

Corporate Governance for Subsidiaries of FMNCs

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Firm Profile

About us

Goldfarb Gross Seligman & Co., Israel's largest law firm, is among the elite group of firms that deliver top-tier legal services at international standards. Tracing our history back over 90 years, we offer clients extensive experience in various fields of law.

Human Capital

The firm is comprised of over 500 attorneys, including more than 200 partners. With expertise in a wide spectrum of legal services, we provide sophisticated legal solutions utilizing an innovative, multidisciplinary approach that integrates experts from a variety of fields into a seamless team.

Professional Approach

At the heart of our professional philosophy is the belief that every client is unique, with its own issues and considerations. We provide personalized service tailored to each client's particular needs, combined with the advantages that a large 'one-stop-shop' law firm with a global reach can offer.

Firm Profile

Practice Areas

The firm specializes in an array of legal practice areas, including hi-tech and VC; corporate and capital markets; M&A; real estate, planning and construction; litigation; and tax; as well as banking and finance; labor law; intellectual property and privacy; antitrust; industry; energy and infrastructure; regulation; environmental law; administrative law; and more.

Excellence

We are consistently ranked among the leading law firms in Israel in multiple practice areas by international and local ratings, such as Chambers & Partners, The Legal 500, BDI, Dun's 100 and others, in light of our extensive legal and commercial experience in the local and global arenas, our deep legal understanding and our commitment to quality, excellence, integrity and discretion, making us the firm of choice for the most discerning clients, both in Israel and overseas.

Community

The firm has a well-established tradition of community engagement, expressed both by monetary donations and volunteer work. We place a strong emphasis on pro bono work, viewing it as a social mission. We believe that providing legal services to organizations and individuals that pursue worthy causes but cannot afford quality professional legal counsel is our moral obligation. We view this as an integral part of the firm's legacy and one of its guiding principles.

Practice Areas





Dr. Ayal Shenhav

Chairman, Head of the International and Hi-Tech Department

Dr. Ayal Shenhav is one of Israel's leading attorneys with over 30 years of experience. Dr. Shenhav's practice includes representation of investment funds and investors, start-ups, multinational corporations and high net worth individuals. Dr. Shenhav is consistently ranked as a leading (Tier 1) practitioner by Chambers & Partners, The Legal 500 and other legal directories.

Dr. Shenhav represents many of Israel's leading venture capital and private equity funds, advising them on their formation, tax efficient structuring, investments and operations. Dr. Shenhav has been involved in dozens of complex financing transactions, representing the investors, companies and founders. He has also been involved in numerous M&A transactions, representing target companies, acquiring companies, investors and more.

Dr. Shenhav advises high net worth individuals on tax matters, asset protection and transfer of assets to next generation.

Dr. Shenhav is a well-known international tax expert with significant expertise in the interaction of the Israeli and US tax systems.

Dr. Shenhav practiced law for several years at Davis Polk & Wardwell in New York, and has served as Vice Dean of the Radzyner School of Law at the Reichman University. Dr. Shenhav founded Shenhav & Co. Law Offices, a leading Israeli law firm which merged with Gross & Co, in 2018. He was Managing Partner of Gross & Co. prior to the formation of Goldfarb Gross Seligman. Dr. Shenhav is an Adjunct Professor at the Tel Aviv University and the Reichman University (teaching the course Start Up Law). Dr. Shenhav was the head of the Law Firm and Accounting Firm Committee of IATI (Israel's leading Hi-Tech Organization). He is also a frequent lecturer at seminars and conferences relating to innovation, venture capital and tax in Israel and abroad. Dr. Shenhav was a board member of the Alliance High School in Tel Aviv.

Education

J.S.D, New York University School of Law, 1995
LL.M., New York University School of Law, 1992
LL.B. (Magna Cum Laude), Tel Aviv University, 1990

Member

New York State Bar Association, 1992
Israel Bar Association, 1991



Perry Wildes

Partner, International and Hi-Tech Department

Adv. Perry Wildes concentrates his practice in the area of corporate and securities law, with an emphasis on public and private capital raising transactions and cross border transactions.

Perry advises Israeli companies registered with the U.S. Securities and Exchange Commission (SEC) on compliance with their securities law and stock exchange disclosure obligations and corporate governance issues. Perry also represents companies and underwriters in public and private finance transactions, including IPO's, SPAC's, follow-on public offerings, PIPES, overseas offerings and other private offerings.

Perry also represents both Israeli and foreign buyers and sellers in public and private merger and acquisition transactions and other cross-border transactions. His experience includes representation of foreign investors in Israeli companies.

Perry's practice also includes representation of tax-exempt organizations and their founders, donors and board members, including foreign citizens and international organizations operating in Israel.

Prior to joining our firm he practiced law in leading law firms in New York.

Education

J.D., New York University, 1992

B.A., English, Yeshiva University, New York, 1989

Member

New York Bar Association

Israel Bar Association



Shay Yanovsky

Partner, International and Hi-Tech Department

Adv. Shay Yanovsky counsels local and international clients across a range of industries, including software, internet, cyber and social media, blockchain technologies, cryptocurrencies, ICOs, ecommerce, telecommunications, biotechnology, medical devices, and cleantech.

Shay advises these clients in a variety of issues, including intellectual property, internet and e-commerce, licensing, computer and information systems, telecommunications, open source, information security, privacy law and data protection regulations, as well as in various aspects relating to the Encouragement of Research and Development Law and to dealing with the Office of the Chief Scientist within the Ministry of Economics.

In addition, Shay counsels a variety of local and international companies in the fields of investment advice and investment marketing regulations, as well as other securities related issues, and credit rating agencies activity in Israel. Among others, Shay actively participated in the Knesset's Economic Committee discussions and various meetings with the Israeli Securities Authority and Ministry of Justice around the regulation of the activity of credit rating agencies in Israel.

During his studies, Shay was a teaching and research assistant in various courses at the Hebrew University of Jerusalem, Tel Aviv University, and Ono Academic Center, such as Biopharmaceutical Patents, Intellectual Property at the Technological Era, and Service Inventions. In addition, Shay is acting and acted in the past as a teaching assistant at the Hebrew University, Ben Gurion University, the College of Management Academic Studies and the Interdisciplinary Center in Herzliya in advanced courses to MBA students such as Business Strategy and Strategy Management.

Education

MBA, executive, majoring in startup funding, Hebrew University, Jerusalem, 2018

LLB., with honors, Hebrew University, Jerusalem, 2008

Member

Israel Bar Association, 2009

Corporate



Annual General Meeting

Auditor shall be appointed at each annual meeting and shall serve until end of next annual meeting unless the company's articles say otherwise



Board Members

shareholders must appoint/re-appoint directors at each annual meeting unless the articles state otherwise



Financial Statements

Each company must prepare annual financial statements including balance sheet as of December 31 (or other date specified in articles) and profit and loss report for the year ending on that day. The financial statements must be presented to the shareholders after approval by company accountants

Corporate



Auditor

A company must hold annual general meeting (AGM) no later than 15 months after the last one, to discuss the financial reports. If company articles provide that AGM not required unless necessary to appoint an accountant, the company must provide the shareholders with the financial statements on the date the AGM would have been held



Annual report

The company must file an annual report to the Registrar of Companies (ROC), including details of address, shareholders and their holdings, board members and liens, among others. Annual fee must also be paid

- Breach of annual reporting/fee payment duties may lead to imposition of fines and suspension of registration activities until settled



General reports

The company must report certain changes to ROC, such as such as changes to Board, transfers of shares, issuances of shares, new liens, amendments to the articles and change in address, among others

Employment

Anti-Harassment Policy

Required under Israeli law. Recommended to give training to employees

Policy re: Monitoring of Electronic Devices

To enable monitoring of emails, companies should (i) include statement in company employment agreements that emails will be monitored and (ii) adopt a separate policy

Vacation Policy

Policy should address number of vacation days that may be transferred from year to year and when lose vacation days. Reduces future disagreements/misunderstandings with employees

Improvement Plan for Employees

Recommended to maintain clear record of required performance improvements of employees and communicated to employees each year. Minimizes risk of claim by employee that being dismissed for invalid reasons (such as discrimination)

Employment

Hearing Required for Terminations

Employees may not be terminated without a hearing and giving employee opportunity to explain why s/he shouldn't be terminated

Accessibility

Israeli law requires any employer with over 25 employees to act for proper representation of people with disabilities among its employees

- For employers with at least 100 employees, at least 3% of its workforce must be people with disabilities
- Employers with at least 100 employees must also appoint a person with disabilities employment officer
- Law also requires periodical inspection for compliance with accessibility standards periodic review and training

Fleet Safety Officer

Companies in possession of 20 vehicles or more (whether owned or leased) must appoint Fleet Safety Officer to supervise vehicle maintenance, ensure driver competence, implement procedure to prevent accidents, drivers training, and report significant incidents to the authorities. Incompliance may result in fines and increased liability in case of accidents or traffic violations.

Visa and Work Permit Regulations

As of January 1st , 2025, all citizens from visa-exempt countries (such as U.S. and Europe) must submit an entry application in the on-line ETA system

Governmental fees apply for employment permits of foreign workers/experts and work visas, in addition to base salary requirement for foreign experts in Israel

When relocating employees to Israel, it is advisable to consult regarding best route to lead to cost savings and shorter regulatory processes

Equity Plans



New Equity Plans

need to complete questionnaires for the Israel Tax Authority (“ITA”) for new equity plans adopted to enable the ITA to identify sensitive issues. Approval of plan may by the ITA may be impacted if “red flags” are raised in the answers provided Examples:

- Type of security subject to the plan, its terms and rights
- When do grants vest
- When is vesting accelerated
- Repurchase/put provisions

Equity Plans



Employment

Israeli employees/directors of foreign parent company who are not also employees/directors of Israeli subsidiary are not entitled to tax-advantaged 102 treatment on their grants

New grants

will require Section 102 trustee to report on grants on quarterly basis/annual basis with grant information on attached excel file. As a result, a higher level of scrutiny of equity grants will be needed because it will be more difficult to make changes to grant documents following the report by the trustee

Data Protection and Data Security



Israeli Privacy Protection Law provides robust privacy protection to data subjects and imposes responsibilities on controller and processor of a database, aligned with global standards like GDPR and CCPA regulations.

Recent amendment to the Israeli Privacy Protection Law expands enforcement powers and introduces significant financial penalties for violations.

Organizations required to take privacy and data security considerations while imposing the “privacy by design” principals.

Organizations required to periodically review their data protection measures to ensure compliance with regulations and protect sensitive data.

Data Protection and Data Security



Data Security Risk Assessments

conduct regular risk assessments to evaluate the effectiveness of data security measures, including incident response protocols

- The level of sensitivity of the data being processed determines the frequency and depth of these assessments
- For medium-high security level databases, the database owner must conduct, once each 24 months, internal or external audit by a duly certified auditor. The audit report must detail the compliance of the data security measures with the data security policy and the data security regulations, identify gaps and propose means of correction

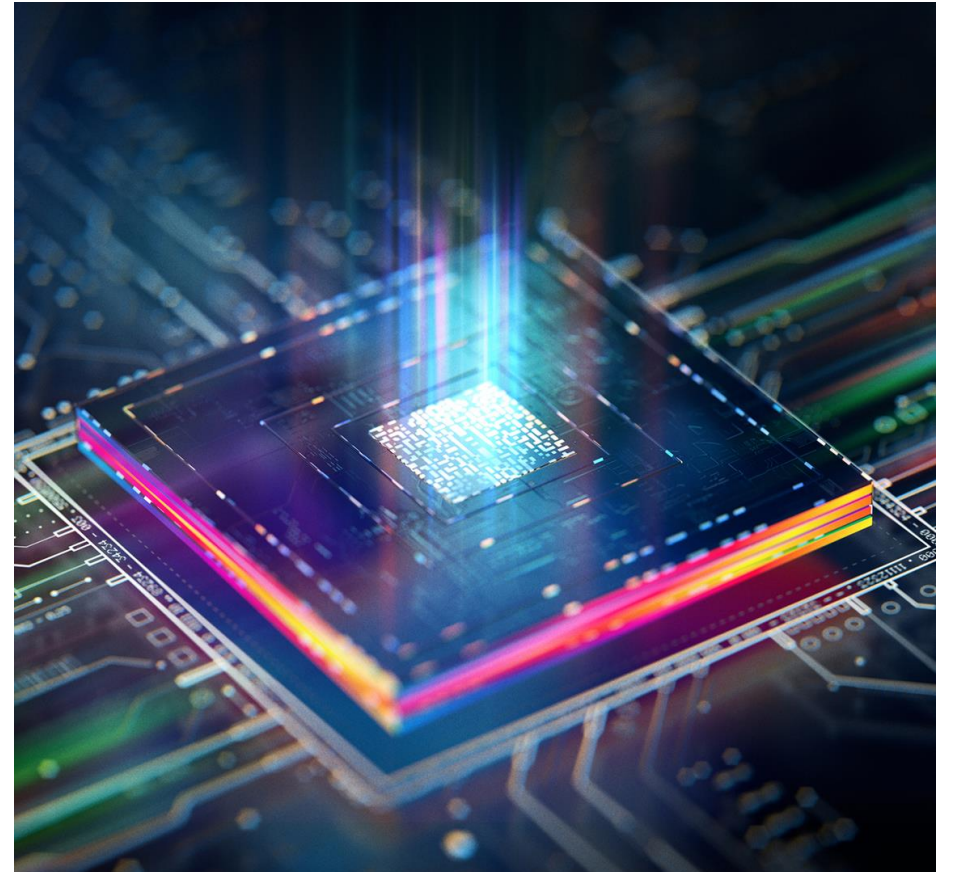
Data Protection and Data Security

Privacy Policy

Israeli law provides that the collection, process, retention, and transfer of personally identifiable information (PII) requires the subject person's consent. Consent may be obtained within framework of a privacy policy, establishing clear guidelines regarding use of PII by the organization, in accordance with each type of PII being processed

Data Processing Agreements (DPAs)

ensuring that each engagement between data controllers and data processors is governed by comprehensive Data Processing Agreements (DPAs) in compliance with data protection regulations.



Intellectual Property (IP)

Companies are recommended to take the following actions

IP Maintenance

regularly review and maintain their IP registrations to ensure they are current and comply with regulations - including renewing registrations, examining any third party objections or other actions and taking action if necessary

Third-Party Components Policy

policy to monitor compliance with open-source licenses used by the company - including periodic training for developers to ensure they are aware of their responsibilities

Artificial Intelligence (AI) Policy

to provide guidance to management and employees on protecting IP, trade secrets, and personal data when using AI technologies. Regular review ensure that the policy is up to date and effective

Bring Your Own Device (BYOD) Policy

to provide guidance and outline rules for employees who use their personal devices (such as smartphones, tablets and laptop) for work purposes

- Key topics: security requirements, acceptable use, data protection, privacy considerations, and compliance and monitoring

General Policies Updates

Companies are recommended to take the following actions

Anti-Bribery/Corruption Policy

adopt and periodic review of the policies and procedures

- Particularly important for companies interfacing with governmental entities
- Israeli subsidiaries should update any such policy adopted by the global parent company for Israeli law requirements

Code of Ethics

adopt and periodic review of code to address any new legal/ethical issues. Also recommend periodic employee training to ensure compliance.

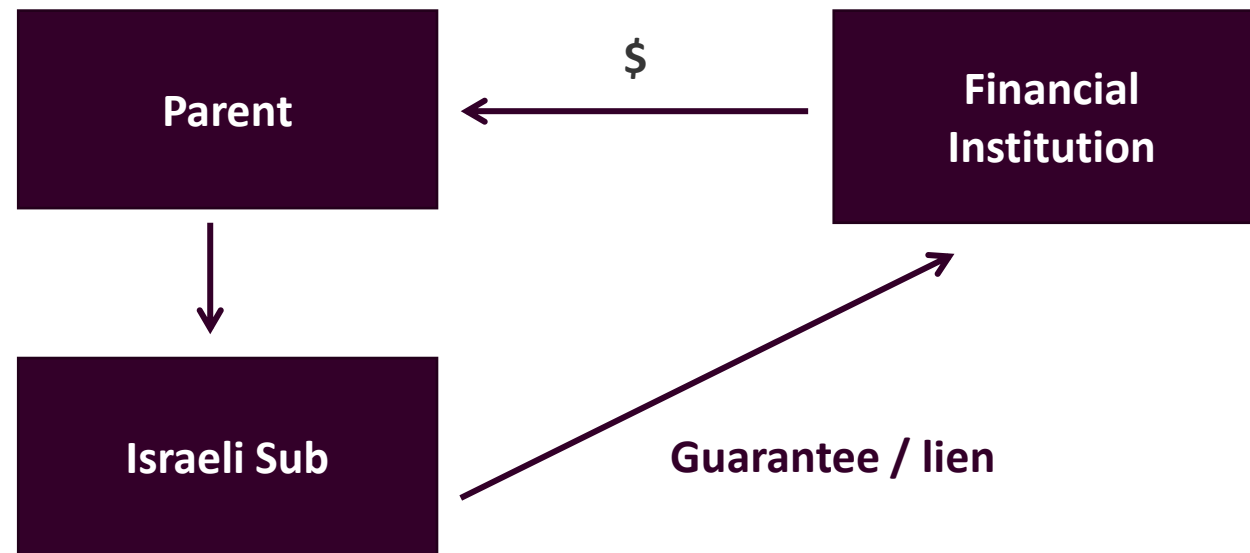
- Israeli subsidiaries should update any such policy adopted by the global parent company for Israeli law requirements

Contract and Insurance Review

- Organizations should have an internal process to track contract extensions, expirations, and termination rights – including periodic review of contracts and insurance to ensure they are current and provide adequate coverage.
- Adapting Global D&O Insurance for Israeli Companies– D&O Insurance for Israeli companies must comply with the Israeli law restrictions which limits exemptions, indemnification and insurance for directors and officers.



Finance Arrangements - Distribution Aspects



Finance Arrangements - Distribution Aspects

Unsettled questions:



Is such an arrangement considered a “distribution” under Israeli law?

What is amount of the distribution?

When is distribution - at the time of granting the guaranty and pledge of assets or their realization?

Finance Arrangements - Distribution Aspects



What is a “Distribution” - (i) dividend and (ii) repurchase/purchase of shares of shareholder or financing such repurchase/purchase of shares (“purchase”)



Guaranties and charges granted by Israeli subsidiary to benefit parent or any affiliate may be considered a “distribution” as both a dividend and a purchase



Dividend – because may be considered as a benefit to shareholders not for valuable consideration. Difficult to substantiate the benefit for Israeli subsidiary in securing obligation of its affiliate



Purchase – if credit facility is used for full or partial finance of the purchase of the Israeli subsidiary

Finance Arrangements - Distribution Aspects

Why does it matter if “distribution”?

Illegal distribution has following consequences:



Breach of duty of care

Personal liability to directors (no insurance coverage)

Breach of fairness of controlling shareholder

Finance Arrangements - Distribution Aspects

To make “distribution” need to meet two tests:

- Solvency test – there is no reasonable concern that the company will not be able to comply with its liability, present and future, when due. The major test based on educated analysis of the board.
- Profit test -higher of (i) cumulative or (i) last eight quarter surpluses from company’s net profit in accordance with recent financial statements (not more than six months old)

Technical test. With court approval may allow disregarding the profit test.

- If distribution made without meeting tests – illegal distribution for which directors liable (creditors)

Dividend Tests (S. 302 of the Companies Law):

Examples for Practical Solutions to Reduce Risk:

limit language of representation re: distribution in the finance documents

Describe benefit to subsidiary in subsidiary board approval (when contribution/benefit not given as part of acquisition)

limit guaranty amount to contribution of the relevant affiliate (when contribution/benefit not given as part of acquisition), such as a credit line or management services

guaranty fees (as determined by a transfer price expert)

Transfer Pricing

- Relevant for both income tax matters and customs declarations
- The value declared during customs clearance must be handled according to transfer pricing rules

Compliance with Israeli Regulations

- Applies to areas such as: standards, food, cosmetics, and other regulated sectors
- In cases where there is a local subsidiary (importer):
 - All regulatory obligations apply to the importing Israeli company
- In cases of sales to an unrelated Israeli company:
 - The agreement between the companies typically requires that products comply with Israeli regulatory requirements

Competition Law

Israeli Competition Law generally regulates four types of activities in Israel:

- ✔ M&A transactions (including the increase in holdings beyond a 25% threshold)
- ✔ monopolies (entities with a market share greater than 50% or with a significant market power)
- ✔ arrangements that restrict competition
- ✔ oligopolies.

M&A transactions involving entities with sales into Israel may require the prior approval of Competition Authority, subject to certain minimum turnover or market-share thresholds.

Competition Law

- **Restrictive arrangements** – including *non-compete clauses, exclusivity clauses, MFN clauses and more* - are generally forbidden, unless approved under a mechanism available under the Competition Law (including self-assessment and including certain regulatory exemptions).
- **Monopolies** not illegal but are subject to certain limitations which do not apply to other commercial entities, regardless of whether an entity was actively declared as a "monopoly".
- **Oligopolies** are regulated only if actively declared as such by the Competition Authority.
- **Corporations** with significant activities in Israel that involve "competitive considerations" (such as entities in markets with limited competition and/or with high market share) should consider enactment and implementation of a Competition Law Compliance Program, which also protects board members and senior management from claims for breach of the Competition Law.

Significant Environmental Regulation

Clean Air Law, 2008

- **Administrative Enforcement:** Financial sanction of up to 1 million NIS per violation; An injunction to prevent or reduce air pollution, cease usage, or impose restrictions.
- **Criminal Enforcement:** Imprisonment of up to 2 years or a fine of up to 1.3 million NIS.
- **Officeholder Liability:** Fine of up to 226,000 NIS.
- **Civil Enforcement:** Class action lawsuits and tort claims.

Business Licensing Law, 1968

- **Administrative Enforcement:** Financial sanction of up to 150,000 NIS per violation; Injunctions
- **Criminal Enforcement:** Imprisonment of up to 18 months or a fine of up to 452,000 NIS.
- **Officeholder Liability:** Up to half the fine prescribed for the respective violation.

Package Treatment Law, 2011

- **Administrative Enforcement:** Administrative fine of up to 530,000 NIS per violation. Administrative orders regarding separation, collection, removal of packages, and contracting with a recognized entity.
- **Criminal Enforcement:** Imprisonment of up to six months or a fine of up to 452,000 NIS.
- **Officeholder Liability:** Fine of up to 75,000 NIS.
- **Civil Enforcement:** Class action lawsuits.

Significant Environmental Regulation

Electrical and Electronic Equipment and Batteries Environmental Treatment Law, 2012

- **Administrative Enforcement:** Administrative fine of up to 671,000 NIS per violation.
- **Criminal Enforcement:** Imprisonment of up to one year or a fine of up to 452,000 NIS.
- **Officeholder Liability:** Fine of up to 75,000 NIS.
- **Civil Enforcement:** Class action lawsuits.

Hazardous Materials Law, 1993

- **Administrative Enforcement:** Administrative fine of up to 997,000 NIS per violation; Orders for the removal of hazardous substances.
- **Criminal Enforcement:** Imprisonment of up to three years or a fine of up to 1.36 million NIS per violation, plus an additional 5% of the fine for ongoing violations.
- **Civil Enforcement:** Class action lawsuits and tort claims.

Thank you

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