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Dun's 100 International Law Firms Guide 2019

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ROBUS Consulting & Legal Marketing

The Rush to Israel – international law firms

What are the reasons for the sharp increase in the representation of international law firms in Israel?

"I enjoy working with Israeli Law attorneys, I find they are creative thinkers, daring and they are a microcosm of the Israeli market that many find as very exciting ", says Clarissa Coleman, a litigator from the international law firm KLgatesL, one of the largest law firms in the U.S and one od the most prominent firms in the wold.

Coleman resides in London and travels to Israel a few times a year to hold meetings with clients and professional colleagues as part of her role as head of the firm's branch in Israel. " Israel is characterized by widespread innovation across many industries in the international market, we have clients from many different industries such as cyber, energy, technological innovation and research centers, they all have eyes on the Israeli market. Israel may have a small market, but their market has an affect and gains interest by the international community, therefore also attracting all the large law firms".

Clarissa is one of many international attorneys operating in Israel on behalf of their international law firm, representing foreign clients in Israel, and Israeli clients in the international arena. In this framework international lawyers become very familiar with the local law firms. Up until the 90's, the number of international lawyers operating in Israel could be counted on two hands, in the last 20 years a dramatic change has accrued, today there are more than 90 international law firms who work in Israel and within the Israeli market, whether within a permanent branch based in Israel or through an appointment of a lawyer responsible for liaising with the Israeli market. "When I started working in Israel in 1988, very few international firms showed any interest in Israel, even in 2012 there wasn't much international presence in Israel, but in the last few years, there has been drastic change" says Coleman, "up until recently there were only 5-10 international law firms in Israel and suddenly there are many active firms engaging in the Israeli market. It seems to me that the change has a lot to do with the economic and political situation, and how Israel is perceived by the world, a lot of law firms who work with countries who are not necessarily fans of Israel are no longer scared of the consequences to open branches and talk business with Israel".

Andrew Besser and **Louis Glass** are lawyers operating in Israel on behalf of one of largest international law firms in the world- CMS. CMS is a firm with approximately 4,500 lawyers spread across 42 countries. Andrew specializes in finance, real estate and leisure, while Glass works in the technological industry. "We are one of the largest law firms in the world specializing in finance, energy and a number of other industries, we work with the most significant clients in Israel as well" says Glass. A lot of Israeli companies are becoming more and more international and the Israeli market is full of potential, Israel is the leader in a few industries that the international arena is very interested in such as the high-tech, real estate and gambling. "We find the Israeli market to be very attractive and dominant in many sectors such as energy and real estate, Israeli clients are all over the globe, for example, we now operate between Israel and London, but even in London we see Israeli presence. For example, with regard to the real estate sector, with emphasis on hotels, the second largest hotel chain in England is Fattal, an Israeli company. "

Personal and professional - the difference between the Israeli client and the Israeli lawyer

Is there a difference between the Israeli client and the European client? And is there a difference between the Israeli client- attorney relationship compared to their counterparts around the world? If you guessed yes, you guessed right. Understanding the cultural difference in Israel is key element for an international law firm who wishes to work within the Israeli market. " Israeli lawyers are more than just lawyers, they are general advisors and key players. In England, the clients are more independent whereas in Israel, clients confide to their lawyers and seek general advice, the client- attorney relationship is a close one, and the expectations of the Israeli client are different from the English " says Clarissa Coleman. "In many cases, the English client will choose his attorney based on his and his firm's reputation, the interaction will usually be via email, in Israel, everything is a lot more personal. The Israeli client will like to get to know his attorney, trust him and rely on him. The international lawyers who wish to work in the Israeli market must learn the internal code and culture that lawyers have with client. The English client will communicate through email, the Israeli client will communicate through WhatsApp messenger, everything is a lot more direct in Israel. It's very important to visit Israel once in a while, meet people, be involved in current events, work with companies in the Israeli market and also hand over work to Israeli law firms. As I said before, there is a difference between the working methods- the sophistication that Israeli lawyers use in order to reach results, their creativity, and unfortunately, the way Israeli lawyers perceive a deadline, Europeans like working in such a way that their tasks are completed before the set deadline, whereas Israelis will hold up to the deadline, but usually they will wait until the last minute to complete the task. Louis Glass agrees with Coleman an adds "From our experience working with Israeli companies in the Israeli market and the international market, I find Israelis look for lawyers based on their specialty, they know exactly what they are looking for, and I'm glad that our firm can provide what they want. The

Louis Glass
CMS

Andrew Besser
CMS

Clarissa Coleman
K&L Gates

The Rush to Israel – international law firms

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Israeli clients are different in other aspects as well, and it is important to understand that if you want to succeed in Israel. We entered the Israeli market gradually while building connections and becoming familiar with the market. In general, the Israeli client is very straight forward and is characterized by a more aggressive approach while negotiating then the European client. We say that in Israel, you need to shout in order to get attention and be listened to, whereas in England, if you shout, no one will listen to you. You need to learn how to do business in Israel, you need to meet your clients and sit with them over a cup of coffee and build trust. In Sweden I have clients that I've never met face to face, something that would never happen in Israel. Here you have to break the distance, you need to use humor, enjoy the client- attorney relationship and break down the walls between you and your client. Glass also sees a great difference in the work of the Israeli lawyer, and the expectations of the Israeli client from his lawyer. "The Israeli market is similar to the one in the U.S in this sense, the Israeli and American lawyer will work closely with the clients, the client will not make a move without advising with a lawyer, there is a close and personal relationship. In Europe the lawyer's reputation and proficiency are more important to the client, not a personal relationship.

Coleman, Glass and Besser are all Jewish, and they are not the only ones. Many of the lawyers working in Israel are Jewish, but they claim that Jewish ethnicity has nothing to do with the law firms' interest in Israel, "You don't need to be Jewish to have interest in Israel, we have an attorney at our firm who has been working with Amdocs for 20 years now, and she's not Jewish, the market in Israel is the attraction not our ethnicity. Yes, we are Jewish, but that's not the point" clarifies Glass, "Jewish lawyers that would come to Israel because of a Zionist ideology are now coming to Israel for business opportunities that the Israeli market has to offer". Coleman also believes that coming to Israel is now more for business opportunities and less for personal reasons "The firms understand that the Israeli market has a lot to offer, there are a lot of international transactions going on in Israel, its worth it to invest in Israel".

Is the market going to be flooded with international lawyers as well?

"Finding a job in Israel has become challenging. Its not as it used to be, once there were only a handful of active firms, whereas today there are many players in the arena and you need to cultivate relationships and build trust in order to work in the Israeli market and also to provide the best representation of Israelis in the international arena" says Clarissa Coleman. The Israeli market has truly become diverse with many different players, this lead "Dun & Bradstreet" to open a local ranking guide for the international firms operating in Israel in corporation with the DUN'S 100 and ROBUS (DUN'S 100 International Law Firm's Guide). "As a company that provides commercial data, analytics, and insights for businesses in Israel, we decided that we need to paint a full picture in such a dynamic and competitive market, so we needed to add an international ranking guide for firms in Israel" says **Efrat Segev**, VP of Economics, Information and Research at Dun & Bradstreet. "What started as a few single law firms turned into massive productivity of international firms in Israel. the need for international law firms started to form, and lawyers in Israel and Israeli clients who need legal guidance in the international arena often found it difficult to choose the most suitable firm and attorneys to fit their needs, and as a company that provides the most reliable, professional and comprehensive information, including in the law industry, we decided it would be right to give a wider angle. We believe the new ranking is important for international firms as well as for Israelis".

According to Segev, there is increasing activity of foreign firms in Israel due to the many transactions with foreign companies from abroad, and also because there are Israeli companies operating abroad, "Global knowledge and experience is needed to execute these transactions. It is important for Israeli clients to know which company specializes in what they need, who can fulfil their needs, to what extent and in what countries? At the same time, it's important the international firms present their activities to us in DUN'S 100, as this is the most relevant arena for them, given the cooperation we have with all local law firms and large companies In the Israeli economy".

ROBUS is also happy with the cooperation and sees it as "The Guide for the Perplexed" for international law firms operating in Israel. "The DUN'S 100 International Law Firm's Guide is the first of its kind, a platform that assembles the activities of law firms from around the world in Israel, designed to facilitate, streamline, and improve their collaboration with clients, legal counsel, and Israeli law firms. " These collaborations are a critical pillar of the international character of the Israeli business market and lead to unique opportunities for the Israeli market in Israel" says **Tamar Sacredoti**, head of the international department at ROBUS consulting & Legal Marketing, "International law firms have been operating in Israel for many years, but in the last years, with the significant legislative changes on the subject from 2012, many more law firms have become active in Israel, some of them opening a permanent branch in Tel- Aviv along with the firms representatives that come to Israel every few weeks in order to increase the firms Israeli activity- activity characterized by high profitability and involvement in significant cases and transactions. The venture expresses the tide of international law firms that dominate the legal market in Israel, enabling local law firms to personally and directly deal with colleagues overseas- including the best foreign legal services ".

International Law Firms

Firm Name		Country	Article See Page
	Allen & Overy	United Kingdom	
	Anderson Mōri & Tomotsune	Japan	
	Asserson	United Kingdom	
	Bersay & Associés	**France**	**11**
	Bryan Cave Leighton Paisner	United States	
	Clifford Chance	United Kingdom	
	CMS	**United Kingdom**	**12**
	Cooley	United States	
	Cuatrecasas	Spain	
	DLA Piper	United States	
	Fox Rothchild LLP	**United States**	**9**
	FPS	Germany	
	Freshfields	United Kingdom	
	Greenberg Traurig LLP	**United States**	**8**
	Hogan Lovells	United Kingdom	
	Howard Kennedy	United Kingdom	
	K&L Gates LLP	United States	
	Kobre & Kim	**United States**	**6**
	Linklaters	United Kingdom	
	Loyens & Loeff	Netherlands	
	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados	**Brazil**	**10**
	Mishcon de Reya	United Kingdom	
	Niederer Kraft Frey Ltd	**Switzerland**	**14**
	Norton Rose Fulbright	United Kingdom	
	R | K Invest Law, PBC	**United States**	**13**
	Reed Smith	United States	
	Simmons & Simmons	**United Kingdom**	**7**
	Simon Associés	France, China	
	Steptoe & Johnson LLP	United States	
	Taylor Wessing	United Kingdom	
	White & Case	United States	
	Zeichner Ellman & Krause	United States	

U.S. Investigations and Enforcement

Robert Henoch & Michael Rosen

The Risks Posed to Israeli Companies

Global investigations of criminal and regulatory issues are on the rise. Increasingly, companies and individuals are subject to enforcement exposure from government agencies across the world, even in jurisdictions where they believe they have few connections. The United States, in particular, exercises far-reaching jurisdiction outside of its borders and will seek to enforce its laws so long as it can show some nexus between the United States and the alleged misconduct. Common examples of a U.S. nexus include the involvement of a U.S. person, commercial activity taking place in the United States, or transactions occurring through the U.S. financial system or in U.S. dollars. As recent investigations and enforcement actions have shown, Israeli companies and individuals are prime targets for this type of enforcement.

One area the United States and other government regulators have cooperated to target is fraudulent activity, including conduct that violates the U.S. Foreign Corrupt Practices Act (FCPA), anti-money laundering statutes and other fraud-related laws. The U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC), in particular, have frequently targeted Israeli companies in FCPA investigations. For example, Elbit Imaging agreed in 2018 to settle FCPA charges with the SEC, stemming from payments to consultants for purported services related to a real estate development project in Romania. According to the SEC's order, Elbit was liable because it failed to accurately record these transactions in its books and records. Public reports indicate that U.S. authorities also are investigating Israel-based communication service provider Internet Gold (the parent company to Bezeq) over FCPA-related allegations. Both Israeli companies were targeted because their stock trades on the U.S. public markets.

Moreover, an increasing number of companies are becoming subject to multi-agency investigations conducted by various governments at the same time. The DOJ, for example, will often coordinate with ministries of justice and prosecutors' offices in other countries in investigations over common allegations, such as alleged corrupt practices. Expected to further fuel this trend is a recent U.S. Supreme Court case, Gamble v. United States, which has given the U.S. government more power to pursue these cross-border, multi-agency investigations. In Gamble, the U.S. Supreme Court implicitly recognized that the United States may investigate and prosecute misconduct even if a foreign government has brought a similar prosecution or enforcement action related to the same conduct. This decision will only strengthen the resolve of U.S. agencies to pursue multilateral investigations where they suspect the misconduct has a U.S. connection.

Put simply, Israeli companies and individuals should be on high alert for U.S. investigations and enforcement if their business activities involve even a potential U.S. connection. With the increasing number of government regulators worldwide looking to beef up their enforcement activity, companies and individuals should exercise vigilance to ensure their conduct does not subject them to potential liability. At the earliest sign of an investigation, companies and their employees should retain counsel experienced in the relevant jurisdiction's criminal and regulatory enforcement matters—especially where investigations involve cross-border elements and collaboration and coordination between foreign authorities and the U.S. Moreover, both companies and individuals should consider—and discuss with experienced counsel the value of—conducting an internal investigation to better understand the full scope of the relevant conduct or potential misconduct. Companies should also consider whether self-disclosure of the conduct to government authorities is warranted, as government authorities, particularly those in the United States, place a high value on disclosure and cooperation.

KOBRE & KIM

Kobre & Kim

Robert Henoch
Partner

Michael Rosen
Of Counsel

Associate
Jeremy Bressman
Litigation Assistants
Jonah Nadel
Ephraim Wegner
Rivka Coleman

Established
2003

Line of Business
Law firm

Yigal Alon Street 94, Alon Tower One,
22nd Floor, Tel Aviv, 6789139 Israel
Tel: 972-0-9786700
www.kobrekim.com

Recent Trends in the Italian Real Estate Market

Ariel Nachman, Head of the Global Israeli Desk

The Italian real estate market is living a rebirth, especially in Milan, which will be hosting the 2016 Winter Olympic Games alongside Cortina

Milan and Rome represent the most important markets for real estate investments in Italy. Milan being a major Italian economic and financial centre on a European scale, maintains a strong position as the favourite destinations for all types of investors and is expected to further its growth with a new additional line to its subway underway (official inauguration date is set at 2022) and as the host of the winter Olympic games in 2026 alongside Cortina. Rome as Italy's political capital is considered the second most important city in the Italian market.

The residential construction activity in Italy has increased by 5.0% during 2018 (in the first half of 2018 there were 13,000 more transactions than in the same period the previous year). However, prices of residential houses have fallen by 0.4% last year. This trend is opposite to other European countries, where the growth of prices is at least 4.3%.

The exception to this trend can be seen in newly constructed properties, which during 2018 recorded a 1.2% growth in both prices and demand with respect to the numbers of the previous year.

Conversely, the value of old residential houses is dropping dramatically, mainly due to the quality of older properties, which have not been renovated for decades.

Currently the average interest rates on mortgages is still very low (approx. 2% in January 2019). That said, the mortgages market remains relatively small due to a very cautious approach taken by Italian financial institutions following the 2007 crisis.

The highest average prices per property are recorded in Milan, which remains Italy's premier real estate market in terms of number and volume of deals. In the first half of 2018, 12,170 transactions were recorded, representing an increase of 2.8% over the previous year. Milan's residential properties' market is growing rapidly up to the point that it may not satisfy the demand of new homes within the next five or ten years.

Rome has not been able to replicate the results and prices seen in Milan, which are significantly lower. However, Rome's real estate market remains the primary one in Italy in terms of number of residential transactions, recording 15,600 transactions in the first six months of 2018. The number of real estate properties absorbed in 2018 is higher compared with the amount of transactions recorded in 2017, but the majority of them concerned domestic assets. The focus of this market is shifting to the requalification of the peripherical urban areas around the city, where investments are gradually increasing.

Investments in the commercial real estate market, are estimated at €3.2bn in the first half of 2018, representing a decrease of 44% compared to the same period in 2017. According to such numbers, the offices sector remains highly lucrative, representing 33% of the total amount of investments (amounting to €1.06bn). Legging behind is the retail sector, which had a significant growth compared to the previous year: from 22% to 31% (amounting to €1.02bn). These are followed by the industrial & logistic sector (representing 16% of the total market) and by tourism - hôtellerie sector (representing 6% of the total market).

The total investments carried out in offices in Milan during the first half of 2018 amount to €780 million, representing a decrease of 14% with respect to the same period of the previous year, while the total investments carried out in Rome amount to €276M, representing a decrease of 65% with respect to the same period of the previous year.

In terms of retail driven investments, 2018 represented a positive trend especially around shopping centres and retail parks. This trend is recorded in all the major cities across Italy

Milan maintains its market lead also in tourism, both with respect to building of new hotels and renovation of existing ones. The main deals completed over the past two years included the 4-star NYX Hotel (300 rooms),next to the Central Station, the 5-star Westin Palace Hotel (227 rooms) in Piazza della Repubblica, the 4-star M89 Hotel (55 rooms),the 5-star VIU, near the Monumentale metro station and the 5-star Savona 18 suites in the Navigli district. Demand is expected to remain high over the coming years with circa 1,500 rooms expected to enter the market. In Rome, this market is focused on acquiring luxury asset in primary locations, even though the demand of 4- and 3-stars category has recently increased.

In conclusion, the Italian real estate market is living a rebirth, mostly in the centre-northern cities.

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Ariel Nachman
Head of the Global Israeli Desk

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CityPoint One Ropemaker Street,
London, EC2Y 9SS, United Kingdom
Tel: +44 20 7628 2020
Fax: +44 20 7628 2070
Ariel.nachman@simmons-simmons.com
www.simmons-simmons.com

The Key to Entering the US Healthcare System for Israeli Technology Companies

Adam Snukal, Shareholder – Intellectual Property & Technology

How to ease the HIPAA compliance burden and be confident in your compliance plan

Are you a technology vendor to healthcare providers in the United States? Do you license a software platform or carry out data analytics for health care players in the U.S.? Have you been asked by your client to be HIPAA compliant, and/or have you been asked to sign a business associate agreement? If the answer to these questions is yes, but you're not sure whether your organization is, in fact, HIPAA compliant, now is the time to take steps to address that potential compliance gap.

HIPAA, a federal law, was enacted by the United States Congress in 1996 to safeguard US-based individuals' protected health information aka "PHI". Within HIPAA, there are two primary actors tasked with protecting PHI: the first party is known as the covered entity. Covered entities are providers or individuals working in a healthcare field with primary and direct access to PHI. These are typically doctors, hospitals, and other healthcare professionals.

The second party is the business associate, or any non-healthcare company providing services to a covered entity with access to PHI. Business associates today span broad and diverse verticals, such as IT and enterprise software, cyber-security, big data analytics, AI developers, and so much more.

Why should you consider HIPAA compliance? Covered entities can only work with business associates that are HIPAA compliant. If you are a company seeking to provide services to a covered entity, you must have a HIPAA program in place before signing a business associate agreement.

In Israel, the number of technology companies providing services to covered entities in the United States continues to grow rapidly. Regardless of whether these companies are sitting in Israel or in the U.S., in order to provide services which may include or require the vendor having access to PHI, all of these companies are required to be HIPAA compliant. Any business associate providing services to a covered entity without being HIPAA compliant risks large fines of hundreds of thousands or even millions of dollars, whether those fines are imposed on the business associate directly or on the covered entity for having engaged a services provider that isn't HIPAA complaint. By way of illustration, Anthem Health, one of the largest U.S.-based health insurers was fined $16 million in 2018 over HIPAA violations that affected over 70 million Americans, and Cottage Health has been fined twice (once in 2018 and second time in 2019) for $3 million as a result of various HIPAA violations. Thus, it is vitally important you ensure that your organization is compliant before entering into a contract with a covered entity that mandates HIPAA compliance.

How can Greenberg Traurig Tel Aviv help your company?

GT is one of the few, if not the only, law firm in Israel that provides HIPAA legal counseling for Israeli technology companies. Through our proven systems and processes, we've successfully assisted many companies, both large and small, to achieve the requisite compliance that has enabled them to participate and become active players in the US healthcare system. GT has a track record of building tailor-made HIPAA compliance programs for some of Israel's largest multi-national organizations, as well as early-stage start-ups, thereby enabling them to enter and transact in the US healthcare marketplace.

We use our knowledge of the latest HIPAA regulatory developments and our experience of counseling Israeli technology companies to identify and bridge critical compliance gaps. Our full service starts by analyzing the company's operational landscape and identifying where and whom within the company may come into contact with PHI, then we support the company to draft policies and procedures, complete documentation, and finally engage in training their workforce, which is key to HIPAA compliance.

Entering the US healthcare system is a key goal for many Israeli technology companies, but HIPAA can prove to be a barrier. With Greenberg Traurig's support, HIPAA compliance can be achieved, enabling you to reach your goals. Look us up today.

Summary Disposition in International Arbitration – Likelihood of Success[1]

Sarah Biser, Craig Tractenberg, and Jeffrey Pollock Fox Rothschild LLP, New York

A uniform pronouncement of the burden of proof necessary for a party to succeed in summary disposition of a case is conspicuously absent from international arbitration today. The formulation seems to be similar before ICSID and ICC tribunals, but the effective standard of proof required can be very different.

Summary Disposition under the ICSID Rules

ICSID Arbitration Rule 41(5) empowers the Tribunal to dismiss claims early in the proceeding which are "manifestly without legal merit." The Tribunal must render an award under ICSID Arbitration Rule 41(6) where the Tribunal lacks jurisdiction or that the claims are "manifestly without legal merit."

ICSID maintains a list of decisions addressing ICSID Arbitration Rule 41(5) on its website.[1] Of the 26 cases listed, three cases have a finding that the claim was manifestly without legal merit[2], three have partial findings to that effect, six denied such a finding and the remainder of the cases did not decide the issue. One of the cases resulting in a partial finding that the claim was" manifestly without legal merit," Trans-Global Petroleum v. Jordan ("Trans-Global"), contains this frequently cited standard:

The ordinary meaning of the word ["manifestly"] requires the respondent to establish its objection clearly and obviously, with relative ease and despatch. The standard is thus set high. Given the nature of investment disputes generally, the Tribunal nonetheless recognizes that this exercise may not always be simple....The exercise may thus be complicated; but it should never be difficult.[3]

In Ansung Housing, the Tribunal using the Trans-Global formulation, dismissed all claims based on time limitations and finding that Respondent had established its objection "clearly and obviously, with relative ease and dispatch.[4]" The Tribunal did not find it necessary to entertain Respondent's argument that the Tribunal must ignore facts that were "incredible, frivolous, vexations or inaccurate or made in bad faith" because the case could be decided on undisputed facts[5].

The time for making an application under ICSID Arbitration Rule 41(5) is early in the case. The deadline is "no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal." As the application is made early in the case, the Tribunal generally cannot decide disputed facts necessary to dispose of the application[6].

Summary Disposition under the ICC Rules

Article 22(3) of the ICC Rules require the Tribunal and parties to "make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute." Complementarily, Article 22 of the ICC Rules empowers the Tribunal to take procedural measures "to ensure effective case management." Paragraphs 59-64 of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under ICC Rules (2017) contemplates summary disposition of claims that are "manifestly devoid of merit." The Tribunal has full discretion to allow such an application at any stage of the proceeding[7].

No published ICC decisions have explained the legal standard of "manifestly devoid of merit." A 2019 unpublished ICC decision, which denied summary disposition, has explained that this is a high standard, with "manifestly" meaning "without ambiguity," and "devoid" requiring the lack of merit to be absolute. The Tribunal was concerned about several issues of mixed fact and law involving the interpretation of a contract, and chose not to perform any fact finding. Paragraph 61 of the ICC Note contemplates that the application can be entertained at any stage of the proceedings. Paragraph 62 mentions that additional evidence after the application is filed should be "allowed only exceptionally." These paragraphs suggest that in order to succeed, the application must stand on its own – as a matter of law - without presentation of substantial evidence. The Tribunal is, nevertheless, empowered to conduct a hearing on the application under paragraph 62 of the ICC Note. The 2019 unpublished ICC decision suggests that this power to conduct a hearing would be rarely invoked.

Contrast Between the Standards of the ICSID and the ICC Rules

The ICSID and ICC standards appear to be similar, but they are not the same. For ICSID cases, the Tribunal must ask itself "what additional evidence can be adduced which could prevent early dismissal if the case were to continue?" The ICSID case issues are binary, bright-line issues beyond dispute because the application must be brought before information exchanges occur. The bright-line issues are generally jurisdictional issues.

In ICC cases, the Tribunal and the parties have the benefit of document exchanges, and have additional information to either clarify or obscure the facts. Moreover, the Tribunal is entitled to conduct a hearing to decide facts, but apparently, materials supplementing the facts after the initial findings should be "allowed only exceptionally." This means that the ICC Tribunal will expect the application to be brought later in the case and only when the evidentiary record is ripe for disposition. Practitioners should not rely on the possibility of serial filings as the record must first be adequately developed. The standard of proof after hearing would normally be dictated by lex arbitri, the law of the seat of the arbitration, as would the level of proof for summary disposition. Even with the application of the lex arbitri, the decisions from tribunal to tribunal without the benefits of previous published decisions renders outcome prediction difficult.

We look to the publication of additional cases in order to aid future arbitrators and practitioners on the standard of proof required.

[1] This article first appeared on the website of the Arbitration Committee of the Legal Practice Division of the International Bar Association, and is reproduced by kind permission of the International Bar Association, London, UK. © International Bar Association.

[1] Https://Icsid.worldbank.org/en/Pages/Process/Decisions-on-Manifest-Lack-of-Legal-Merit.

[2] The three cases are Global Trading Resource Corp. and Glovex International, Inc. v. Ukraine (ICSID Case No. ARB/09/11), Award December 1, 2010, RSM Production Corporation and others v. Grenada (ICSID Case No. ARB/10/6 Award December 10, 2010 and Ansung Housing Co., Ltd. v. People's Republic of China (ICSID Case No. ARB/14/25 Award March 9, 2017.

[3] Ansung Housing Co., Ltd. v. People's Republic of China, ("Ansung Housing") ICSID Case No. ARB/14/25, Award March 9, 2017, citing Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan, ICSID Case No. ARB/07/25, para. 88 (Decision on the Respondent's Objection Under Rule 41(5).

[4] Ansung Housing at para. 70.

[5] Ansung Housing at para. 71.

[6] Trans-Global at para. 97.

[7] ICC Note para. 59-61.

Brazilian M&A environment and recent initiatives on technology and innovation laws.

Claudio Oksenberg, Paulo Marcos Rodrigues Brancher, Camilla Ribeiro Martes

This article has the purpose of presenting an outlook of the M&A environment in Brazil and its opportunities to foreign investments in light of the Brazilian innovation and digital businesses legal system resulting from recent initiatives from the new Federal Administration.

M&A activity in Brazil has been constantly increasing over the last two years. The expectations for the remaining of the year 2019 are positive and the outlook for Brazil will certainly be enhanced by the approval and implementation of several reforms proposed by the new Federal Administration, especially the pension system and tax reforms. The prospect of the combination of attractive prices, less expensive credit and international and domestic banks willing to approve financing will benefit the volume of transactions in Brazil.

An important driver for M&A activity in Brazil is the privatization agenda, which is one of the main priorities for the Brazilian Government and aims to attract the private sector to fill infrastructure gaps, especially to industries such airports, ports, energy, railroads, roads and mining. In addition, there are still other industries with growth and consolidation potential (e.g. healthcare and education) that may be further explored as the country's gross domestic product continues its tendency to grow.

Technology is also a key driver for attracting investment to Brazilian companies. Industries that are extremely important for Brazilian economy such as agribusiness, financial services, education, mobility and health are being benefited and transformed by technology. The Brazilian Federal Administration and Congress have been stimulating initiatives to foster investments in the information technology and the innovation and digital businesses. Among other initiatives it is worth mentioning the following:

1. Brazilian Data Protection Law ("LGPD"): Driven by the recent increase of data incidents and the enactment of the European General Data Protection Regulation, Brazilian Congress passed a comprehensive data protection law (Law No. 13,709/2018) with detailed rules for collecting, using, processing and storing personal data in Brazil. Any data processing may only be made in accordance with the principles set forth in the LGPD. Failure to comply with the LGPD may give rise to administrative sanctions and fines to the applied by the National Data Protection Authority. As the LGPD did not revoke sector-specific laws that sets-forth on privacy and data protection, certain obligations may continue to apply to organizations based on such laws, in addition to the LGPD.

2. The Economic Freedom Act: Signed on April 30, 2019 by the Brazilian President, the so-called Economic Freedom Act is an executive order still to be made into law by Congress that introduced certain guidelines to reduce governmental bureaucracy and interference in private party's relations, speeding up the opening and closing of businesses in Brazil and protecting investors from companies failure, all with the purpose of stimulating the entrepreneurial activity in Brazil.

3. The "Startups' Act": With the main purpose of adoption new rules that reduce obstacles for innovation and enhance sustainable growth for emerging companies in Brazil, the Federal Government launched a public consultation related to the legal framework of startups, which main topics, among others, are: the creation of the simplified corporate structure that would benefit from the existing rules applicable to corporations, but in a simplified way, which includes the possibility to have a single shareholder, flexibility on distribution of dividends and on the overall governance of the company ; a simpler tax procedure with cost reductions for making and exiting from investments; flexibility of contracting with the government; and fostering research, development and innovation.

Although still under consolidation, the initiatives above have been hot topics in the Brazilian legal market and reinforce the growth trend of Brazilian M&A and foreign investment activities, especially in the technology industry, which includes the rise and spread of venture and corporate capital investments.

MATTOS FILHO >
Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados

Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados

Claudio Oksenberg
Partner at the Corporate and M&A Practice

Paulo Marcos Rodrigues Brancher
Partner at the Intellectual Property and Innovation and Digital Businesses

Camilla Ribeiro Martes
Senior Associate at the Corporate and M&A Practice

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1992

Line of Business
Law Firms

Al Joaquim Eugênio de Lima 447, São Paulo, SP – Brazil - 01403-001
Tel: +55 11 3147 7600
Praia do Flamengo, 200 11º andar, Rio de Janeiro, RJ – Brazil - 22210-901
Tel: +55 21 3231 8200
SHS Q. 6 Conjunto A, Bl. C S. 1901, Brasília, DF - Brazil - 70316-109
Tel: +55 61 3218 6000
34 East 51st Street, 12th floor, New York, NY 10022 U.S.A.
Tel: +1 646 695 1100
5th floor, 32 Cornhill, London UK EC3V 3SG
Tel: +44 (0)20 7280 0160
Mattosfilho@mattosfilho.com.br
www.mattosfilho.com.br

Expand Your Business Thanks To France

Stéphanie Benmoussa-Molkhou

France is the place to be within the EU for growth stage companies. France has also put itself firmly on the world map of startup nations.

"Choose France". This is slogan of the French government in order to attract foreign investors. As the only structured French business law firm with permanent offices in Israel for years, we at Bersay & Associés have witnessed a change in the perception of France from an Israeli standpoint.
Israeli companies are seriously considering France as a market to expand their business and as a gateway to Europe.

Why should Israeli companies choose France?

Israeli companies in the growth stage:

- They will find large clients. France is at the forefront of many industries such as:
  - **Aerospace, Defense & Security** (Safran, Thalès, Zodiac, EADS, Airbus, Dassault, DCN, SAGEM, Alcatel, Eurocopter)
  - **Automotive** (PSA Peugeot Citroën, Renault)
  - **Energy**, Oil & Gas (Total, EDF, Areva, Veolia, ENGIE)
  - **Infrastructure & Construction** (Bouygues, Vinci, Eiffage)
  - **Transportation & Aviation** (Alstom, SNCF, Air France, Airbus)
  - **Healthcare & Pharmaceutical** (Sanofi, Pasteur, Stallergenes)
  - **Telecommunications** (Numericable, Orange, Free)
  - **Banking** (BNP, Crédit Agricole, Société Générale, BPCE)
  - **Cosmetics and Luxury Goods** (L'Oreal, Dior, Hermes, Louis Vuitton, L'Occitane, Bourjois, Lancôme, Sephora, Yves Rocher).

- They will profit from the Brexit effect as European financial institutions are relocating to Paris. Significantly, in June 2019 the European Banking Authority moved from London to Paris.
- France is a Fintech Hub. It has notably passed a law aiming at boosting the French crowdfunding sector. Another law has been passed which authorized the blockchain mechanism in order to trade unlisted securities. These moves are attracting both Fintechs and SMEs to grow in France.
- They can reach a huge market of 67 million people.
- Retail companies and any BtoC company can take advantage of France's big market which will also be its gateway to the rest of Europe.

Israeli startups are choosing France

France has the ideal world-class R&D and innovation tax regimes.
Existing incentives include:

- Reduced Corporate Tax Rate - 15% corporate tax rate applying to profits resulting from an IP transaction (royalties and capital gains on sale of patent held for more than two years).
- Regular Company Tax: progressively reduced to 25%
- R&D Tax Credit
  - Tax credit rate: 30% up to €100 million of the R&D total expenditures, and 5% above this ceiling;
  - Possibility to obtain a tax rebate where the company does not owe any corporate tax.
- Young Innovative Companies special tax regime
  This tax regime is dedicated to French companies meeting some criteria (created in the last eight years, with fewer than 250 employees, less than €50 million in turnover or €43 million in assets, etc.)
  They benefit from:
  - Total exemption of corporate tax for the first profitable year and then 50% tax relief for the following profitable year (cap at €200,000 in any three-year period).
  - Full exemption for seven years from part of the social security contributions for employees dedicated to the R&D operations.
  - Exemption from capital gains tax relating (under certain criteria).
  - Regular Company Tax: progressively reduced to 25%.

Expand your business thanks to France

France is a vast territory composed of thirteen separate regions. Each region is eager to attract foreign companies, able to provide vital market information and even introduce you to potential clients.
Moreover, recent employment reforms have given more visibility and flexibility to companies in France, including:

- Maximum indemnity in case of unfair dismissal, depending of the seniority of the employee.
- Allowing struggling companies to make redundancies in France, even when their overseas business is flourishing.
- Mutual termination agreement which is a smoother way to terminate an employee-employer relationship.

Bersay & Associés has established a reputation for high quality and business-oriented work, linking Israel with France. A wide range of companies, from startups to multinationals, turn to Bersay & Associés when doing business with France.
With the right advisors on your side, you can tackle any challenges and make your business flourish.

Bersay & Associés

Stéphanie Benmoussa-Molkhou
Managing Partner

Jérôme Bersay
Managing Partner

Additional Partners
Alain Jouan
Dimitri-André Sonier
Anya Hristova
Frédéric Flatrès
Martin Tissier
Anne-Lise Puget
Nathalie Cerqueira
Cyrille Gogny-Goubert
Claire Poirson

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1995

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Bersay & Associés addresses the legal needs of businesses.
Its practice covers all of the main areas of business activity, in an advisory capacity as well as in litigation and arbitration, and in both domestic and cross-border matters.

31, avenue Hoche, 75008 Paris, France
Tel: +33 1 56 88 30 00
Tel: +33 1 56 88 30 01
www.bersay-associes.com

Structuring Hotel Management Agreements

Thomas Page, Global Head of Hotels & Leisure, CMS, London

How does a management agreement work?

A hotel management agreement is an agreement under which the owner of the hotel appoints a hotel operator to manage the hotel business on the owner's behalf. The operator provides management services and gives the owner a right to use its brand name and access to the operator's central reservation system, loyalty programmes and sales and marketing programmes. In return, the hotel owner pays the operator fees.

This can be distinguished from a franchise, which is mostly a brand licensing arrangement. Under a management agreement, the business owner outsources day-to-day control of the business to a specialist hotel operator. Under a franchise, the owner continues to operate the hotel itself.

It is possible to combine a franchise and a management agreement and license a brand from one branded hotel operator under a franchise and also appoint another "white label" operator to manage the hotel on a day-to-day basis.

Real estate investors and managed hotels

Most real estate investors who have not invested in managed hotel before will be used to receiving their income in the form of rent. However managed hotels are one of the few passive real estate investments where the owner receives trading income, rather than rental income.

As a result, real estate investors new to managed hotels have to get used to a number of factors:

- Business risk – the owner assumes primary business risk and liabilities, in exchange for receiving all of the profits after management fees.
- Tax treatment of trading income.
- Employment of staff –the owner is typically the employer of the hotel staff.
- Capital expenditure – the owner has to fund capital expenditure on the furniture, fittings and equipment (FF&E) as well as the property.
- Working capital – the owner is responsible for ensuring that the hotel has sufficient cash to cover operating expenses as and when they arise.

These types of operational management agreements used to be unique to the hotel industry, but we are now seeing very similar arrangements used in other operational real estate investments such as student accommodation, serviced apartments, data centres and restaurants.

Typical management agreement terms

A branded hotel management agreement is usually a long term arrangement – anything from 15-40 years or more in length. Operators will seek to restrict any termination by the owner. Owners will seek to retain some termination rights, but to do so often comes at the expense of an agreed termination fee or other terms that may be more onerous than if there were no termination rights.

In good locations, operators are keen to get long-term contracts and will often pay the owner a premium, known as key money, to secure an agreement with minimal termination rights. Unbranded management agreements are typically much shorter and often have more flexible termination rights.

The fees are usually expressed as a percentage of hotel revenue, plus a percentage of profit. The percentages may change over time or may change depending upon the profit margin achieved by the hotel. The key for an owner is to ensure that the overall fee arrangements are structured so as to ensure that the interests of the operator and the owner are aligned and if the hotel is successful, both parties will share in that success. This incentivises the operator to deliver outperformance.

Managing underperformance

From an owner's perspective, it is important to ensure that not only is an operator rewarded when the investment outperforms, but also that the operator is penalised when the investment underperforms. This can be achieved through a number of levers, such as ratcheted fees (fee rates change with margin), owner's priority return (profit threshold for payment of certain fees) and performance test (the right to terminate without compensation if the operator underperforms against defined key performance indicators (KPIs)).

CMS
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Andrew Besser
Partner, CMS


Louis Glass
Partner, CMS


Thomas Page
Global Head of Hotels & Leisure

Established
1779

Line of Business
Law Firms

Cannon Place, 78 Cannon Street
London EC4N 6AF
Tel: +44 (0) 207 367 3000
Tel: +44 (0) 207 367 2000
http://cms.law

Optimising the structure

The exact structure of the hotel management agreement on each hotel will depend upon the particular requirements of the owner/investor, its lender, the operator (and the brand owner if different) and whether the management agreement is being put in place for a new development, a conversion or an existing hotel that is re-branding. Experienced advisers can advise on the optimum structure for any given circumstances.

SEC Enforcement: Beware Of Land Mines!

Richard A. Kirby and Beth-Ann Roth

U.S. regulatory pitfalls may not be apparent...

So how does one steer clear of land mines? Fortunately, many of the potential legal problems that lie just beneath the surface can be anticipated. Unfortunately, many are not obvious, and can lead the SEC or another federal or state regulator to question your actions. Once you're in their web, it's harder to get out, so seek experienced counsel early on in the process.

Managing or raising money.

Your outreach to friends and family may seem innocent, but U.S. laws governing money managers and start-up funding are intricate and can implicate specific requirements. Make sure your website makes it clear who your target customers are. We have seen non-U.S. companies get into trouble with the SEC even when they are not soliciting U.S. business, simply because they have a U.S. address listed on their English-language website without adequate disclaimers.

Crypto/blockchain issues.

This area is rapidly evolving. The SEC has issued guidance and approved some offerings, but it left many questions unanswered or not clear enough for comfort. Seek counsel before moving forward with any activity that potentially "touches" the U.S.

Just read the law, right?

It is essential to consult statutes and regulations to know your obligations. But that's often not the full answer. Much U.S. securities law is further defined by administrative pronouncements. Professional securities-law counsel can help you navigate these waters.

It's "just" a form. I can handle it.

You want to register your company's activities, and the questionnaire seems straightforward. But those administrative positions noted above are relevant here as well. Filings are public, so a seemingly-correct but technically-inaccurate answer on a form can be deemed by the SEC to be false and misleading and therefore a securities-law violation worthy of fines or other sanctions.

The SEC is asking questions. What should I do?

You might be the target of the inquiry, or you might be a witness. It is often impossible to tell from the inquiry itself. It is important, therefore, to take any inquiry seriously and respond with extreme care. But how did this happen?

All regulatory inquiries are based on "cause." This means that the SEC likely received a tip from a "whistleblower" (an informer), an investor complaint, or a referral from another law-enforcement agency. Congress adopted the whistleblower program after the 2008 financial crisis, and offers financial rewards in exchange for information that leads to a successful case. Whistleblowers even retain advisers to help them maximize opportunities for awards.

Leads also come from state agencies, industry entities such as FINRA or the NYSE, and non-U.S. regulators. The SEC conducts its own "sweeps," targeting specific issues or entire industry segments. The SEC has limited resources, so in order to maximize its reach it employs a sophisticated data-driven methodology for selecting cases.

You are always entitled to legal representation, even if the inquiry seems informal and inconsequential. You should take advantage of that right. Counsel can intercede to understand the source of the inquiry, as well as the focus of the government. This applies to all interactions with the government of any kind. What you say in your responses can get you into trouble, even in cases where you might otherwise have been able to steer clear of the government's grasp.

We are experienced SEC defense and securities law counsel and would be pleased to assist you.

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R|K Invest Law, PBC


Richard Kirby
Partner


Beth-Ann Roth
Partner

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1725 Eye Street, NW Suite 300
Washington, DC 20006
Tel: + 972 (0)52 612 1364,
+1 (202) 6647171
Fax: +1 (866) 788-9942
www.investlaw.net

Swiss Law and Swiss Fin Tech Environment as an Opportunity for Israeli clients

Tamir Livschitz and Clara-Ann Gordon

Swiss law and jurisdiction as an attractive solution for cross-border business

Swiss law is one of the most common laws parties choose to apply as a neutral solution to govern their cross-border business. Even parties domiciled in classic common law jurisdictions regularly revert to Swiss law as a neutral law, easily accessible and intelligible for lawyers and non-lawyers alike. Contract negotiators and drafters from all over the world are attracted by the clearly defined, liberal and predictable legal framework Switzerland provides. Parties in particular appreciate the great degree of party autonomy they enjoy under Swiss law. Accordingly, there are only few limitations in Swiss law to what parties can regulate in their contractual dealings.

In contentious situations, Swiss law is known to respect the need of protecting trade secrets and confidential information. Accordingly, far-fetched discovery proceedings threatening to expose trade secrets are as unknown in Switzerland as wide disclosure obligations amongst contracting parties. As a further and welcome side effect, parties have also come to appreciate that no risk of incurring extensive costs and legal fees related to discovery and disclosure exercises exists.

The business-friendly Swiss law is certainly one reason why Switzerland is home to some of the largest global companies and has one of the highest concentrations of Fortune500 companies in the world. And Switzerland's liberal legal landscape is also one of the reasons why it hosts many international organizations like the United Nations, the World Trade Organisation (WTO), the World Intellectual Property Organisation (WIPO), the International Air Transportation Association (IATA), the International Olympic Committee (IOC), FIFA, UEFA or FIBA.

For many decades, Switzerland has been one of the preferred venues for hosting international arbitrations. Since 2000, Swiss cities have invariably been ranked first or second among the chosen venues for ICC arbitration proceedings worldwide. With its international arbitration law, Switzerland is one of the forerunners of modern arbitration laws worldwide. Clear and modern, with its concise 18 articles, the arbitration law supports an arbitration-friendly and efficient regime which highlights Switzerland's strong support for international arbitration.

NKF has for many years been representing a significant number of Israeli clients in their cross-border contractual dealings conducted under Swiss law, and in disputes resolved in commercial arbitration proceedings in Switzerland. Dual-qualified lawyers (Switzerland and Israel) make part of NKF's Israel desk.

Fintech Landscape in Switzerland

Switzerland strongly supports innovation both on the governmental and on the corporate level. This includes fintech innovation. The country has a strong and mature financial market and strong service industries which support such initiatives. Well-known internationally is the so-called "Crypto Valley", a fintech hub focussed on crypto offerings located in Zug, a small canton close to the financial centre of Zurich. Google, IBM, Disney, Thomson Reuters and The Federal Institute of Technology ETH all established research laboratories in and around Zurich, adding to the technical innovation network. Zurich University recently announced that it will create 18 new chairs for digital innovation studies; Zurich University also intends to further enhance its research on artificial intelligence. There are numerous companies focussing on digital offerings, specialized once like Swissquote, Temenos, Avaloq, and others providing IT support and IT-focussed financial services but also the major Swiss banks like UBS and Credit Suisse who both have fintech innovation laboratories. Several projects are currently aiming at setting up crypto and fintech focussed banks and apply for a banking license with the Financial Market Supervisory Authority FINMA.

There are numerous initiatives by government bodies and regulators to provide support to financial innovation. The most comprehensive one is the "Digital Switzerland" initiative that coordinates various private initiatives and provides governmental support to such initiatives. FINMA set up a special fintech desk as a competence centre for fintech applications and fintech enquiries. Through such desk, FINMA issued e.g. guidelines for initial coin offerings in 2018 and confirmed its willingness to review submissions for initial coin offerings and provide clearance letters for such offerings confirming that an ICO will not be in breach of Swiss regulations. Through the state agency "Innosuisse", the Swiss Federation supports technology based innovation in Swiss enterprises. Innosuisse offers coaching, thereby helping startups to raise capital.

NKF has in recent years advised a number of Israeli clients with an interest in the Swiss Fintech market.

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Niederer Kraft Frey Ltd

Clara-Ann Gordon
Partner

Tamir Livschitz
Partner

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Niederer Kraft Frey is a leading full service Swiss law firm based in Zurich with an international approach. NKF works closely with its clients in Switzerland and internationally, to implement strategic goals, strengthen businesses and navigate change effectively

Bahnhofstrasse 53, 8001 Zurich
Switzerland
Tel: +41 58 800 80 00
Fax: +41 58 800 80 80
nkf@nkf.ch
www.nkf.ch

dun & bradstreet

ROBUS
Consulting & Legal Marketing