital investment transactions during the surveyed period, and, thus, to draw an interesting comparison between the terms commonly used in Israel and those commonly used in the Silicon Valley.

We note that this is the first survey that we are issuing addressing investment rounds performed following the storm in the financial markets and the subsequent economic crisis.

Conclusions:

The results of this survey clearly indicate that the financial crises is reflected in the investment rounds performed in the second half of 2008, with a stronger effect in the final quarter of the year.

We witness a dramatic decline in the number of “up-rounds” as compared to the previous investment rounds - from 85% in the second half of 2007 and 82% in the first half of 2008 to only 54% in the surveyed period (although this figure still represents the majority of the transactions)! In comparison, the number of “down-rounds” has increased to 34%.

It should be noted that the results of this survey include investment rounds from the third quarter of 2008 (i.e. prior to the dramatic effect of the storm in the financial markets, and the subsequent economic crisis which occurred towards the end of the third quarter). As such, the dramatic affect is primarily from the fourth quarter.

In this context it is rather interesting to note that the results of the survey conducted by our colleagues in the Silicon Valley, for the period of the second half of 2008 indicate a higher number of "up-rounds" as compared to our survey for the same half (62% in the Silicon Valley, as compared to 54% in our survey), while the results of the Silicon Valley survey for the last quarter of 2008, which period was already influenced by the economic crisis, are almost identical to the results of our survey for the entire half of 2008 (54% "up-rounds" and 33% "down-rounds"). It can therefore be deduced that the influence of the crisis in the last quarter of the 2008 on the value of transactions, is greater in Israel.

An additional indication of the effect of the crisis appears in the increase in the number of "reorganizations" performed in the framework of investment rounds. Such reorganizations increased in this survey to 13%, as compared to between 2% and 4% in the periods surveyed since the second half of 2005. The results in the Silicon Valley are similar – with reorganizations in the last quarter of 2008 constituting 13%, as compared to between 4% and 5% in each of the first three quarters of 2008.

In the other terms of investment rounds, a trend of certain stiffening appears, although not a dramatic change, and there were also new "A" rounds (30% for the entire second half of 2008).

We hope that you find this survey useful and interesting. **To be included in our email distribution 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.

SHIBOLET
in cooperation with
FENWICK & WEST LLP

Trends in Legal Terms in Venture Financings
in Israel

(Second Half of 2008)

- **Background** – We have analyzed the terms of venture financings for 43 Israeli and Israeli-related technology companies that reported raising money in the second half of 2008. 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 2008 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
A	30%	36%	36%	46%	35%	21%	34%	28%	35%	20%
B	30%	27%	32%	18%	27%	28%	27%	22%	21%	36%
C	16%	20%	14%	16%	24%	19%	12%	26%	25%	26%
D	12%	12%	11%	8%	7%	19%	17%	9%	11%	8%
E and higher	12%	5%	7%	12%	7%	13%	10%	15%	8%	10%

- **Price Change** – The financings closed in the second half of 2008 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	H2'08	H1'08	H2'07	H1'07	H 2'06	H 1'06	H 2'05	H 1'05	H 2'04	H 1'04
Down	32%	18%	9%	31%	32%	26%	30%	19%	43%	42%
Flat	14%	0%	6%	4%	6%	9%	4%	16%	12%	3%
Up	54%	82%	85%	65%	62%	65%	66%	65%	45%	55%

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

Series	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
B	23%	7%	0%	44%	7%	31%	36%	0%	25%	24%
C	29%	0%	25%	25%	54%	27%	20%	33%	56%	62%
D	20%	57%	17%	25%	25%	18%	29%	25%	43%	0%
E and higher	60%	33%	0%	17%	50%	14%	25%	14%	40%	80%

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

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
83%	75%	75%	63%	72%	80%	81%	76%	80%	78%

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

Series	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
B	69%	73%	78%	56%	67%	75%	73%	80%	85%	61%
C	86%	73%	63%	50%	77%	73%	100%	75%	75%	92%
D	100%	71%	67%	75%	75%	91%	71%	75%	71%	75%
E and higher	100%	100%	100%	83%	75%	86%	100%	71%	100%	100%

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

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
10%	7%	22%	6%	4%	9%	18%	16%	24%	23%

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	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
>1x- 2x	100%	100%	83%	100%	100%	100%	75%	25%	88%	100%
>2x - 3x	0%	0%	17%	0%	0%	0%	0%	75%	0%	0%
> 3x	0%	0%	0%	0%	0%	0%	25%	0%	12%	0%

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

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
88%	86%	82%	84%	89%	93%	85%	91%	79%	90%

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:

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
58%	58%	54%	47%	51%	57%	57%	69%	60%	67%

- **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:

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
58%	64%	63%	58%	56%	56%	68%	78%	52%	62%

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in the second half of 2008 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
Full Ratchet	12%	9%	16%	14%	18%	28%	39%	31%	30%	28%
Weighted Average	88%	91%	82%	78%	82%	65%	61%	65%	64%	66%
None	0%	0%	2%	8%	0%	7%	0%	4%	6%	6%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in the second half of 2008 and in the periods covered by our previous surveys may be broken down as follows:

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
7%	2%	2%	8%	2%	9%	15%	0%	13%	14%

- **Redemption** – The percentage of transactions in the second half of 2008 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:

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
12%	11%	25%	8%	18%	14%	20%	17%	21%	26%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the second half of 2008 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:

H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04	H1'04
13%	2%	0%	4%	2%	2%	2%	7%	2%	10%

For additional information about this report please contact Lior Aviram – l.aviram@shibolet.com or Limor Peled – l.peled@shibolet.com, at Shibolet & Co., 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.

**FENWICK & WEST LLP
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**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 2008)**

- **Background** – We have analyzed the terms of venture financings for 43 Israeli based/related technology companies that reported raising at least \$500,000 in the second half of 2008, and compared those terms to the terms of venture financings for 229 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 – 30% (compared to 15% in the Silicon Valley)
 - Series B – 30% (compared to 26% in the Silicon Valley)
 - Series C – 16% (compared to 29% in the Silicon Valley)
 - Series D – 12% (compared to 15% in the Silicon Valley)
 - Series E and higher – 12% (compared to 15% in the Silicon Valley)
- **Price Change** – The financings during the second half of 2008 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%	24%
Flat	14%	14%
Up	54%	62%

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

Series	Israel	Silicon Valley
B	23%	15%
C	29%	30%
D	20%	17%
E and higher	60%	35%

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

Israel	Silicon Valley
83%	42%

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

Series	Israel	Silicon Valley
B	69%	32%
C	86%	39%
D	100%	60%
E and higher	100%	44%

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

Israel	Silicon Valley
10%	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%	63%
>2x - 3x	0%	31%
>3x	0%	6%

- **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
88%	60%

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
58%	50%

- **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
58%	4%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	12%	4%
Weighted Average	88%	96%
None	0%	0%

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

Israel	Silicon Valley
7%	14%

- **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
12%	21%

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

Israel	Silicon Valley
13%	10%

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 Shibolet & Co. 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.