

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – Fourth Quarter of 2008/First Quarter of 2009**

We are pleased to present the results of our survey for the fourth quarter of 2008/first quarter of 2009, analyzing the legal terms commonly used in venture capital investment transactions 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 on a six-month basis and provides an analysis of the legal terms of venture capital transactions closed during the fourth quarter of 2008/first quarter of 2009, as compared with the results covered by our earlier surveys.

In preparing our survey for the fourth quarter of 2008/first quarter of 2009, we examined the terms of 27 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”.

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.

Conclusions:

The results of this survey clearly indicate that the venture capital funds have ceased making new investments! This finding is clearly reflected by the significant decline in the number of 'Series A' round investments to 15%, which is the lowest rate since the beginning of conducting our survey in 2003!

Additional indications of the financial crisis are reflected in an increase in the number of "pay to play" provisions, which is a stipulation among investors imposing a "penalty" on those investors who do not continue to participate in subsequent investment rounds of a company, as well as an increase in the number of redemption rights.

In general, as reported in other surveys and reports, the total number of investment rounds has decreased, and accordingly the absolute number of investment rounds surveyed by our firm was particularly low. It is worth noting that, as distinguished from the trend in the Silicon Valley, the number of "down-rounds" has decreased in favor of an increase in the number of "flat-rounds" or

"up-rounds". In the Silicon Valley, however, the number of "down-rounds" has increased, and in the Silicon Valley survey results for the first quarter of 2009 only – the "down-round" transactions even outnumbered the "up-round" transactions, for the first time since the last quarter of 2003!

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 survey, 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**

(Fourth Quarter of 2008 & First Quarter of 2009)

- **Background** – We have analyzed the terms of venture financings for 27 Israeli and Israeli-related technology companies that reported raising money in the fourth quarter of 2008 and in the first quarter of 2009. 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 fourth quarter of 2008/the first quarter of 2009 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
A	15%	30%	36%	36%	46%	35%	21%	34%	28%	35%
B	37%	30%	27%	32%	18%	27%	28%	27%	22%	21%
C	7%	16%	20%	14%	16%	24%	19%	12%	26%	25%
D	22%	12%	12%	11%	8%	7%	19%	17%	9%	11%
E and higher	19%	12%	5%	7%	12%	7%	13%	10%	15%	8%

- **Price Change** – The financings closed in the fourth quarter of 2008/the first quarter of 2009 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	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
Down	23%	32%	18%	9%	31%	32%	26%	30%	19%	43%
Flat	18%	14%	0%	6%	4%	6%	9%	4%	16%	12%
Up	59%	54%	82%	85%	65%	62%	65%	66%	65%	45%

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

Series	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
B	10%	23%	7%	0%	44%	7%	31%	36%	0%	25%
C	50%	29%	0%	25%	25%	54%	27%	20%	33%	56%
D	17%	20%	57%	17%	25%	25%	18%	29%	25%	43%
E and higher	40%	60%	33%	0%	17%	50%	14%	25%	14%	40%

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

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
78%	83%	75%	75%	63%	72%	80%	81%	76%	80%

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

Series	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
B	70%	69%	73%	78%	56%	67%	75%	73%	80%	85%
C	100%	86%	73%	63%	50%	77%	73%	100%	75%	75%
D	83%	100%	71%	67%	75%	75%	91%	71%	75%	71%
E and higher	80%	100%	100%	100%	83%	75%	86%	100%	71%	100%

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

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
11%	10%	7%	22%	6%	4%	9%	18%	16%	24%

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	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
>1x- 2x	100%	100%	100%	83%	100%	100%	100%	75%	25%	88%
>2x - 3x	0%	0%	0%	17%	0%	0%	0%	0%	75%	0%
> 3x	0%	0%	0%	0%	0%	0%	0%	25%	0%	12%

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

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
93%	88%	86%	82%	84%	89%	93%	85%	91%	79%

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:

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
52%	58%	58%	54%	47%	51%	57%	57%	69%	60%

- **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:

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
56%	58%	64%	63%	58%	56%	56%	68%	78%	52%

- **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	Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
Full Ratchet	15%	12%	9%	16%	14%	18%	28%	39%	31%	30%
Weighted Average	85%	88%	91%	82%	78%	82%	65%	61%	65%	64%
None	0%	0%	0%	2%	8%	0%	7%	0%	4%	6%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in the fourth quarter of 2008/the first quarter of 2009 and in the periods covered by our previous surveys may be broken down as follows:

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
18%	7%	2%	2%	8%	2%	9%	15%	0%	13%

- **Redemption** – The percentage of transactions in the fourth quarter of 2008/the first quarter of 2009 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:

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
18%	12%	11%	25%	8%	18%	14%	20%	17%	21%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the fourth quarter of 2008/the first quarter of 2009 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:

Q4'08 +Q1'09	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05	H2'04
4%	13%	2%	0%	4%	2%	2%	2%	7%	2%

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
(Fourth Quarter of 2008 & First Quarter of 2009)**

- **Background** – We have analyzed the terms of venture financings for 27 Israeli based/related technology companies that reported raising at least \$500,000 in the fourth quarter of 2008 and in the first quarter of 2009, and compared those terms to the terms of venture financings for 220 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 – 15% (compared to 14% in the Silicon Valley)
 - Series B – 37% (compared to 27% in the Silicon Valley)
 - Series C – 7% (compared to 24% in the Silicon Valley)
 - Series D – 22% (compared to 16% in the Silicon Valley)
 - Series E and higher – 19% (compared to 19% in the Silicon Valley)
- **Price Change** – The financings during the fourth quarter of 2008/first quarter of 2009 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	23%	39%
Flat	18%	20%
Up	59%	41%

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

Series	Israel	Silicon Valley
B	10%	28%
C	50%	45%
D	17%	33%
E and higher	40%	54%

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

Israel	Silicon Valley
78%	42%

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

Series	Israel	Silicon Valley
B	70%	32%
C	100%	36%
D	83%	58%
E and higher	80%	51%

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

Israel	Silicon Valley
11%	25%

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%	75%
>2x - 3x	0%	15%
>3x	0%	10%

- **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
93%	55%

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
52%	54%

- **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%	6%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	15%	2%
Weighted Average	85%	98%
None	0%	0%

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

Israel	Silicon Valley
18%	15%

- **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%	22%

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

Israel	Silicon Valley
4%	12%

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.