



## Insight #8: Applicable Law and Jurisdiction

**Leaning towards US State or Other Non-Israeli Law? Think Again!** Many non-Israeli investors in or purchasers of Israeli companies prefer to apply the laws of their local jurisdiction, or the laws of a third party country, to the share purchase agreement (the laws of the State of Delaware, the State of New York and England and Wales are notable examples). Some Israeli law firms play along. We understand the temptation of applying a familiar law, but recommend careful consideration of this matter when you are on the buy side of the transaction, for the reasons detailed below.

**Specific Performance is More Easily Obtained under Israeli Law.** When purchasing shares, your main objective is to actually become owner of these shares. This objective is easier to achieve under Israeli law than under the laws of most common law countries. Israeli law considers contractual obligations as fulfilled when carried out as stipulated by the contract. Providing the economic benefit of the bargain by way of monetary payments is insufficient. Accordingly, specific performance is the remedy of choice for breaches of contract under Israeli law, and injunctions and other forms of temporary relief are more readily granted by Israeli courts.

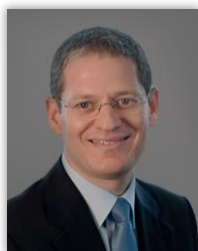
**Non-Israeli Law Cannot Grant you Ownership of Shares in an Israeli Company.** Companies are a fiction created by law. They owe their existence to the legal regime that applies to them and can only function within its limits. Trying to enforce the actual issuance or sale of shares of an Israeli company under a non-Israeli legal regime is bound to fail: the requirements and procedures are different, and what works under the laws of the State of Delaware or England and Wales will simply not work under Israeli law. You might end up with a court decision that makes perfect sense under the law of choice but does not conform to the requirements of Israeli corporate law. In other words, some things are country-specific and should be treated as such; companies are one such thing.

**Consider Partial Application of Israeli Law.** A possible solution to the dilemma of choosing between a more familiar law and a more effective law is a combination of both. Apply the laws of your jurisdiction of preference to the transaction in general, but at the same time stipulate that matters relating to issuance or transfer of shares, appointment of directors and other matters that require corporate action will be governed by Israeli law. This way you can enjoy the best of both worlds: make sure your rights to acquire shares are adequately protected by and can be enforced under Israeli law, and at the same time enjoy the benefits of a familiar legal regime for general matters such as representations, warranties and liability.

**Consider Israeli Courts as your Litigation Forum.** Some non-Israeli parties prefer non-Israeli litigation forums, such as international arbitration panels and even non-Israeli courts, over Israeli courts. While this choice has obvious merits, it also has its disadvantages. If the goal is to receive actual ownership of shares of an Israeli company, litigating outside of Israel may be insufficient, as effective enforcement will most likely require involvement of an Israeli court. Even if you only seek monetary damages, effective enforcement may require involvement of an Israeli court if the seller has assets only in Israel. Since you may end up in an Israeli court in any event, perhaps it would be easier to consider it as the litigation forum and avoid duplicate legal procedures. Israeli courts are proficient in corporate litigation: while Israel is not Delaware, the District Court of Tel-Aviv has a specialized department for economic matters with judges who are experts in Israeli corporate law. In addition, litigation in Israel can be cost effective when compared to non-Israeli jurisdictions.

- Note: if you choose a non-Israeli litigation forum, consider asking for the right to obtain temporary relief from Israeli courts. A temporary injunction will sometimes provide you not only a better chance of enforcing your rights but also leverage in reaching a favorable conclusion of the dispute.

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