



10 Insights

for purchasing or investing in an Israeli company

While decisions of Israeli courts in corporate matters are increasingly influenced by Delaware's corporate law, Israel's companies law is still distinct and different in many important aspects.

In the following weeks we will present a series of tips for acquirers of and investors in Israeli companies, and their non-Israeli advisors, to consider when structuring and negotiating the transaction.

Insight #1: Making Sure that You Have Ownership of Your Shares - Part I

Don't Worry about Share Certificates. While Israeli private companies may issue share certificates, they are not considered as constitutive documents for the purpose of share ownership and are not used in order to transfer ownership of shares. In fact, many Israeli companies with only Israeli shareholders refrain from issuing share certificates. On the other hand, if you are purchasing or investing in an Israeli private company that has issued share certificates, make sure that you are receiving a share certificate representing the purchased shares and that all certificates representing shares that are being sold are cancelled as part of the sale process.

Don't Rely on the Reports of the Israeli Corporations Authority. The Israeli Corporations Authority, previously known as the Israeli Companies Registrar, keeps track of certain basic information concerning Israeli private companies, such as incorporation documents, authorized share capital, issued share capital, shareholders and number of shares held and directors. Much of this information is publicly available in Hebrew and can be accessed

online. More detailed information may be obtained by reviewing the corporate file of the target company which includes various corporate documents and filings. Large parts of this information, however, are not constitutive. In other words, failure to report certain corporate actions to the Israeli Corporations Authority, such as changes in shareholding, does not influence the validity of the corporate action itself, although failures to report might result in fines or other administrative actions against the company.

Accordingly, you should not assume that the information included in a report of the Israeli Corporations Authority concerning a private company accurately reflects the current status of the company.

- Note: make sure your purchase of shares is duly reported by the company to the Corporations Authority after the closing. While this is not required in order to secure your ownership of the shares, the company does have an obligation to report which should be fulfilled.

The Constitutive Documents are a Private Company's Internal Registries. Israeli private companies are required to maintain registries of shareholders and directors in their registered office, and to make them available to the public upon request. A private company's internal shareholders registry is considered the constitutive document in relation to ownership of shares. If you want to make sure that you are the legal owner of the shares acquired by you, make sure you are registered as such in the internal shareholders registry of the relevant Israeli private company. Remember to ask for a copy duly certified by an officer of the company to be a true copy of the original.

- Note: many Israeli private companies neglect to maintain an internal shareholders registry despite its obvious importance. Make sure this is corrected when investing in or purchasing an Israeli private company.

Make Sure there is a Valid Share Transfer Deed. Shares of Israeli private companies are usually transferred by way of a share transfer deed signed by the seller and the purchaser, sometimes with witnesses. The exact form of this deed is often included in the company's articles of association, and if not it may be determined by the board of directors. Do not rely solely on the share purchase agreement – make sure there is also a valid share transfer deed in the proper format.

Make Sure the Transfer or Issuance of Shares is Duly Approved by the Company. Issuances of new shares require board action. Transfers of existing shares very often also require board approval pursuant to the articles of association of Israeli private companies. Under certain circumstances shareholder approval may also be required. Make sure that the company takes all corporate actions required in connection with the issuance or transfer of shares.

If in Doubt – Ask for an Opinion by Local Counsel. Israeli private companies may agree to provide an opinion by Israeli counsel relating to the Israeli law aspects of the transaction. While these opinions will most likely be subject to various assumptions, caveats and exceptions, they can provide additional comfort that ownership of the shares being acquired has been secured under Israeli law.

Dr. Eyal Raz, Partner, specializes in representing and advising international and local clients in M&A and investment transactions involving Israeli companies.



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