

הנדון: סקר שנתי בדבר תנאים משפטיים של עסקאות הון סיכון – מחצית ראשונה 2018

אנו מתכבדים להציג בפניכם תוצאות הסקר שלנו למחצית הראשונה של שנת 2018, 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:

הצמיחה בהיקף ההשקעות בהיי טק במחצית הראשונה של 2018, שדווחה בסקרים אחרים, גובתה גם במגמה חיובית שעולה מתוצאות הסקר של התנאים המשפטיים לתקופה זו.

לראשונה מאז 2014, שיעור המימון בסבבים מאוחרים חזר להיות משמעותי, והיווה 25% מהסבבים שנסקרו, לצד שליש מהסבבים של סיבובים ראשונים. דבר זה מעיד שהתעשייה, לראשונה מאז 2014, ממשיכה לתמוך בחברות בוגרות ויחד עם זאת גם משקיעה במיזמים חדשים. זוהי תוצאה בריאה לכל הדעות לתעשייה שמחד ידעה תקופות של חיפוש האקזיט המהיר וקושי בגיוס כספים לחברות בוגרות, ומאידך ידעה תקופות בהן לא היו הרבה גיוסים חדשים אלא בעיקר תמיכה בקיים.

עוד לראשונה, שיעור השימוש בזכות קדימות בחלוקה לעומת מניות הבכורה של הסיבוב הקודם ("senior liquidation preference"), ירד ל-59%, שהינו השיעור הנמוך ביותר שסקרנו מאז החלנו לסקר ב-2008. לעומת עמק הסיליקון, בו שיעור השימוש בזכות עומד על 23% בלבד, עדיין מדובר בשיעור גבוה, אך לעומת השיעורים של שנים קודמות שהגיעו גם ל-83%, ועמדו רוב הזמן על מעל 75%, מדובר בשיעור ירידה משמעותי, שמשקף את תחושת הביטחון הדולה יותר שחשים המשקיעים.

במסגרת ההבדלים ה"תרבותיים" בין ישראל ועמק הסיליקון - מעניין לציין שבעמק הסיליקון, שיעור השימוש ב"זכות ההשתתפות בחלוקה" של מניות הבכורה ("participation rights") המשיך לרדת ועמד למחצית הראשונה של 2018, על 10% בלבד! אצלנו חלה ירידה משמעותית ב-2017 בשיעור השימוש בזכות, אך ירידה זו נבלמה במחצית הראשונה של 2018, ועדיין ככל שמדובר בישראל - שיעור שימוש שהינו פי 3 מהשיעור בעמק הסיליקון – 31%.

עוד מעניין לציין שבעמק הסיליקון לא משתמשים יותר בהגנת אנטי דילול של התאמת מחיר מלאה (ה- full ratchet) והוא מזה מספר שנים עומד על שיעור של 0%. אצלנו הוא אמנם נמצא בשיעור שימוש זעום של 3-4%, אבל הוא טרם נכחד לגמרי, ואולי הגיע הזמן לכך.

אנו מקווים שתמצאו את הסקר כמועיל ומעניין. **כדי להירשם לקבלת דיוור ישיר באי מייל של סקרים אלו בעתיד, אנא פנה לאתר הבית שלנו: www.shibolet.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
(H1 2018 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 of 2018. 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 the first half of the year of 2018 and in the periods covered by our previous surveys may be broken down by types of round, or series, as follows:

Series	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
A	33%	35%	33%	44%	35%	37%	39%	18%	20%	16%	30%
B	25%	30%	31%	28%	23%	30%	31%	25%	28%	24%	30%
C	19%	20%	22%	12%	15%	13%	12%	27%	30%	14%	16%
D	15%	4%	8%	11%	13%	7%	13%	20%	10%	16%	12%
E and higher	10%	11%	6%	5%	14%	13%	5%	10%	12%	30%	12%

- **Price Change** – The financings closed in the first half of the year of 2018 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	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Down	12%	11%	7%	8%	23%	15%	16%	25%	39%	30%	32%
Flat	6%	8%	3%	8%	9%	5%	11%	9%	7%	17%	14%
Up	82%	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	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	8%	10%	0%	4%	28%	5%	14%	24%	24%	0%	23%
C	10%	5%	10%	9%	17%	11%	25%	12%	27%	60%	29%
D	13%	25%	0%	20%	0%	20%	11%	35%	71%	50%	20%
E and higher	20%	18%	33%	0%	36%	33%	0%	30%	67%	36%	60%

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

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
59%	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	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
B	54%	68%	69%	62%	56%	57%	45%	72%	48%	78%	69%
C	60%	80%	60%	55%	83%	88%	22.5%	73%	82%	100%	86%
D	63%	75%	57%	80%	60%	80%	22.5%	85%	71%	67%	100%
E and higher	40%	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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
12%	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	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
>1x- 2x	75%	67%	100%	80%	50%	100%	100%	70%	100%	75%	100%
>2x - 3x	25%	0%		20%	38%	0%	0%	20%	0%	13%	0%
> 3x	0%	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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
31%	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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
44%	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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
42%	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 the first half of the year of 2018 and in the periods covered by our previous surveys may be broken down as follows:

Type of Provision	H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
Full Ratchet	4%	3%	3%	8%	8%	6%	4%	9%	14%	11%	12%
Weighted Average	94%	94%	95%	88%	82%	91%	84%	85%	81%	89%	88%
None	2%	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 the first half of the year of 2018 and in the periods covered by our previous surveys may be broken down as follows:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
0%	3%	1%	0%	3%	0%	1%	2%	4%	14%	7%

- **Redemption** – The percentage of transactions in the first half of the year of 2018 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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
0%	4%	3%	5%	6%	6%	16%	18%	11%	19%	12%

- **Corporate Reorganizations** – The percentage of post-Series A financing transactions in the first half of the year of 2018 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:

H1'2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	H2'2008
6%	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
(H12018 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 of 2018, 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 – 33% (compared to 24% in the Silicon Valley)
 - Series B – 25% (compared to 25% in the Silicon Valley)
 - Series C – 19% (compared to 20% in the Silicon Valley)
 - Series D – 15% (compared to 13% in the Silicon Valley)
 - Series E and higher – 10% (compared to 17% in the Silicon Valley)
- **Price Change** – The financings during the first half of the year of 2018 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	12%	13%
Flat	6%	10%
Up	82%	77%

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

Series	Israel	Silicon Valley
B	8%	14%
C	10%	11%
D	13%	15%
E and higher	20%	15%

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

Israel	Silicon Valley
59%	23%

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

Series	Israel	Silicon Valley
B	54%	16%
C	60%	27%
D	63%	25%
E and higher	40%	27%

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

Israel	Silicon Valley
12%	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	Israel	Silicon Valley
>1x - 2x	75%	71%
>2x - 3x	25%	29%
>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
31%	10%

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%	55%

- **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
42%	5%

- **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%	99%
None	2%	1%

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

Israel	Silicon Valley
0%	5%

- **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%	4%

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

Israel	Silicon Valley
6%	6%

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.