

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions in 2010**

We are pleased to present the results of our survey for 2010, 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.

As was done with respect to the 2009 survey, we have chosen to also present the survey regarding 2010 as an annual survey, due to the decrease in the number of the investment rounds as compared to previously surveyed years.

In preparing our survey, we examined the terms of venture capital investment transactions of Israeli and “Israeli-related” high-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 does not relate to bridge loan transactions or investments made solely by “Angels”.

As always, this survey was produced in coordination with Fenwick & West LLP., one of the leading Silicon Valley law firm. 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 appears that 2010 was characterized primarily by rounds of continued support of relatively young existing companies. This is evident from the sharp increase seen in Series “C” rounds alongside a mild increase in Series “B” rounds as well. The number of first investment rounds also increased, but only by a little.

The most prominent and interesting phenomenon revealed by the 2010 survey is that the rate of down-rounds has increased to the highest rate since 2005 (!) and constitutes 39% of the surveyed rounds! It is very interesting to note, in this context, that the increase is at the expense of the flat-rounds, as no change was noted in the rate of the up-rounds compared to the findings of 2009.

It seems that this derives from the state of the VC industry in which many of the Israeli venture capital funds finished the money that was available for investment and are no longer able to support their portfolio companies. In the past, VC funds continued to support their portfolio companies in the framework of internal rounds and in many cases this was done at the same value as previous rounds. With many VC funds unable to continue their support, the companies cannot maintain their

value and are forced to reduce their value in order to raise money in rounds in which only some of the existing VC funds participate or in rounds that are led by new investors.

It is interesting that alongside the increase in the down-rounds, an improvement in some of the customary terms was observed. As such, a decrease in the rate of the 'senior liquidation preference' was noted – 69% in 2010 as compared to 81% in 2009 and 83% in the second half of 2008; as well as a decrease in the rate of the 'participation rights' – 72% in 2010 as compared to 84% in 2009 and 88% in the second half of 2008.

These changes in the terms can perhaps be attributed to the sharp increase in the rate of rounds that are being led by foreign VC funds, since the foreign VC funds influence these terms - making them more similar to what is customary in the Silicon Valley. It is also possible that the Israeli funds are more inclined to adopt these terms and it is even possible that our surveys, presenting what is customary in the Silicon Valley, may have had a certain cumulative effect in this matter.

During 2010 there was also a decrease in the rate of use of multiple liquidation preferences, pay-to-play provisions and redemptions, as compared to an increase during 2009.

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

(2010 Annual Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money in 2010. 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 2010 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
A	20%	16%	30%	36%	36%	46%	35%	21%	34%	28%
B	28%	24%	30%	27%	32%	18%	27%	28%	27%	22%
C	30%	14%	16%	20%	14%	16%	24%	19%	12%	26%
D	10%	16%	12%	12%	11%	8%	7%	19%	17%	9%
E and higher	12%	30%	12%	5%	7%	12%	7%	13%	10%	15%

- **Price Change** – The financings closed in 2010 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	2010	2009	H2'08	H1'08	H2'07	H1'07	H 2'06	H 1'06	H 2'05	H 1'05
Down	39%	30%	32%	18%	9%	31%	32%	26%	30%	19%
Flat	7%	17%	14%	0%	6%	4%	6%	9%	4%	16%
Up	54%	53%	54%	82%	85%	65%	62%	65%	66%	65%

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

Series	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
B	24%	0%	23%	7%	0%	44%	7%	31%	36%	0%
C	27%	60%	29%	0%	25%	25%	54%	27%	20%	33%
D	71%	50%	20%	57%	17%	25%	25%	18%	29%	25%
E and higher	67%	36%	60%	33%	0%	17%	50%	14%	25%	14%

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

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
69%	81%	83%	75%	75%	63%	72%	80%	81%	76%

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

Series	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
B	48%	78%	69%	73%	78%	56%	67%	75%	73%	80%
C	82%	100%	86%	73%	63%	50%	77%	73%	100%	75%
D	71%	67%	100%	71%	67%	75%	75%	91%	71%	75%
E and higher	89%	82%	100%	100%	100%	83%	75%	86%	100%	71%

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

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
8%	32%	10%	7%	22%	6%	4%	9%	18%	16%

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	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
>1x- 2x	100%	75%	100%	100%	83%	100%	100%	100%	75%	25%
>2x - 3x	0%	13%	0%	0%	17%	0%	0%	0%	0%	75%
> 3x	0%	12%	0%	0%	0%	0%	0%	0%	25%	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:

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
72%	84%	88%	86%	82%	84%	89%	93%	85%	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:

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
62%	61%	58%	58%	54%	47%	51%	57%	57%	69%

- **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:

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
45%	38%	58%	64%	63%	58%	56%	56%	68%	78%

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in 2010 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
Full Ratchet	14%	11%	12%	9%	16%	14%	18%	28%	39%	31%
Weighted Average	81%	89%	88%	91%	82%	78%	82%	65%	61%	65%
None	5%	0%	0%	0%	2%	8%	0%	7%	0%	4%

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

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
4%	14%	7%	2%	2%	8%	2%	9%	15%	0%

- **Redemption** – The percentage of transactions in the year 2010 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:

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
11%	19%	12%	11%	25%	8%	18%	14%	20%	17%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the year 2010 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:

2010	2009	H2'08	H1'08	H2'07	H1'07	H2'06	H1'06	H2'05	H1'05
3%	3%	13%	2%	0%	4%	2%	2%	2%	7%

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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
(2010 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 2010, 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 – 20% (compared to 19% in the Silicon Valley)
 - Series B – 28% (compared to 23% in the Silicon Valley)
 - Series C – 30% (compared to 30% in the Silicon Valley)
 - Series D – 10% (compared to 14% in the Silicon Valley)
 - Series E and higher – 12% (compared to 14% in the Silicon Valley)
- **Price Change** – The financings during the year 2010 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	39%	27%
Flat	7%	17%
Up	54%	56%

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

Series	Israel	Silicon Valley
B	24%	17%
C	27%	33%
D	71%	29%
E and higher	67%	30%

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

Israel	Silicon Valley
69%	37%

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

Series	Israel	Silicon Valley
B	48%	25%
C	82%	33%
D	71%	47%
E and higher	89%	54%

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

Israel	Silicon Valley
8%	19%

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%	83%
>2x - 3x	0%	13%
>3x	0%	4%

- **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
72%	45%

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
62%	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
45%	6%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	14%	4%
Weighted Average	81%	94%
None	5%	2%

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

Israel	Silicon Valley
4%	12%

- **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
11%	22%

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

Israel	Silicon Valley
3%	9%

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.