

לקוחות וחברים יקרים,

הנדון: סקר שנתי בדבר תנאים משפטיים של עסקאות הון סיכון – שנת 2017

אנו מתכבדים להציג בפניכם תוצאות הסקר שלנו לשנת 2017, המנתח תנאים משפטיים של עסקאות השקעת הון סיכון בחברות היי-טק ישראליות ו"ישראליות קשורות" ("Israeli Related"), והשוואת תנאים אלו לאלו הנהוגים בעמק הסיליקון ארה"ב.

כתמיד, הסקר נערך בשיתוף פעולה עם פירמת עוה"ד Fenwick & West LLP, שהינה פירמת עו"ד מהמובילות בעמק הסיליקון שבארה"ב, דבר המאפשר לנו להביא בפניכם השוואה מעניינת, העושה שימוש באותם כלים ומינוחים, בין התנאים הנהוגים בישראל לתנאים הנהוגים בעמק הסיליקון.

מסקנות:

התוצאות השנתיות של 2017 מצביעות על עלייה קלה בשיעור סבבי השווי היורד ובשיעור הסבבים ללא שינוי בשווי. זאת, לעומת שנת 2016 שהציגה שיא של 90% בשיעור סבבי השווי העולה. עיקר ירידת השווי נצפה בסבבי D ומעלה, כלומר בסבבים המאוחרים.

מדובר בעלייה קלה ולא באינדיקציה לאיזושהי מגמה, ובסה"כ התוצאות מעידות על יציבות בתעשייה – סיבובים ראשונים ממשיכים להיות מעל שליש מהסבבים, ברוב הגדול של החברות הסבבים נעשים בשווי עולה ואין שום הקצנה בתנאים.

מגמת הירידה שנצפתה לאורך השנים בשימוש ב"זכות ההשתתפות בחלוקה" של מניות הבכורה ("participation rights") המשיכה גם בשנת 2017, ועמדה על פחות משליש מהסבבים שנסקרו, שזהו השיעור הנמוך ביותר מכל השנים שסקרנו! עד 2012 היה שימוש בזכות זו בשני שליש ויותר מהסבבים שנסקרו. גם בכך יש כדי להעיד על יציבות בתעשייה, שכן היא ממשיכה לאמץ מגמות מקלות מהתעשייה בעמק הסיליקון, שנטמעות יותר ויותר. שם שיעור השימוש בזכות זו עומד על 15% בלבד.

יחד עם זאת, לצד השימוש היורד ב"זכות ההשתתפות בחלוקה", ממשיכה התעשייה בישראל לעשות שימוש בצבירת ריבית על ההשקעה בסכום העדיפות, בכמעט מחצית העסקאות (50% מהסבבים שנסקרו בארץ לעומת 6% בעמק הסיליקון!). כמו כן, ממשיכה התעשייה בישראל להשקיע במניות בכורה עם זכות קדימות בחלוקה לעומת מניות הבכורה של הסיבוב הקודם ("senior liquidation preference"), בשיעורים גבוהים של מעל שני שליש מהסבבים, לעומת פחות משליש מהסבבים בעמק הסיליקון (73% בישראל לעומת 27% בעמק הסיליקון). התעשייה באופן מסורתי מרבה להשתמש בשני תנאים אלו ועדיין לא נוטה לכיוונים של עמק הסיליקון שם המשקיעים פחות מגוונים בתנאים אלו למול היזמים והסבבים הקודמים. נראה שהתעשייה בעמק הסיליקון ממשיכה לבנות על הצלחת החברות ופחות עוסקת בהגנה של מקרה כישלון.

אנו מקווים שתמצאו את הסקר כמועיל ומעניין. **כדי להירשם לקבלת דיוור ישיר באי מייל של סקרים אלו בעתיד, אנא פנה לאתר הבית שלנו: www.shiboleet.com.**

לקבלת העתק של הסקר הנפרד שנערך לגבי תנאי ההשקעה בעמק הסיליקון - אנא פנה לאתר משרד Fenwick & West LLP: www.fenwick.com/vctrends.htm.

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Trends in Legal Terms in Venture Financings
in Israel
(2017 Survey)

- **Background** – We have analyzed the terms of venture financings for Israeli and Israeli-related technology companies that reported raising money during 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 2017 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
A	35%	33%	44%	35%	37%	39%	18%	20%	16%	30%
B	30%	31%	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	11%	6%	5%	14%	13%	5%	10%	12%	30%	12%

- **Price Change** – The financings closed in 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	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Down	11%	7%	8%	23%	15%	16%	25%	39%	30%	32%
Flat	8%	3%	8%	9%	5%	11%	9%	7%	17%	14%
Up	81%	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	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	10%	0%	4%	28%	5%	14%	24%	24%	0%	23%
C	5%	10%	9%	17%	11%	25%	12%	27%	60%	29%
D	25%	0%	20%	0%	20%	11%	35%	71%	50%	20%
E and higher	18%	33%	0%	36%	33%	0%	30%	67%	36%	60%

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

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
73%	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	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	68%	69%	62%	56%	57%	45%	72%	48%	78%	69%
C	80%	60%	55%	83%	88%	22.5%	73%	82%	100%	86%
D	75%	57%	80%	60%	80%	22.5%	85%	71%	67%	100%
E and higher	64%	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:

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
6%	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	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:

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
31%	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:

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
44%	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:

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
50%	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 2017 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Full Ratchet	3%	3%	8%	8%	6%	4%	9%	14%	11%	12%
Weighted Average	94%	95%	88%	82%	91%	84%	85%	81%	89%	88%
None	3%	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 2017 and in the periods covered by our previous surveys may be broken down as follows:

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

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

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
4%	3%	5%	6%	6%	16%	18%	11%	19%	12%

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

2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
3%	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
(2017 Survey)**

- **Background** – We have analyzed the terms of venture financings for Israeli based/related technology companies that reported raising money during 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 – 35% (compared to 28% in the Silicon Valley)
 Series B – 30% (compared to 25% in the Silicon Valley)
 Series C – 20% (compared to 20% in the Silicon Valley)
 Series D – 4% (compared to 12% in the Silicon Valley)
 Series E and higher – 11% (compared to 16% in the Silicon Valley)

- **Price Change** – The financings during 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	11%	15%
Flat	8%	10%
Up	81%	75%

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

Series	Israel	Silicon Valley
B	10%	16%
C	5%	13%
D	25%	15%
E and higher	18%	16%

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

Israel	Silicon Valley
73%	27%

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

Series	Israel	Silicon Valley
B	68%	24%
C	80%	26%
D	75%	37%
E and higher	64%	26%

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

Israel	Silicon Valley
6%	11%

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%	87%
>2x - 3x	0%	13%
>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
31%	15%

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
44%	57%

- **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
50%	6%

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

Type of Provision	Israel	Silicon Valley
Full Ratchet	3%	0%
Weighted Average	94%	98%
None	3%	1%

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

Israel	Silicon Valley
3%	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
4%	8%

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

Israel	Silicon Valley
3%	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.