DOING BUSINESS IN Israel

DARDIK GROSS & CO.
WWW.DGLAW.CO.IL

ADDRESS
Beit Oz Building, 14 Abba Hillel Silver Rd., 8th Floor.
Ramat Gan 52506, Israel

CONTACT PARTNER
Dan Gross
DARDIK GROSS & CO
gross@dglaw.co.il

CONTACT PARTNER
Amon Dardik
DARDIK GROSS & CO
dardik@dglaw.co.il
**Business Structures:**
What types of business structures are permitted?

The mainly used business structures in Israel are:

- **Limited liability Corporation (“LTD”):** An LTD is an independent legal person, controlled by its shareholders and managed by its Board of Directors. Shareholders and directors may be legal persons themselves. Shareholders are protected by a corporate veil. There is no requirement to have a local shareholder or director.

- **Partnership:** A partnership is any business enterprise entered by two persons, except for incorporated business enterprises. Partnerships are more loosely-regulated than companies and are managed by their members. Partnerships may be limited or unlimited. A limited partnership (LLP) has 1-20 General Partners and an unlimited number of Limited Partners. A general partner has managerial power of the partnership and is liable for the partnership’s debt. A limited partner has, generally, no managerial power and may not represent the partnership; however, a limited partner is not liable for the partnership’s debts. Unlimited partnerships only have (up to 20) general partners.

- **Foreign Company:** A foreign company is a legal entity formed outside of Israel, and registered to conduct business in Israel. For example, a Delaware LLC, an Italian S.p.A., etc. may be registered in Israel as a Foreign Company.

**Taxation:** Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

Israel’s personal taxation regime uses progressive tax brackets for income generated from personal labor. Standard rates vary between 10% and 50% for income higher than ~ILS 640K annually. Capital gains are generally taxed at 25%. Taxes on rents from residential property may vary greatly, depending on the scheme chosen, from 0 to 50%.

Taxes on salaries are withheld at source by employers, and capital gains taxes from sale of securities are withheld at source by the broker.

Israel uses a modern, two-stage corporate tax system. Corporations are taxed once at the corporate level at 23% and distributions are taxed at 25%-30%. Dividends between Israeli companies are generally not taxed. Partnerships are generally not seen as separate legal entities for tax purposes, so a partnership’s income is attributed to the partners individually, and each partner’s share is seen as personal income. Israel imposes a 17% value-added tax on local transaction.

**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

The Israeli government promotes Foreign Direct Investments through several legal means, including the so-dubbed R&D Law and the Invest in Israel program.
Israel is a party to several treaties regarding corruption, bribery and money laundering practices, and legislation, especially over the last couple of years, has become increasingly stringent, with high ranking officials and multinational companies making negative headlines for themselves.

Cross border moneys transfers are subject to banking regulations, which are directed, inter alia, by the provisions of the FATCA agreement entered with the USA Government.

The Israeli Court system generally has three instances: Magistrate, District, and Supreme Court.

Magistrate Courts hear lawsuits worth up to ILS 2.5M. District Courts hear lawsuits above said amount and also serve as appellate Courts for lawsuits tried at the Magistrate Courts. The Supreme Court serves as an appellate Court for lawsuits tried in the District Courts, and as a second appellate Court for appeals heard by the District Court. The Supreme Court also serves as High Court of Justice, hearing petitions made against Government agencies.

There are several instances which specialize in specific fields of Law: The Administrative Courts hear certain petitions made against Government agencies that do not qualify for the High Court of Justice; the Financial Court hears claims regarding securities, investments, derivative lawsuits and petitions against the Securities Authority; the Family Court, Christian, Sharia, and Rabbinical Tribunals mainly deal with marital status, custody and divorce; Labor Tribunals deal with most cases involving employer-employee relationship.

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Generally, Corporations combine by way of merger or an acquisition. Companies may generally merge by a simple majority decision of both companies' General Assemblies. Mergers and acquisitions in publicly-traded companies are subject to regulatory limitations, involving inter alia special majority provisions at the sell side. Israeli Courts have recognized the use of reverse triangular mergers that may circumnavigate some of these limitations.
| **Competition Law:** How do laws impact competition? | The Antitrust Law, 5748-1988 governs the field of competition law in Israel. The three main functions of the law are the prohibition of restrictive practices, limitations applicable to monopolies, and the establishment of the Antitrust Authority. Restrictive practices, although a priori forbidden, may be approved by the Antitrust Commissioner, on a case-by-case basis and based on factual evidence that the restrictive practice does not impede competition. Further, the Commissioner also releases special Exemption Rules, specifically exempting certain restrictive practices from the requirement to seek approval. For example – certain vertical restrictive practices may be Exempt, and thus essentially a priori legal. |
| **Employment Relations:** Briefly summarize major laws impacting employment and employee relations. | Workers’ and employers’ rights and duties are not codified, and instead are found in multiple Acts, Regulations, Collective Agreements, Ordinances, and Stare Decisis. Israeli Law differentiates between an employee and an independent contractor. Generally speaking, only employees enjoy the rights afforded by Labor Laws, while contractors’ relationships are regulated by other commercial laws. The distinction between an employer and a contractor is a substantive distinction. This means that even if parties entered what seems to be a contracting agreement, a Court of Law may deduct, based upon evidence, that the parties actually entered what is essentially an employment relationship. Once employment relationship is established, employees are entitled to several substantive and procedural rights. To name a few: annual paid leave, parenthood paid and unpaid leave, sick leave, convalescence pay, travel expense, retirement plan contributions, hearing before dismissal, etc. |
| **Statutes and regulations:** What are the main laws and regulations governing business combinations? | The Companies Law, 5759-1999 regulates the corporate aspects of mergers and acquisitions, while the Income Tax Ordinance regulates their taxation aspects. |
| **Governing Law:** What law typically governs the transaction agreements? | Transactional law is not codified in Israeli legislation. The laws that form the basis of transactional law are the Contract Law 5733-1973, Contract Law (Remedies) 5731-1970, the Sales Law 5728-1968, the Unjust Enrichment Law 5739-1979, the Lease and Borrowing Law 5731-1971, the Assignment Law 5729-1969, the |
### Filings & Fees:

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

A merger requires filing and a fee with the Registrar of Companies. Certain companies’ mergers and acquisitions may require approval of the Antitrust Commissioner.

Mergers and certain acquisitions involving publicly-traded companies may require an Immediate Reports filed with the Securities Authority, as well as other reporting subject to the nature of the transaction.

Taxation-wise, mergers, acquisitions, and corporate restructuring may qualify for tax exemptions, subject to meeting certain criteria.

### Information to be Disclosed:

What information must be made public in a business combination? Does this depend on the structure used?

Reports of mergers and acquisitions may require, depending upon certain criteria any or all of the following, the disclosure of the tender offer, GA resolutions, disclosure of any merger oppositions, Court decisions, Antitrust Commissioner’s decisions, possible tax implications, notice of decisions which required special approvals by either the BoD or a third party/Governmental agency, etc.

Reporting requirements are generally based upon material criteria.

### Disclosure of substantial shareholdings:

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

When publicly-traded companies are involved, public disclosure and reporting obligations, such as the ones described above, may include disclosure of information RE substantial shareholders.

Due disclosure to a counterparty (not public) is seen as part of the duty to act in Good Faith. If shareholdings in a corporation are deemed material to a transaction, then their disclosure to a counterparty might be considered mandatory to meet Good Faith standards.

### Duties of directors and controlling shareholders:

What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Officers of the company owe to it a Duty of Care, as well as Fiduciary Duty. Under the Duty of Care, an officer must act in the capacity and diligence expected from a reasonable officer of the same qualifications. Under the Fiduciary Duty, an officer must avoid conflict of interests, competing with the company, acquiring personal favors on account of company’s business opportunity, and disclose to the company any information regarding the company which he acquired. BJR is generally recognized by Courts.

The applicability of fiduciary duties, and other duties, to shareholders and controlling shareholders is not yet clearly-defined in Israeli law, but there’s a general understanding that shareholders’ powers over the company may impose upon them certain responsibilities to the company’s well-being and interests.
| Approval and appraisal rights: | Any merger requires the approval by simple majority of the GA. If the merger requires Special Approval (e.g. transaction with an interested party), then a simple majority within uninterested parties' part in the GA is required.

Offerees in a full tender offer may appeal to Court, which may decide that the offer was for less than fair share price and compel the offeror to pay the difference. |
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| Hostile transactions: What are the special considerations for unsolicited transactions? | In a private company, an acquirer of 80% of the company shares may, under certain conditions, compel the other shareholders to also sell him/her their shares. The 80% benchmark may be changed in the AoA.

In a public company, a person wishing to acquire 90% of company shares, must conduct a Full Tender Offer to purchase all of the company's shares. If offer was accepted by all but less than holders of 5% of the shares, than the purchase would apply to them unwillingly. A reverse triangular merger is generally allowed by Israeli Courts of Law. |
| Break-up fees – frustration of additional bidders: Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders? | There are no specific limitations of break-up and reverse break-up fees, although the general contractual norm is that any type of liquidated damages should reflect an actual pre-assessment of damages, and should contain no punitive element. |
| Government influence: Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security? | Unless a specific stipulation by law is in place, Government agencies can’t usually influence private sector business combinations.

Such specific stipulations are usually related to antitrust issues, corporate and securities regulations, or specific industries. |
<p>| Conditional offers: What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional? | A tender offer may only be conditioned upon: (i) a minimal rate of acceptance of the offer and, (ii) homologation by a competent authority of the purchase, should one be required. |</p>
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<th><strong>Minority squeeze-out:</strong> May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?</th>
<th>Minority squeeze-outs are generally recognized in Israeli law and may be implemented in several ways. Generally speaking, the two major defenses minority shareholders have against their squeeze-out are limitations on the size of minority that can be squeezed-out (e.g. less than 5% in the case of full tender offers) and the right of appraisal. Further, the fiduciary duties of officers also serve to safeguard minority rights.</th>
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<td><strong>Cross-border transactions:</strong> How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</td>
<td>Please be more specific – cross-border may refer to many types of transactions who may be regulated differently.</td>
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<td><strong>Waiting or notification periods:</strong> Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?</td>
<td>A merger requires notification to the Registrar of Companies within 3 days of the merger resolution. In the case of a public company’s merger, an immediate report to the Securities Authority must be made. If a notice regarding the merger is received from the Antitrust Commissioner, then the company must disclose this to the Registrar of Companies within 3 days. A tender offer’s acceptance period may be between 14 and 60 days.</td>
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<td><strong>Sector-specific rules:</strong> Are companies in specific industries subject to additional regulations and statutes?</td>
<td>Yes, there are specific provisions of law that apply to different fields of industry. The fields of law that most commonly feature special provisions for certain industries are labor law, antitrust law, financial and anti-money laundering regulations, R&amp;D and foreign investments, taxation, etc.</td>
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<td><strong>Tax issues:</strong> What basic tax issues are involved in business combinations?</td>
<td>Generally speaking, transfers of assets due to a merger are eligible for tax exemption. Therefore, one of the main and basic tax issues regarding mergers to make sure all the qualifications for said exemptions are met. Another important issue is the formulation of the setting-off of one merging company’s capital losses with the other merging company’s capital gains.</td>
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<td><strong>Labour and employee benefits:</strong> What is the basic regulatory framework governing labour and employee benefits in a business combination?</td>
<td>In the framework of a merger, the target company’s employees become the acquirer’s employees. In many circumstances, the target’s employees may quit their new employer and be eligible for severance pay, as if they were terminated. After a merger, the seniority-based benefits of target company employees that are now employed by the acquirer, are calculated as if they were employed by the acquirer from the date of their employment by the target.</td>
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<td><strong>Restructuring, bankruptcy or receivership:</strong> What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?</td>
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<td>In general terms, the framework of mergers and restructurings that are conducted as part of a company’s insolvency, require a &gt;50% GA approval, and the approval of the Court.</td>
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<th><strong>Anti-corruption and sanctions:</strong> What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?</th>
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<td>The general anti-corruption and anti-bribery provisions of law are also in effect in the framework of business combinations.</td>
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<td>We are not aware of economic sanctions applicable to Israel.</td>
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