

The International Comparative Legal Guide to:  
**Mergers and Acquisitions 2009**

A practical insight to cross-border Mergers and Acquisitions



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# Israel

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### 1 Relevant Authorities and Legislation

#### 1.1 What regulates M&A?

Israel's Companies Law, which became effective on February 1, 2000, contains the general statutory framework for acquisitions of public companies. The Companies Law is subject to enforcement action by the Ministry of Justice, although as a practical matter the law is self-executing, with actions to enforce the law generally taken by way of private shareholder litigation.

In the case of companies listed on the Tel Aviv Stock Exchange (TASE), the procedural aspects of tender offers, such as the length of time that a tender offer must remain open, and conditions of the offer, as well as all public filings in connection with the offer, are subject to the regulation and oversight of the Israeli Securities Authority (ISA) and the TASE. Israeli companies listed in the United States are generally subject to the procedural rules and filing requirements set forth in the U.S. Securities Exchange Act of 1934 and the regulations thereunder. The ISA also publishes Staff Positions in which it provides interpretations of certain matters under both the Companies Law and the Securities Law.

#### 1.2 Are there different rules for different types of public company?

The largest, and more widely held, Israeli public companies are generally listed either on the TASE or in the U.S., and in some cases are dual listed in the U.S. and on the TASE. The TASE tends to be characterised by companies that are more closely-held than those listed in the U.S., although there are some major exceptions, such as Israel's leading banks.

#### 1.3 Are there special rules for foreign buyers?

There are no general restrictions on foreign ownership of shares in Israeli companies, other than restrictions on residents of countries in a state of war with the State of Israel.

Israeli companies that participate in certain Governmental funding programs, such as the research and development grants of the Office of the Chief Scientist of the Israeli Ministry of Industry, Trade and Labour (OCS), the Approved Enterprise program of the Investment Center of such Ministry and the Privileged Enterprise program of the Israeli Tax Authority (each of the latter two provides certain tax benefits), are required to obtain approval of these agencies prior to certain changes in their shareholding, including where foreign shareholders acquire certain holdings in the companies.

#### 1.4 Are there any special sector-related rules?

The following sectors are subject to certain regulatory requirements with respect to an acquisition:

- Telecommunication companies - the acquisition of certain percentages may require a license from the Ministry of Communications.
- Bank or bank-holding and insurance companies; certain pension funds and other financial institutions - the acquisition of 5% or more is subject to certain governmental permits.
- Natural resources or essential services - the State of Israel may retain certain veto or other rights.
- Brokerage firms (members of the TASE) - the acquisition of a control stake is subject to the approval of the TASE.

#### 1.5 What are the principal sources of liability?

Generally, liability can result from either non-compliance with the tender offer rules or from misrepresentations in the transaction documents. Insider trading matters are governed by separate rules. In addition, directors and officers of an Israeli company have a duty of care and a duty of loyalty towards the company and are required to act in good faith and in favour of the company; shareholders are required to act towards other shareholders and the company in good faith and in a reasonable manner, and to refrain from abusing their powers, including when voting at shareholders' meetings on certain matters prescribed by law; and control shareholders are required to treat the company in a fair manner. Liability may apply both to the companies as well as their directors and officers.

### 2 Mechanics of Acquisition

#### 2.1 What alternative means of acquisition are there?

The Companies Law offers three methods of acquiring a public company: statutory merger, tender offer and court-approved merger.

Because under Israeli law mergers may only be effected between two Israeli companies, most acquisitions of Israeli companies by foreign purchasers are effected by means of a triangular merger. In this structure, the acquiring company forms an Israeli subsidiary ("Newco"), which is then merged with the target company. A triangular merger may take one of two forms: either a forward triangular merger or a reverse triangular merger. In a forward triangular merger, Newco is the surviving company in the merger, and the target company is merged into Newco. The shareholders of the target company receive either cash or shares of the parent of

Newco, depending upon the form of merger. In a reverse triangular merger, Newco is merged into the target company, and the shares of the target company are transferred at closing to the purchaser; as in the forward triangular merger, the shareholders of the target company will receive either cash or shares of the purchaser, depending on the type of merger.

The second method for acquiring public companies is by way of a full tender offer. The offeror must receive sufficient affirmative responses to its tender offer such that upon completion of the tender offer the purchaser holds more than 95% of the outstanding share capital of the target company. Once the purchaser has acquired more than 95% of the target company's outstanding share capital in this manner, the remaining minority shares are automatically transferred to the purchaser at the tender offer price by which the purchaser reached the 95% shareholding level. A person may not hold more than 90% of the target company's share capital, therefore, in the event that a full tender offer is not accepted in a manner that allows for a squeeze out of the remaining shares, the acquirer may purchase shares in the tender offer only up to a cap of 90% of the company's share capital.

Any offeree in a tender offer is entitled, within three months of the completion of the tender offer, to challenge the share price paid in the tender offer by way of a civil action, and may request that such action be treated as a class action on behalf of other shareholders.

The consideration paid in a tender offer may be in the form of shares of the acquiring company or cash.

The third method available for acquiring public companies is a court-approved merger. This procedure involves an application to a court in Israel on behalf of the two merging companies. The court is authorised, acting in its discretion, to call shareholder meetings of the two merging companies. At such meetings, the proposed merger must be approved by the holders of at least 75% of the shares participating in the vote of each company, as well as a simple majority of those shareholders attending and voting at each meeting. After the proposed merger has been approved by the shareholders of both companies, it is subject to final approval by the court before taking effect.

Israeli law permits the acquisition of a control stake in a public company through a special tender offer. See answer to question 5.1.

In addition, Israeli law permits the acquisition of all or a significant portion of the assets of an Israeli public company, although such structure is not used very often.

## 2.2 What advisers do the parties need?

Typically, parties will engage legal counsel, accountants and in certain cases investment bankers (or other financial advisors). Legal counsel is responsible for confirming that all corporate, regulatory and tax matters are addressed. Where the acquirer is non-Israeli, legal counsel from the acquirer's home jurisdiction will be engaged to confirm compliance with the acquirer's charter documents as well as the laws of such jurisdiction. The engagement by the target company of non-Israeli counsel (in addition to Israeli counsel) will depend on the size and complexity of the transaction and on whether the target's securities are listed in a non-Israeli jurisdiction. Accountants will address various accounting due diligence matters and in many cases will also be responsible for obtaining certain tax rulings. Investment bankers (or other financial advisors) will likely be engaged in larger transactions, and will provide advice with respect to the structure of the transaction. In addition, they may be engaged to provide to the target's board of directors a fairness opinion with respect to the consideration in the transaction.

## 2.3 How long does it take?

This depends on the structure of the transaction:

- Tender offer - an offer for a TASE-listed company must be kept open for at least 14 days, or if the offer qualifies as a "special tender offer", as discussed in question 5.1, for at least 21 days.

The maximum time period for maintaining a tender offer is 60 days. If, however, a competing bid has been made during the pendency of a tender offer, then the offer may be extended for so long as the competing bid is pending. An offer which was originally made for a period of less than 60 days may be extended until the 60-day limit.

- Statutory merger - once the merger agreement is finalised and signed, each party thereto is required to convene a meeting of its shareholders for the purpose of approving the merger (the notice should be of at least 35 days), and to file a formal merger notice (a rather technical document, which includes certain information about the terms of the proposed merger and the parties thereto) with the Israeli Companies Registrar. Assuming the merger is approved by the shareholders of both parties thereto the Israeli Companies Registrar will affect the merger and issue a certificate of merger after the later of: (i) 50 days after the filing of the merger notice; and (ii) 30 days after approval of the merger by the shareholders of both parties thereto.
- Court-approved merger - once the merger agreement is finalised and signed, the target company applies to the Israeli court to approve the convening of a shareholders meeting (and, where applicable, a creditors meeting). The court will typically respond within two to three weeks, and if it approves the convening of the foregoing meetings, such meetings will typically be held within 30 days. If the merger is approved at the relevant meetings, the parties will then apply to the court for its approval of the meetings' results. Therefore, the minimum period from the initial court approval until completion of the transaction is 60 days.

## 2.4 What are the main hurdles?

Beyond the customary hurdles (including negotiating and drafting the term sheet and the definitive agreements and performance of due diligence), each of the transaction structures involves certain other hurdles:

- Tender offer - the main hurdle is to receive the approval of the holders of shares such that the offeror holds upon completion of the tender offer more than 95% of the issued shares.
- Statutory merger - the main hurdle is obtaining the approval of shareholders of both parties.
- Court-approved merger - the main hurdle is obtaining the approval of shareholders and, where applicable, creditors.
- General - an extraordinary transaction of a publicly-held company with its control person or in which its control person has a personal interest (defined by Israeli courts very broadly) is subject to the approval of the holders of a majority of the shares present and voted at the shareholders meeting, provided that either: (i) such approval includes the affirmative vote of the holders of at least one-third of the shares held by shareholders that do not have a personal interest in such transaction and are voted on such matter; or (ii) the shares of the shareholders who do not have a personal interest in the transaction and are voted against approval of the transaction constitute not more than 1% of the voting rights in the company.

## 2.5 How much flexibility is there over deal terms and price?

There are no rules that require minimum consideration or any other



terms for the proposed transaction. In a tender offer, the terms must be made in writing to all shareholders, on equal terms to all holders of the same securities (except that Israeli law does not prohibit the payment of different consideration to different shareholders of a target in a merger; various practitioners believe that this is permissible provided that the payment of different consideration is fully disclosed and that all shareholders of the target company are offered the option to choose between the different types of consideration). In a full tender offer, shareholders have certain appraisal rights.

## 2.6 What differences are there between offering cash and other consideration?

Israeli law does not regulate the types of consideration that may be paid in a takeover. Typically, the consideration is paid either in the form of cash or listed securities of the bidder.

If the consideration is paid in the form of shares or other securities, the bidder must comply with the relevant provisions of Israel's Securities Law, including the filing with the ISA of an Israeli prospectus (unless an exemption is available).

Israeli law grants the ISA authority to exempt certain companies from the requirement to issue an Israeli prospectus in connection with a public offering in Israel. In particular, if the company offering the securities is listed both on the TASE and on a foreign securities exchange, the ISA may allow the issuer to rely solely on a prospectus approved in the other jurisdiction in which the issuer is listed. Some foreign bidders have taken advantage of this exemption by dual listing their shares on the TASE, and thereby qualifying for this exemption.

In the case of Israeli companies listed outside of Israel, bidders acquiring these companies with securities may also be required to comply with Israel's Securities Law, as noted above, if the bidder is unable to show that the target company has fewer than 35 Israeli shareholders that are not so-called "institutional investors".

## 2.7 Do the same terms have to be offered to all shareholders?

See answer to question 2.5 above.

## 2.8 Are there any limits on agreeing terms with employees?

Although the approval of employees is typically not required in M&A transactions, a change of control may, in certain circumstances, be deemed a termination of employment, entitling the employees to receive severance payment as if their employment was terminated (but not if the employee continues to work for the target).

Often acquirers will want to ensure that key employees either enter into new employment agreements or reaffirm their existing employment terms. Non-competition provisions are difficult to enforce against employees (such enforcement is conditioned upon: (i) specific and significant consideration paid therefore; and (ii) the existence of a risk that, absent the non-competition, one of the company's most essential assets may be harmed by the employee's competition). In addition, employees may not waive certain rights, including severance pay, vacation days and notice pay.

## 2.9 What documentation is needed?

See answer to question 2.1 above.

## 2.10 Are there any special accounting procedures?

Pursuant to recent regulations, and subject to a transition period, all companies whose securities are listed on the TASE are required to file financial statements that are prepared in accordance with IFRS.

## 2.11 What are the key costs?

Key transaction costs are legal fees and payments to financial advisers and accountants. There are also certain filing fees, but the amounts are insignificant.

## 2.12 What consents are needed?

In addition to specific consents (see answer to question 1.4 above) and consents of third parties under certain agreements, there are various regulatory consents that are typically required in M&A transactions involving Israeli companies:

- Anti trust - the approval of the Israeli Antitrust Commissioner may be required, depending on the size of the transaction and the market share of the parties to the transaction.
- Israeli Securities Authority - if securities are being used as part or all of the consideration, the acquirer may be required to file a prospectus. In addition, if options held by the target's employees are assumed by the acquirer, a certain exemption from the Israeli Securities Authority may be required.
- Israeli Tax Authority - it is customary to seek a ruling from the Israeli tax authority with respect to the amount of withholding that should be applied to the consideration in the transaction, as well as a ruling that the assumption of options by the acquirer will not result in an immediate tax event for the target option holders. Certain other rulings are available, for example with respect to a deferral of the payment of taxes with respect to mergers in which the consideration is non-cash for two and four years, in each case with respect to 50% of the shares.
- Office of the Chief Scientist and Investment Center - many Israeli companies, especially technology companies, receive research and development grants from the OCS. In certain cases, a notice to the OCS of a transaction is sufficient, whereas in cases involving a change of control the advance approval of the OCS is required. In addition, certain restrictions apply to the intellectual property developed using the OCS grants, and certain undertakings (relating to the transfer of the OCS-supported intellectual property) may need to be executed by non-Israeli shareholders of OCS-supported companies. The approval of the Investment Center may also be required.

## 2.13 What levels of approval or acceptance are needed?

The level of approvals varies, based on the transaction structure:

- Statutory merger - the board of each party to the merger must approve the merger, and must conclude that, taking into account the financial condition of the parties to the merger, there is no reasonable concern that the surviving company will be unable to meet the obligations of both parties to the merger. Thereafter, the shareholders of each merging company must approve the merger. Typically, the required majority is over 50% (or over 75% with respect to companies incorporated before the Companies Law became effective in early 2000, which companies did not amend their articles of association to remove the 75% requirement), but companies may provide in their articles of association for a higher majority. Shares held by the other merging company or certain affiliates thereof will be excluded in determining

whether the required vote has been obtained. With respect to the target company, the approval of each class of securities will be required.

- Tender offer - see answers to questions 2.1 above and 5.1 below.
- Court-approved merger - in addition to the court approval, the merger is also subject to the approval of the holders of at least 75% of the shares present and voted (and if there are separate classes, then such requirement will apply to each class) as well as a simple majority of those shareholders attending and voting at the meeting. The approval of creditors may also be required.

#### 2.14 When does cash consideration need to be available?

If the target is listed on the TASE, the consideration will be paid to the TASE Clearing House, which will then distribute the consideration to the brokers that hold share on behalf of the beneficial owners, who will distribute the consideration to the beneficial owners after applying the required withholding.

### 3 Friendly or Hostile

#### 3.1 Is there a choice?

Hostile bids are permitted in Israel. As a practical matter, due to the relatively heavy concentration of ownership of most Israeli public companies, with many companies having a single majority shareholder and the restrictions on the distribution of dividends to shareholders (which is an obstacle for a leveraged buy out), hostile takeover bids have been rare.

#### 3.2 How relevant is the target board?

The approval of the target's board is required with respect to a statutory merger and a court-approved merger. With respect to a full tender offer, in the absence of a specific provision regarding the required conduct of the board of directors, there is uncertainty as to the question of whether the board is required to evaluate the price offered in the full tender offer and express its view, or if it is expected not to express any view and allow the shareholders to make their own independent determination on the proposed terms. There are strong arguments that support the conclusion that the board is not required to take any action or make any recommendation to the shareholders. In addition to the fact that there is no such requirement in the Companies Law, one should bear in mind that a tender offer is a direct transaction between the acquirer and the remaining shareholders, while the company is not a party to such transaction. In a transaction between shareholders, the terms and conditions are negotiated between the parties, or, in the case of a full tender offer result from the terms offered by the acquirer, while the company does not participate in the negotiations and is not involved in any way in the process. Shareholders are at liberty to decide whether or not to accept the offer and they are presumed to have the ability to consider the transaction on their own and on its merits. Furthermore, the appraisal rights mechanism allows shareholders to require the court to correct an unfair price. Therefore, the board is not perceived as the party which is in charge of protecting the interests of the shareholders. On the other hand, the board of directors of a company, by virtue of its duty of care and the duty of loyalty, is perceived to be an organ of the company that has a duty to maximise shareholder value, and under such duty may be subject to the argument that it should take a position against a full tender offer that offers a value which is considered by the board to be inadequate, especially in circumstances in which the board has specific and concrete indications that may impose on the board a

duty to actively express its views, such as circumstances in which the board is aware of other bidders at higher prices. In a special tender offer, the board is required to either make a recommendation to its shareholders as to whether the offer is fair or, if the board does not make any recommendation, to disclose the reasons for not making any recommendation. In a statutory merger, the board of each merging company is required to consider not only the interest of the shareholders but also the ability of the merged company to meet its obligations to the merging company's creditors.

#### 3.3 Does the choice affect process?

Yes. A hostile takeover is only possible through a tender offer. The other structures require cooperation by the board of directors of the target.

### 4 Information

#### 4.1 What information is available to a buyer?

There is limited information available in the public domain for Israeli companies. The initial source for basic company information is the Companies Registrar. The Registrar maintains an online database which provides basic information such as the Company's registered address, directors, shareholder register, major shareholder decisions and charges registered against the Company. Companies listed on the TASE are not required to update the Registrar with respect to directors or shareholders.

In addition to the online database of the Registrar, the Registrar maintains physical files at its offices. Any person may obtain copies of these files from the Registrar. These files will contain the company's memorandum and articles of association and the full text of certain major shareholder decisions.

Companies listed on the TASE are subject to reporting requirements set forth in the Israeli Securities Law. These reports include quarterly and annual financial statements, notices of shareholder meetings, changes to the board of directors, changes in the holdings of insiders (holders of 5% or more) and material events. The TASE instituted an electronic filing system in 2003, and earlier filings may be obtained through the library of the TASE. All TASE filings are in Hebrew language (except those of dual listed companies, which file with the TASE copies of the reports they file in foreign jurisdictions in the foreign language).

Israeli companies listed in the United States are generally subject to the reporting requirements of the Securities Exchange Act of 1934, as applicable to foreign private issuers. These reports, including an annual report, notices of shareholder meetings and other material events, are available online through the EDGAR website.

#### 4.2 Is negotiation confidential?

There are no rules requiring that potential bids remain confidential. Companies listed on the TASE that are negotiating friendly acquisitions may be required to issue an immediate report in connection with these negotiations, unless the disclosure may jeopardise the consummation of the transaction or detrimentally influence the terms thereof (provided that the negotiations are not published in the media).

#### 4.3 What will become public?

The public report must contain information about the material terms

of the transaction, including the consideration and other special terms. In cash transactions, it may be possible to avoid disclosing the name of the acquirer.

#### 4.4 What if the information is wrong or changes?

The merger agreement in a statutory merger and in a court-approved merger will govern the parties' ability to terminate the agreement upon a breach of a representation or warranty or if new information is discovered between signing and closing. In a tender offer, a bidder may withdraw a tender offer if there have occurred unforeseen and unforeseeable circumstances since the date of the announcement of the tender offer which have resulted in the offer terms being significantly different from those terms that a reasonable bidder would have offered had it known the existence of these conditions at the time of making the offer.

## 5 Stakebuilding

### 5.1 Can shares be bought outside the offer process?

Israel's Companies Law sets certain threshold interests in public companies which may only be acquired by way of a special tender offer. In particular, a purchaser who wishes to acquire a 25% interest in a public company may only do so by way of a special tender offer for at least 5% of the company's shares. The foregoing requirement does not apply to a company which already has a 25% shareholder, regardless of whether the purchaser intends to obtain its 25% interest through market purchases from the public or by way of an off-market purchase from such existing 25% shareholder. Similarly, a purchaser who wishes to exceed the 45% threshold may only do so by way of a 5% or more special tender offer, unless there is already a shareholder of the target company holding at least 45% of its shares.

In a special tender offer, unlike in a full tender offer, shareholders are given an option to: (i) tender their shares in response to the offer; (ii) state their opposition to the tender offer; or (iii) not respond at all. If the number of shares voted in opposition to the tender offer exceeds the number of shares that are tendered, the tender offer will have failed and will not be completed, notwithstanding the fact that the number of tendered shares may have exceeded the number of shares sought to be purchased by the purchaser. If the number of shares voted against the tender offer is less than the number of shares tendered, the tender offer will have succeeded, and shareholders who have not yet tendered their shares or who have opposed the special tender offer may participate in the special tender offer during a 4-day period after expiration of the open period of the special tender offer.

### 5.2 What are the disclosure triggers?

Any person who acquires an interest of greater than 5% in a company listed on the TASE is required to notify the company of the acquisition. The company is then required to file a notice of this acquisition with the TASE and the ISA. Thereafter, any further sales or purchases of shares by that shareholder, for so long as the shareholder holds an interest above 5%, are subject to similar disclosure requirements.

Shareholders of Israeli companies listed in the U.S. are subject to the U.S. reporting requirements applicable to 5% or more shareholders.

### 5.3 What are the limitations?

Generally, a party may acquire shares on the open market or in private transactions. Once the acquirer holds 5% or more of the voting rights in the target company, it becomes subject to the disclosure requirements set forth in the answer to question 5.2. Note also the limitations set forth in the answer to question 5.1.

## 6 Deal Protection

### 6.1 Are break fees available?

Merger agreements may contain provisions for break fees in the event that the merger is not consummated. There is no statutory guidance, or judicial review, with respect to the enforceability of break fees or the permitted levels of these fees. It is, nevertheless, common to include provisions of this nature in merger agreements involving public companies.

In considering the inclusion of these provisions in a merger agreement, the target company will need to be guided by the general fiduciary duties of its directors, and both parties to the merger agreement will be guided by their respective duties to act in good faith in negotiating and performing contracts. Most practitioners advise clients to set break fees of a scope that is commensurate with the level of expenses incurred by a bidder in the course of the acquisition process. Break fees that are perceived as penalty clauses by a court are less likely to be enforceable.

### 6.2 Can the target agree not to shop the company or its assets?

There is no clear statutory or case law guidance on "fiduciary outs". Therefore, one view is that the board of directors of a public company may undertake a certain no shop period as part of its business judgment and without breaching its fiduciary duties; while others argue that, had this matter been examined by Israeli courts, they would apply the same rules as those applied by Delaware courts and would therefore rule that Israeli boards of directors must maintain the ability to present superior offers to the shareholders. Recently, the concept of "go shop" has been included in Israeli M&A transactions.

### 6.3 Can the target agree to issue shares or sell assets?

There is no Israeli rule or case law that prohibits target companies from selling assets or issuing shares in an attempt to oppose a proposed transaction, provided that such actions are taken as a reasonable exercise of business judgment and not in violation of fiduciary duties. With respect to a special tender offer, officers and directors are prohibited from taking steps intended to oppose the special tender offer (except steps taken to improve the terms offered to the target shareholders); if they take such steps, they will be liable to the offeror and the target shareholders unless they had reasonable ground to believe that such steps are in the best interests of the target's shareholders.

### 6.4 What commitments are available to tie up a deal?

The Companies law does not address specifically the issue of obtaining commitments from key shareholders to sell their shares into a tender offer or to vote their shares in favour of a merger. As a practical matter, it is common to obtain undertakings of this nature simultaneously with the announcement of the transaction. In the

case of key shareholders that are themselves publicly traded companies, entering into this type of agreement may require public disclosure by these companies of their undertaking. In addition, holders of 5% or more of the shares of an Israeli company listed in the U.S. may be required to file a report under the Securities Exchange Act of 1934 with respect to such undertaking.

Israel's Companies Law sets forth fiduciary duties applicable to shareholders. In the context of a merger transaction, the shareholder is required to act in good faith and in an acceptable manner, and to avoid improper exploitation of his power in the company. In the case of a controlling shareholder, there is a general obligation to act at all times with fairness to the company.

These fiduciary duties have not been the subject of significant judicial review, and it therefore remains unclear as to how these duties will be interpreted by the courts.

## 7 Bidder Protection

### 7.1 What deal conditions are permitted?

Tender offers may be conditioned only upon: (i) the receipt of any governmental consents, permits or licenses necessary for the bidder to acquire the shares being sought; or (ii) the affirmative response of the minimum number of shares specified by the bidder in the tender offer document. See also the answer to question 4.4 above.

Merger agreements may provide for any conditions to closing as may be agreed by the parties in the merger agreement, and the non-fulfilment of any such conditions could therefore lead to the merger not being completed.

### 7.2 What control does the bidder have over the target during the process?

The bidder has no control over the target during the process. Furthermore, parties to a merger agreement should be aware that any cooperation during the period between signing and closing may be a violation of the Israeli anti trust laws.

### 7.3 When does control pass to the bidder?

The bidder will gain control over the target after completing the acquisition of the target shares and appointing new directors at a shareholders meeting.

### 7.4 How can the bidder get 100% control?

The only ways to gain full control of the target are as set forth in the answer to question 2.1.

## 8 Target Defences

### 8.1 Does the board of the target have to tell its shareholders if it gets an offer?

In a tender offer, there are strong arguments that board of directors is not required to take any action (see above under "How Relevant is the Target Board?"). In other circumstances, the board must consider what is best for the shareholders and then determine whether to present the offer to the shareholders. In a special tender offer, the board is required to either make a recommendation to its shareholders as to whether the offer is fair or, if the board does not

make any recommendation, to disclose the reasons for not making any recommendation.

### 8.2 What can the target do to resist change of control?

A number of takeover defences is available to Israeli target companies, including a poison pill, a staggered board and the board's ability to issue blank cheque preferred stock (only with respect to Israeli public companies whose securities are listed on a foreign exchange; Israeli companies whose securities are listed on the TASE may only have one class of securities).

### 8.3 Is it a fair fight?

In a full tender offer, the chances of exceeding a 95% acceptance are slim (both for substantive reasons, such as the offered price, as well as for various other reasons, including the fact that many shareholders simply do not respond to tender offers). With respect to a regular merger and a court-approved merger, the likelihood of completing the transaction is somewhat higher, one of the reasons being the involvement of the target's board of directors and its ability to negotiate better terms for the target's shareholders.

## 9 Other Useful Facts

### 9.1 What are the major influences on the success of an acquisition?

The major influences on the success of an acquisition are: (i) the offered consideration; (ii) the ability to retain key employees; (iii) the cooperation of the officers and directors of the target; and (iv) the proposed plans for the target post closing.

### 9.2 What happens if it fails?

In a tender offer, the offeror may condition the closing of the offer on the ability to complete the acquisition of 100% of the target shares (i.e., the offeror holding more than 95% of the shares following completion of the tender offer period).

## 10 Updates

### 10.1 Please provide a summary of any new cases, trends and developments in M&A Law in Israel.

All new cases and major developments have already been addressed in the previous sections.



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Mike Rimon is a partner in the Corporate and Securities Group. He represents international and domestic public and private companies and individual entrepreneurs in a wide range of corporate and securities matters, including mergers and acquisitions; private and public equity and debt offerings in the US and the UK, including offerings exempt from SEC registration pursuant to Rule 144A and Regulation S; joint ventures; venture capital transactions; and licensing and other commercial transactions. In addition, Mike provides ongoing corporate and securities advice to both private and publicly-held companies on Israeli, US and UK corporate and securities laws. Prior to joining Meitar Liquornik Geva & Leshem Brandwein in early 2004, Mike was a corporate associate at Parker Chapin LLP in New York for over five years.



Meitar Liquornik Geva & Leshem Brandwein is one of Israel's largest law firms, and is Israel's leading practice in international corporate transactions. The firm has approximately 120 lawyers and is highly ranked by Chambers Global and the European Legal 500. The firm handles domestic and international matters, including mergers and acquisitions, public offerings, private equity, banking, litigation and other matters. The firm represents clients from both the international and domestic Israeli business communities, and offers clients hands-on international legal practice. Many of the firm's partners are U.S. natives or Israelis who practiced in the U.S., and the firm focuses particularly on introducing foreign clients to the Israeli business community and legal environment.