

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – Year 2011**

We are pleased to present the results of our survey for the year 2011, analyzing 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.

In preparing our survey, we examined the terms of venture capital investment transactions of Israeli and “Israeli-related” high-tech companies, with an investment amount of at least US \$500,000 each. The survey relates only to equity transactions in which funds participated, and does not relate to bridge loan transactions or investments made solely by individual “Angels”.

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 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:

It is interesting and worth noting that the indicator of the number of Series "A" rounds, which is indicative of the overall "atmosphere" in the VC industry and is critical to its future, has shown an increase in the second half of 2011, with **an annual rate of 18%** out of the total number of transactions surveyed. However, it is evident that this rate is still relatively low and is similar to the low rates witnessed during the periods of depression in 2009 and 2010. As points of reference- this data may be compared to the rate of 36%-45% seen during 2007 and the first half of 2008. Nevertheless, this percentage is significantly better than the extraordinarily low rate which we reported during the first half of 2011. As is well known, there has been a change in the **identity** of investors participating in Series "A" rounds, in light of the substantial decrease in the amount of capital available to Israeli VC Funds for investments in new companies. It will be interesting to see in the future if and how this change will affect the VC industry in general and the legal terms of transactions in particular.

Another manifestation of a more positive atmosphere in the VC industry is demonstrated in the valuations on which financing rounds are based- the rate of "up-round" deals increased to 66% and the rate of "down-round" deals dropped to 25%. This increase in the rate of "up round" deals is consistent with tones of relative optimism voiced in the Israeli VC industry at the end of 2011. Indeed, this is the highest rate of "up round" deals which have been surveyed since the first half of 2008- the eve of the global financial crisis, and conversely since the second half of 2008 until 2011

the rates stood at a mere 53%-54%. A similar rate of "up round" deals for the year 2011 was also noted in the results of the Silicon Valley survey- 67%.

Alongside the rise in company valuations, with respect to the majority of customary deal terms demanded by the VC funds from their portfolio companies, the results of the survey suggest that deal terms have become tougher. The demand for more stringent deal terms might indicate that notwithstanding the optimism reflected by increased valuations, there is still concern in the VC industry which is balanced out by the demand for protecting valuation through the application of more onerous economic deal terms. Thus, an increase in the use of 'senior liquidation preference' was noted, from a rate of 69% in 2010 to 77% in 2011; as well as an increase in the rate of 'participation rights'- from 72% in 2010 to 77% in 2011. We also noted an increase in the use of 'redemption rights' with respect to preferred shares- from 11% in 2010 to 18% in 2011.

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**

(2011)

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money during 2011. 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 2011 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
A	18%	20%	16%	30%	36%	36%	46%	35%	21%
B	25%	28%	24%	30%	27%	32%	18%	27%	28%
C	27%	30%	14%	16%	20%	14%	16%	24%	19%
D	20%	10%	16%	12%	12%	11%	8%	7%	19%
E and higher	10%	12%	30%	12%	5%	7%	12%	7%	13%

- **Price Change** – The financings closed in 2011 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	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
Down	25%	39%	30%	32%	18%	9%	31%	32%	26%
Flat	9%	7%	17%	14%	0%	6%	4%	6%	9%
Up	66%	54%	53%	54%	82%	85%	65%	62%	65%

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

Series	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
B	24%	24%	0%	23%	7%	0%	44%	7%	31%
C	12%	27%	60%	29%	0%	25%	25%	54%	27%
D	35%	71%	50%	20%	57%	17%	25%	25%	18%
E and higher	30%	67%	36%	60%	33%	0%	17%	50%	14%

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

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
77%	69%	81%	83%	75%	75%	63%	72%	80%

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

Series	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
B	72%	48%	78%	69%	73%	78%	56%	67%	75%
C	73%	82%	100%	86%	73%	63%	50%	77%	73%
D	85%	71%	67%	100%	71%	67%	75%	75%	91%
E and higher	80%	89%	82%	100%	100%	100%	83%	75%	86%

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

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
16%	8%	32%	10%	7%	22%	6%	4%	9%

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

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
77%	72%	84%	88%	86%	82%	84%	89%	93%

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:

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
59%	62%	61%	58%	58%	54%	47%	51%	57%

- **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:

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

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in 2011 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
Full Ratchet	9%	14%	11%	12%	9%	16%	14%	18%	28%
Weighted Average	85%	81%	89%	88%	91%	82%	78%	82%	65%
None	6%	5%	0%	0%	0%	2%	8%	0%	7%

- **Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in 2011 and in the periods covered by our previous surveys may be broken down as follows:

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
2%	4%	14%	7%	2%	2%	8%	2%	9%

- **Redemption** – The percentage of transactions in 2011 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:

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
18%	11%	19%	12%	11%	25%	8%	18%	14%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in 2011 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:

2011	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06
1%	3%	3%	13%	2%	0%	4%	2%	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
SHIBOLET
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
(2011 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising at least \$500,000 in 2011, 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 – 18% (compared to 19% in the Silicon Valley)
 - Series B – 25% (compared to 26% in the Silicon Valley)
 - Series C – 27% (compared to 22% in the Silicon Valley)
 - Series D – 20% (compared to 17% in the Silicon Valley)
 - Series E and higher – 10% (compared to 16% in the Silicon Valley)
- **Price Change** – The financings during 2011 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	25%	18%
Flat	9%	15%
Up	66%	67%

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

Series	Israel	Silicon Valley
B	24%	12%
C	12%	19%
D	35%	24%
E and higher	30%	20%

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

Israel	Silicon Valley
77%	36%

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

Series	Israel	Silicon Valley
B	72%	26%
C	73%	44%
D	85%	38%
E and higher	80%	41%

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

Israel	Silicon Valley
16%	18%

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	70%	67%
>2x - 3x	20%	21%
>3x	10%	12%

- **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
77%	38%

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%	51%

- **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	9%	3%
Weighted Average	85%	95%
None	6%	2%

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

Israel	Silicon Valley
2%	7%

- **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%	17%

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

Israel	Silicon Valley
1%	5%

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.