



Insight #4: Representations, Warranties and Indemnities – Part II

There is No Concept of “Good Standing” under Israeli Corporate Law. An Israeli company cannot obtain a certificate of good standing: the concept does not exist under Israeli law and the Israeli Corporations Authority does not issue such certificates. Certain information included in a certificate of good standing, such as whether a company is up to date with its annual fee payments or whether any procedure has been commenced to liquidate the company, may be found in information collected by the Corporations Authority and available online in Hebrew. If you are asking for a representation that an Israeli company is “in good standing”, it does not necessarily mean what you think it does. In order to be duly and fully covered, identify the contents of a certificate of good standing in your local jurisdiction and ask for specific representations covering each and every one of them.

Privacy Matters: Do Not Assume that Compliance with International Standards is Sufficient. The Israeli privacy law and regulations are different in certain aspects from international standards such as GDPR and CCPA. An Israeli company may accordingly be compliant with GDPR and/or CCPA and at the same time not be fully compliant with the equivalent Israeli standards. Indeed, many Israeli companies with a mostly outbound business model invest significant efforts to comply with international privacy standards while neglecting the Israeli requirements. Make sure you receive advice from a local expert on compliance with local privacy requirements.

Ownership of Israeli Real Estate Assets: An Unconventional Ownership Arrangement. If the target company owns real estate in Israel, you may find yourself facing a rather unconventional ownership arrangement. For various reasons, large parts of Israel’s real estate are registered in the name of the State of Israel or associated bodies, and ownership in such parcels of land is granted by way of a 49 year long lease which may be extended by an additional period of 49 years. If you encounter this ownership arrangement – rest assured; it might seem unusual but is actually quite standard in Israel. Make sure to receive advice of local counsel as to how this arrangement works, and in particular – when the extension period is scheduled to arrive and what the extension entails.

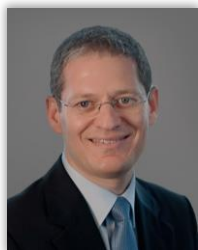
- Note: your acquisition of a company which owns Israeli real estate may be subject to regulatory notice or approval.

Interested Party Transactions. Israeli law imposes various procedural requirements on approval of interested party transactions, which in private companies will usually take the form of disclosure of any personal interest of directors in the matter at hand (including a personal interest derived from fulfilling a position of an employee, officer or director with an interested party), abstaining from involvement in the approval process, and if a majority of the directors have a personal interest in a specific matter – obtaining shareholder approval in addition to board approval. As a result, a careful review of board and shareholder resolutions may reveal important information that will help to identify interested party transactions.

Corporate Processes and Actions. Israeli closely-held private companies will sometimes neglect to strictly follow various corporate processes and actions required under law. Most companies will approve annual financial statements as they are required for tax purposes, but some companies might not follow corporate processes related to appointment of directors or auditors, required notice periods or quorums for board or shareholder meetings, approval of material or interested party transactions, and even filings with the Israeli Corporations Authority and payment of annual fees. Ask local counsel to review these matters and identify any compliance gaps.

- Note: the articles of association of many Israeli companies include a statement to the effect that corporate actions taken will not be adversely affected by failure to comply with certain procedural requirements. In addition, a company can adopt board and shareholder resolutions ratifying previous decisions which might have been taken without following proper process. Consider using this mechanism to clear up any doubts which arise in your due diligence review concerning past corporate processes and actions.

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



Dr. Eyal Raz

Partner

✉ raz@gornitzky.com

This client update is designed to provide general information only, is not a full or complete analysis of the matters presented, and may not be relied upon as legal advice.