

Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – First Half of Year 2012**

We are pleased to present the results of our survey for the first half of 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.

In preparing our survey, we examined the terms of VC 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 VC 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 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:**

One interesting conclusion that stands out is the rise in the rate of first round financing, which is an indication of the state of the VC industry, constituting a rate of 26% of the rounds surveyed in the first half of 2012 – an improvement compared to the rates surveyed since 2009.

However, even in this survey, like all of our earlier surveys since 2009, the rates of first round funding did not constitute the highest rate of the rounds that were surveyed. In the years prior to the last financial crisis – since the second half of 2004 until the end of 2008, the rates of the first rounds constituted the highest rates of the rounds that were surveyed, on a consistent basis. This figure illustrates the ongoing problematic situation of the industry. In a healthy and robust industry, the rate of first rounds will be the highest so that at the end of the road, after the filtering of subsequent rounds, there will remain a sufficient number of good companies in the industry. This is also the case in the Silicon Valley.

It's interesting though to notice the improvement in the amount of up rounds (from 66% in the year 2011 to 82% in the results of this survey) that was observed, along with the relaxation of customary conditions, which indicates that there are good companies in the local hi-tech industry. These companies continue to receive financial support, if not from local sources – than from foreign VC funds, with the rate of the latter investments out of the total investments rising gradually. The root of the problem which we indentified, as well as others, is the lack of the supply/availability of funding for establishing new companies.

Thus, we observed a reduction in the use of "participation rights" of preferred shares in distributions (from 77% in 2011 to 60% in the results of this survey) which is the lowest outcome that we have hitherto surveyed. Generally, the rate of use of the aforementioned right ranges between 72% and 89%. It will be interesting to see whether this is an outcome that will also find its expression in the future, which is perhaps due to the growing number of foreign funds, that bring with them the Silicon Valley practice (there, for instance, the participation rate according to the last survey was only 37%!), or if this is merely a random deviation from practice of the industry in Israel.

Furthermore, even in the rounds which included a "participation right" for preferred shares, the rate of the rounds that capped this right increased, and only 48% of the rounds surveyed didn't put a cap versus 59% in 2011, 62% in 2010, 61% in 2009, and 58% in 2008.

Another improvement in terms was observed regarding the rate of use of accrued interest on the investment amount or accrued dividends with respect to the preference in distributions upon sale and/or liquidation. In this survey the rate dropped to 34%. This rate is the lowest surveyed by us since we started to publish the survey – in the second half of 2003.

Moreover, the relaxations in the aforementioned terms apparently also stem from the fact that more foreign funds are involved in the investment in local startups, hence having influence on the conditions that are prescribed. This is reflected in the results of this survey which conducts a comparison of the terms practiced in Silicon Valley, where investors are more lenient with conditions, and although the gap is still widely in favor of Silicon Valley, it seems that the improvement of conditions is seeping through the foreign funds that are invested here in Israel thereby affecting the local industry standard.

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](http://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](http://www.fenwick.com/vctrends.htm).

**For additional information about this survey, please contact Mr. Lior Aviram at [L.Aviram@shibolet.com](mailto:L.Aviram@shibolet.com) or Ms. Limor Peled at [L.Peled@shibolet.com](mailto:L.Peled@shibolet.com), Tel: +972 (3) 7778333.**

**SHIBOLET  
in cooperation with  
FENWICK & WEST LLP**

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

**(First Half 2012)**

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money during the first half of 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 H1 2012 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

| Series       | H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|--------------|-------|------|------|------|-------|-------|-------|-------|-------|
| A            | 26%   | 18%  | 20%  | 16%  | 30%   | 36%   | 36%   | 46%   | 35%   |
| B            | 43%   | 25%  | 28%  | 24%  | 30%   | 27%   | 32%   | 18%   | 27%   |
| C            | 9%    | 27%  | 30%  | 14%  | 16%   | 20%   | 14%   | 16%   | 24%   |
| D            | 17%   | 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 H1 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 | H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H 2'06 |
|--------------|-------|------|------|------|-------|-------|-------|-------|--------|
| Down         | 9%    | 25%  | 39%  | 30%  | 32%   | 18%   | 9%    | 31%   | 32%    |
| Flat         | 9%    | 9%   | 7%   | 17%  | 14%   | 0%    | 6%    | 4%    | 6%     |
| Up           | 82%   | 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       | H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|--------------|-------|------|------|------|-------|-------|-------|-------|-------|
| B            | 100%  | 24%  | 24%  | 0%   | 23%   | 7%    | 0%    | 44%   | 7%    |
| C            | 0%    | 12%  | 27%  | 60%  | 29%   | 0%    | 25%   | 25%   | 54%   |
| D            | 0%    | 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:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 77%   | 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       | H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|--------------|-------|------|------|------|-------|-------|-------|-------|-------|
| B            | 55%   | 72%  | 48%  | 78%  | 69%   | 73%   | 78%   | 56%   | 67%   |
| C            | 15%   | 73%  | 82%  | 100% | 86%   | 73%   | 63%   | 50%   | 77%   |
| D            | 20%   | 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:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 5%    | 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 | H1'12 | 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:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 60%   | 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:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 48%   | 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:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 34%   | 48%  | 45%  | 38%  | 58%   | 64%   | 63%   | 58%   | 56%   |

- **Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in H1 2012 and in the periods covered by our previous surveys may be broken down as follows:

| Type of Provision | H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------------------|-------|------|------|------|-------|-------|-------|-------|-------|
| Full Ratchet      | 6%    | 9%   | 14%  | 11%  | 12%   | 9%    | 16%   | 14%   | 18%   |
| Weighted Average  | 83%   | 85%  | 81%  | 89%  | 88%   | 91%   | 82%   | 78%   | 82%   |
| None              | 11%   | 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 H1 2012 and in the periods covered by our previous surveys may be broken down as follows:

| H1'12 | 2011 | 2010 | 2009 | H2'08 | H1'08 | H2'07 | H1'07 | H2'06 |
|-------|------|------|------|-------|-------|-------|-------|-------|
| 3%    | 2%   | 4%   | 14%  | 7%    | 2%    | 2%    | 8%    | 2%    |

- **Redemption** – The percentage of transactions in H1 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:

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

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in H1 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:

| H1'12 | 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**  
**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**  
**(First Half 2012 Survey)**

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising at least \$500,000 in H1 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 –26% (compared to 23% in the Silicon Valley)
  - Series B –43% (compared to 18% in the Silicon Valley)
  - Series C – 9% (compared to 19% in the Silicon Valley)
  - Series D –17% (compared to 16% in the Silicon Valley)
  - Series E and higher – 5% (compared to 24% in the Silicon Valley)
- **Price Change** – The financings during H1 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         | 9%     | 16%            |
| Flat         | 9%     | 14%            |
| Up           | 82%    | 70%            |

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

| Series       | Israel | Silicon Valley |
|--------------|--------|----------------|
| B            | 100%   | 7%             |
| C            | 0%     | 16%            |
| D            | 0%     | 14%            |
| E and higher | 0%     | 25%            |

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

| Israel | Silicon Valley |
|--------|----------------|
| 77%    | 38%            |

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

| Series       | Israel | Silicon Valley |
|--------------|--------|----------------|
| B            | 55%    | 24%            |
| C            | 15%    | 28%            |
| D            | 20%    | 36%            |
| E and higher | 10%    | 58%            |

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

| Israel | Silicon Valley |
|--------|----------------|
| 5%     | 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%   | 88%            |
| >2x - 3x           | 0%     | 12%            |
| >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 |
|--------|----------------|
| 60%    | 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 |
|--------|----------------|
| 48%    | 53%            |

- **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 |
|--------|----------------|
| 34%    | 4%             |

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

| Type of Provision | Israel | Silicon Valley |
|-------------------|--------|----------------|
| Full Ratchet      | 6%     | 2%             |
| Weighted Average  | 83%    | 97%            |
| None              | 11%    | 1%             |

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

| Israel | Silicon Valley |
|--------|----------------|
| 3%     | 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 |
|--------|----------------|
| 14%    | 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%             |

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