



Dear Clients and Friends,

Re: **Survey on Legal Terms of Venture Capital Transactions – For the First Half of the Year 2017**

We are pleased to present the results of our survey for the first half of the year 2017, 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 collaboration 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 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:

For the first time since 2015, a slight increase was observed in the number of down-rounds and the number of flat-rounds; this was at the expense of the number of up-rounds which decreased! Likewise in Silicon Valley, a slight increase was observed in the number of down-rounds.

Much of the decline was observed in B and later rounds. While down-round in later rounds maybe called for, as it acts as a natural screening process of companies that were ultimately unable to take off, down-rounds in B rounds is a very early filter in the food chain of investments. On the one hand, such screening may indicate that low-quality investments were made in the first stage (quantity at the expense of quality), which points to an unhealthy industry that is willing to fund projects indiscriminately. On the other hand, it can be said that this is a healthy process that drops companies in the early stages, rather than dragging these companies and investing in them until later stages and only then dropping them.

In our previous survey covering the year of 2016, we questioned whether the slowdown that originated in Silicon Valley, coupled with the new foreign investment regulation in China, making it difficult to inject money originating from China into Israel’s high tech sector, would impact 2017. Furthermore, the results we observed infact demonstrate a slight increase in the number of up-rounds. These results also come alongside the results of other surveys published which pointed out that the first half of 2017 had an unprecedented low in the number of exits in the last five years. That being said, it is too early to tell whether these results indicate the beginning of a trend reversal, as they are still minor.

Alongside the increase in down-rounds we also observed an increase in the rate of the use of the senior liquidation preference of preferred shares in the framework of distribution events. The rate returned to 81%, a rate which has not been observed by us since 2009! In this regard there is a significant difference compared to Silicon Valley where the rate hovers around 27% only and rates that have continuously been significantly lower than those prevailing in Israel throughout the entire period that we have been conducting our surveys. The ongoing dissimilarity between Israel and Silicon Valley concerning the rate of use of the senior liquidation preference appears to reflect a cultural difference between the two, in that the Israeli industry continues to make significant use of this term, despite its more limited use in Silicon Valley.

On the other hand, a significant decline in the rate of the use of participate rights of preferred shares was observed, which dropped to the lowest rate we have surveyed thus far – only 27%. It appears that regarding this term, the Israeli industry has adopted the view that sees a certain inequitableness in the participation right, which entitles the preferred investor to receive a return on its investment larger than its pro rata share in the company, and has therefore



significantly reduced its use. In the past we observed such a trend taking place with the anti-dilution mechanism, where similarly to the Silicon Valley, the vast majority moved to the weighted average mechanism as supposed to the full ratchet mechanism.

The results of this survey leave us in anticipation of identifying the prevailing market trend, which we will hopefully be able to determine according to the findings of our next survey. The increase in the rate of down-rounds is minor; and in respect of the transaction terms, on the one hand, there is heightened usage of the senior liquidation preference in Israel, but on the other hand there is a significant drop in the rate of use of participation rights in distributions.

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 Adv. Lior Aviram at L.Aviram@shibolet.com or Adv. 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
(H1 2017 Survey)

- **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 the year 2017. 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 2017 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
A	37%	33%	44%	35%	37%	39%	18%	20%	16%	30%
B	31%	32%	28%	23%	30%	31%	25%	28%	24%	30%
C	20%	22%	12%	15%	13%	12%	27%	30%	14%	16%
D	4%	8%	11%	13%	7%	13%	20%	10%	16%	12%
E and higher	8%	7%	5%	14%	13%	5%	10%	12%	30%	12%

- **Price Change** – The financings closed in H1 2017 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	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Down	10%	7%	8%	23%	15%	16%	25%	39%	30%	32%
Flat	6%	3%	8%	9%	5%	11%	9%	7%	17%	14%
Up	84%	90%	84%	68%	80%	73%	66%	54%	53%	54%

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

Series	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	13%	0%	4%	28%	5%	14%	24%	24%	0%	23%
C	0%	10%	9%	17%	11%	25%	12%	27%	60%	29%
D	0%	0%	20%	0%	20%	11%	35%	71%	50%	20%
E and higher	25%	33%	0%	36%	33%	0%	30%	67%	36%	60%

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

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
81%	67%	63%	73%	75%	76%	77%	69%	81%	83%

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

Series	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	81%	69%	62%	56%	57%	45%	72%	48%	78%	69%
C	70%	60%	55%	83%	88%	22.5%	73%	82%	100%	86%
D	50%	57%	80%	60%	80%	22.5%	85%	71%	67%	100%
E and higher	100%	83%	60%	100%	100%	10%	80%	89%	82%	100%

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

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
12%	11%	15%	22%	9%	3%	16%	8%	32%	10%

- 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	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
>1x- 2x	67%	100%	80%	50%	100%	100%	70%	100%	75%	100%
>2x - 3x	0%		20%	38%	0%	0%	20%	0%	13%	0%
> 3x	33%		0%	12%	0%	0%	10%	0%	12%	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:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
27%	40%	41%	54%	60%	69%	77%	72%	84%	88%

- 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:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
50%	38%	55%	53%	57%	59%	59%	62%	61%	58%

- 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:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
41%	49%	46%	46%	40%	48%	48%	45%	38%	58%

- Anti-dilution Provisions** - The use of anti-dilution provisions in the financings which took place in H1 2017 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Full Ratchet	4%	3%	8%	8%	6%	4%	9%	14%	11%	12%
Weighted Average	94%	95%	88%	82%	91%	84%	85%	81%	89%	88%
None	2%	2%	4%	10%	3%	12%	6%	5%	0%	0%

- Pay-to-Play Provisions** - The use of pay-to-play provisions in the financings which took place in H1 2017 and in the periods covered by our previous surveys may be broken down as follows:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
6%	1%	0%	3%	0%	1%	2%	4%	14%	7%

- **Redemption** – The percentage of transactions in H1 2017 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:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
0%	3%	5%	6%	6%	16%	18%	11%	19%	12%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in H1 2017 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:

H1'2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
4%	1%	3%	0%	1%	0%	1%	3%	3%	13%

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 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
(H1 2017 Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising money during the first half of the year 2017, 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 – 37% (compared to 28% in the Silicon Valley)
 - Series B – 31% (compared to 21% in the Silicon Valley)
 - Series C – 20% (compared to 22% in the Silicon Valley)
 - Series D – 4% (compared to 12% in the Silicon Valley)
 - Series E and higher – 8% (compared to 17% in the Silicon Valley)
- **Price Change** – The financings during H1 2017 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	10%	16%
Flat	6%	9%
Up	84%	75%

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

Series	Israel	Silicon Valley
B	13%	13%
C	0%	20%
D	0%	11%
E and higher	25%	17%

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

Israel	Silicon Valley
81%	27%

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

Series	Israel	Silicon Valley
B	81%	24%
C	70%	28%
D	50%	34%
E and higher	100%	26%

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

Israel	Silicon Valley
12%	10%

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	67%	75%
>2x - 3x	0%	25%
>3x	33%	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
27%	17%

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
50%	62%

- **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
41%	7%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	4%	0%
Weighted Average	94%	98%
None	2%	1%

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

Israel	Silicon Valley
6%	4%

- **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
0%	8%

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

Israel	Silicon Valley
4%	5%

For additional information about this report please contact Barry Kramer at 650-335-7278; bkramer@fenwick.com; 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.