

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – For the Year 2012**

We are pleased to present the results of our survey for the year 2012, which analyzes legal terms of venture capital (VC) investments in Israeli and "Israeli related" hi-tech companies, and comparing these terms to those common in the Silicon Valley, United States.

As always, this survey was produced in coordination with Fenwick & West LLP., one of the leading Silicon Valley law firms. Our cooperation with Fenwick & West in producing this survey enables us to also present the results of their corresponding survey covering Silicon Valley VC investment transactions during the surveyed period, and, thus, to draw an interesting comparison, using the same tools and terminology, between the terms commonly practiced in Israel and those commonly practiced in the Silicon Valley.

Conclusions:

The rise in the rate of first round financing, which was highlighted in our survey published in the first half of 2012, grew significantly stronger in the second half of the year, setting the rate of transactions of first round financing for the entire year of 2012 at a rate of 39%!

This is the first time since 2009 that the rate of first round financing constitutes the highest rate of the rounds that were surveyed!

This rate of first rounds is definitely a rate that is considered healthy and optimistic, and illustrates an improvement to the industry conditions that prevailed for some time now, wherein the rates of first round financing haven't been all that high (with the result being fewer companies making it to the finishing line after the filtering of subsequent rounds); nevertheless, according to our impression, and as has been demonstrated by other industry surveys, there has been a significant decline in the total amount of funds invested in high tech companies. Thus, as an outcome of the continuing diminution in the amount of funds available to the Israeli VC Funds, the amount of money that was invested in 2012 in investment rounds backed by VC Funds, decreased by more than 20% from the amount invested in such rounds in 2011.

The aforementioned data in the aggregate evidences a shift, in terms of sectors and amounts, of investments in the Israeli high-tech industry to such sectors that require smaller investment amounts. Thus, though we are indeed seeing an increase in the rate of first rounds, the amounts invested in those rounds are significantly less.

This conclusion is consistent with the considerable increase in the number of companies in the internet sector (wherein funding amounts tend to be significantly lower than those required in other

sectors) that raised funds in first rounds in 2012, in comparison to 2011, as other industry surveys have indicated.

Clearly, investing in companies within the internet and mobile sectors comes at the expense of companies from other more infrastructure based traditional sectors, such as the telecommunications and semiconductors industries which have traditionally played a significant role in Israel bringing about the big exits of the past few years. In these sectors, there has been a significant decrease in the amount of new companies receiving funding – a factor which will have an effect during the upcoming years.

As was already noted in our previous survey, there are many good companies in the local high-tech industry; this is demonstrated by the fact that the number of down rounds continues to decrease – while in 2010 the rate was 39% and in 2011 25%, it is 16% this year! In addition, the number of up rounds has been consistently rising - in 2010 the rate was 54%, in 2011, 66%, and this year is 73%!

In this regard the data is very similar to those of Silicon Valley, where the rate of the number of down rounds was 14% in 2012 and the number of up rounds was 68%.

It's worth noting that the use of the anti-dilution mechanism on the basis of full protection in the form of the "Full Ratchet" formula (i.e. a full price adjustment for each investment round at a lower price, as opposed to adjustment based on the Weighted Average formula or no protection at all) is gradually disappearing - in 2012 the rate of its use in rounds surveyed was only 4%! Also in this regard our figure is similar to the data of Silicon Valley, where the usage rate of the "Full Ratchet" formula was 2%.

With regard to other customary terms – the domestic industry has traditionally refrained from the liberal attitude towards entrepreneurs as practiced in Silicon Valley; take for example – the rate of the use of the "Senior Liquidation Preference" which continues to be used in Israel at a high rate of 76%, compared to only 33% in Silicon Valley; the percentage of transactions with accrued interest on the investment amount for the purpose of preference in distributions (whether in the form of interest or accrued dividends also distributed in 'exit' events) - was 48% in Israel, compared to only 6% in Silicon Valley! And the rate of use of "participation rights" – has been 69% in Israel, compared to 37% in Silicon Valley!

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.

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in cooperation with
FENWICK & WEST LLP**

**Trends in Legal Terms in Venture Financings
in Israel**

(2012 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money during 2012. 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 2012 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
A	39%	18%	20%	16%	30%	36%	36%	46%	35%
B	31%	25%	28%	24%	30%	27%	32%	18%	27%
C	12%	27%	30%	14%	16%	20%	14%	16%	24%
D	13%	20%	10%	16%	12%	12%	11%	8%	7%
E and higher	5%	10%	12%	30%	12%	5%	7%	12%	7%

- **Price Change** – The financings closed in 2012 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	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H 2'06
Down	16%	25%	39%	30%	32%	18%	9%	31%	32%
Flat	11%	9%	7%	17%	14%	0%	6%	4%	6%
Up	73%	66%	54%	53%	54%	82%	85%	65%	62%

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

Series	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
B	14%	24%	24%	0%	23%	7%	0%	44%	7%
C	25%	12%	27%	60%	29%	0%	25%	25%	54%
D	11%	35%	71%	50%	20%	57%	17%	25%	25%
E and higher	0%	30%	67%	36%	60%	33%	0%	17%	50%

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

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
76%	77%	69%	81%	83%	75%	75%	63%	72%

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

Series	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
B	45%	72%	48%	78%	69%	73%	78%	56%	67%
C	22.5%	73%	82%	100%	86%	73%	63%	50%	77%
D	22.5%	85%	71%	67%	100%	71%	67%	75%	75%
E and higher	10%	80%	89%	82%	100%	100%	100%	83%	75%

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

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
3%	16%	8%	32%	10%	7%	22%	6%	4%

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	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
>1x- 2x	100%	70%	100%	75%	100%	100%	83%	100%	100%
>2x - 3x	0%	20%	0%	13%	0%	0%	17%	0%	0%
> 3x	0%	10%	0%	12%	0%	0%	0%	0%	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:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
69%	77%	72%	84%	88%	86%	82%	84%	89%

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:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
59%	59%	62%	61%	58%	58%	54%	47%	51%

- **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:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
48%	48%	45%	38%	58%	64%	63%	58%	56%

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in 2012 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
Full Ratchet	4%	9%	14%	11%	12%	9%	16%	14%	18%
Weighted Average	84%	85%	81%	89%	88%	91%	82%	78%	82%
None	12%	6%	5%	0%	0%	0%	2%	8%	0%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in 2012 and in the periods covered by our previous surveys may be broken down as follows:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
1%	2%	4%	14%	7%	2%	2%	8%	2%

- **Redemption** – The percentage of transactions in 2012 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:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
16%	18%	11%	19%	12%	11%	25%	8%	18%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in 2012 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:

2012	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06
0%	1%	3%	3%	13%	2%	0%	4%	2%

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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
(2012 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising money during 2012, and compared those terms to the terms of venture financings for 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 –39% (compared to 21% in the Silicon Valley)
 - Series B –31% (compared to 23% in the Silicon Valley)
 - Series C – 12% (compared to 20% in the Silicon Valley)
 - Series D –13% (compared to 15% in the Silicon Valley)
 - Series E and higher – 5% (compared to 21% in the Silicon Valley)
- **Price Change** – The financings during 2012 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	16%	14%
Flat	11%	18%
Up	73%	68%

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

Series	Israel	Silicon Valley
B	14%	6%
C	25%	16%
D	11%	14%
E and higher	0%	22%

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

Israel	Silicon Valley
76%	33%

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

Series	Israel	Silicon Valley
B	45%	22%
C	22.5%	28%
D	22.5%	35%
E and higher	10%	46%

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

Israel	Silicon Valley
3%	12%

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%	93%
>2x - 3x	0%	7%
>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
69%	37%

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
59%	56%

- **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
48%	6%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	4%	2%
Weighted Average	84%	97%
None	12%	1%

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

Israel	Silicon Valley
1%	6%

- **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
16%	17%

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

Israel	Silicon Valley
0%	3%

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.