



# **Accession of Israel to the OECD**

## **Review of international investment policies**



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## FOREWORD

This review is based on the report prepared by the Investment Committee as part of the process of Israel's accession to OECD membership.

The OECD Council decided to open accession discussions with Israel on 16 May 2007 and adopted an Accession Roadmap, setting out the terms, conditions and process for accession, on 30 November 2007.

In the Roadmap, the OECD Council requested a number of OECD Committees to provide it with a formal opinion. In light of the formal opinions received from OECD Committees and other relevant information, the OECD Council decided to invite Israel to become a Member of the Organisation on 10 May 2010.

In the Accession Roadmap, the Investment Committee was requested to examine Israel's position with respect to OECD instruments, standards and benchmarks, to assess the adequacy of its policies taking into account its economic and social situation and to provide the Council with its formal opinion on the willingness and ability of Israel to assume the obligations of membership in the field of investment.

The accession review of Israel was based on the following information:

- The Initial Memorandum of Israel setting out its preliminary position under all OECD legal instruments;
- The responses of Israel to a questionnaire prepared by the Investment Committee;
- A Secretariat mission on 3-5 November 2008;
- A Secretariat report which was revised following each accession review meeting;
- Accession review meetings of the Investment Committee on 15 December 2008 and 17 June 2009 comprised of a question and answer session with the Israeli Delegation and a closed session during which the Committee discussed its conclusions;
- The response by Israel to a letter from the Chair of the Investment Committee Accession Examinations requesting further improvements, confirmations and clarifications of the country's position under the instruments, following the first accession review meeting and the letter from Israel following the second accession review meeting; The technical assessment of the Committee's Working Group on International Investment Statistics (WGIIS) which considered Israel's position under the Benchmark Definition of Foreign Direct Investment, its response to the Survey of Implementation of Methodological Standards for Direct Investment (SIMSDI) and its commitments regarding the reporting of statistics on international investment;

- Information on recent macroeconomic and financial developments provided by the Secretariat of the Economic and Development Review Committee;
- The outcome of the review of Israel by the Committee on Financial Markets concerning the parts of the Codes of Liberalisation dealing with banking and financial services, as reflected in its formal opinion;
- The outcome of the review of Israel by the Insurance and Private Pensions Committee and its Working Party of Governmental Experts on Insurance concerning the parts of the Codes of Liberalisation dealing with insurance and private pensions.

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<sup>1</sup> This review was finalised on the basis of information available as of 6 October 2009, date of its approval by the OECD Investment Committee.

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## 1. INTRODUCTION AND SUMMARY

### 1.1. Accession Review Procedure<sup>2</sup>

The Accession Roadmap provided that Israel should commit to the following core principles in the investment area [Annex 1]:

- i) full compliance with the principles of non-discrimination, transparency and ‘standstill’, in accordance with the OECD Codes of Liberalisation and the National Treatment instrument of the OECD Declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);
- ii) an open and transparent regime for FDI including in key sectors. Restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;
- iii) liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;
- iv) no restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;
- v) relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;
- vi) fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;
- vii) effective enforcement of intellectual property rights;
- viii) key commitments under investment protection and other international agreements;
- ix) capacity to present a credible plan for the establishment of a visible, accessible, transparent and accountable National Contact Point for the OECD Guidelines for Multinational Enterprises; evidence of the candidate's commitment to the various international instruments cited in the Guidelines.

The Roadmap specifically provided for:

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2 This review is not intended to cover the territories known as the Golan Heights, the Gaza Strip or the West Bank. However, for technical reasons, this review sometimes uses Israel’s official statistics, which include data relating to the Golan Heights, East Jerusalem and Israeli settlements in the West Bank.

- i) A review and assessment by the Committee of the willingness and ability of Israel to assume the obligations of the Decisions on the Codes of Liberalisation of Capital Movements and Current Invisible Operations (1961 and subsequent amendments) and of the Decisions Related to the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments).
- ii) A review and an assessment by the Committee of Israel's position under the Recommendation on the OECD Benchmark Definition on Foreign Direct Investment (1995, recently revised) and under the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments). In addition, Israel would be required to comply with statistical reporting requirements associated with the Benchmark Definition.
- iii) An assessment of Israel's position under the Recommendation on OECD Principles for Private Sector Participation in Infrastructure.

The Investment Committee's Report on Israel's Position under the OECD Investment Instruments presents the full account of the Investment Committee's examination of Israel. The Report was transmitted to Council separately for the adoption of the lists of proposed reservations by Israel to the Code of Liberalisation of Capital Movements and to the Code of Liberalisation of Current Invisible Operations, as well as proposed updated exceptions to the National Treatment instrument.<sup>3</sup> The Report also includes the updated list of measures reported for transparency in accordance with the Declaration on International Investment and Multinational Enterprises.<sup>4</sup>

## 1.2. Israel's position under OECD instruments relating to investment

Of the 18 OECD instruments in the investment field (see Annex 1 for a complete list) Israel has already formally adhered to two: the Declaration on International Investment and Multinational Enterprises in 2002 and the Declaration on Sovereign Wealth Funds and Recipient Country Policies in November 2008.

Israel accepts all of the OECD investment instruments with the following qualifications:

- *Decision of the Council adopting the Code of Liberalisation of Capital Movements [OECD/C(61)96]*

Israel accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Capital Movements [Annex 2].

- *Decision of the Council adopting the Code of Liberalisation of Current Invisible Operations [OECD/C(61)95]*

Israel accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Current Invisible Operations [Annex 3].

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<sup>3</sup> Information on the OECD Codes of Liberalisation can be found at [www.oecd.org/daf/investment/codes](http://www.oecd.org/daf/investment/codes)

<sup>4</sup> Information on the OECD Declaration on International Investment and Multinational Enterprises, including the National Treatment instrument, can be found at [www.oecd.org/daf/investment/declaration](http://www.oecd.org/daf/investment/declaration)

- *Declaration on International Investment and Multinational Enterprises [C(76)99]*

Israel accepts the Declaration and related Decisions and Recommendations [C(89)76; C(88)131; C(88)41; C(87)76 and C(86)55] subject to a list of proposed exceptions to the National Treatment instrument. Israel also updates a list of other measures reported for transparency under the instrument [Annexes 4 and 5].

### ***The Codes of Liberalisation***

Israel has endorsed the objectives and principles of the Codes of Liberalisation of Capital Movements (CLCM) and Current Invisible Operations (CLCIO), hereinafter “Codes of Liberalisation”. Israel’s acceptance of the obligations of the Codes of Liberalisation is subject to reservations, which are listed in Annexes 2 and 3 of the Report. The Report examines the conformity of measures maintained by Israel with the Codes of Liberalisation, as well as the implications of Israel’s proposed adherence to the OECD Codes of Liberalisation. Israel’s proposed position under the OECD Codes of Liberalisation can be summarised as follows:

In the field of *inward direct investment*, Israel does not maintain trans-sectoral restrictions, except on ownership of land by foreign investors. Sectoral restrictions concern the establishment of branches in certain financial services; maritime and air transport; telecommunication services; and electricity. Overall, the level of restrictiveness of Israel’s regulations relating to inward direct investment is slightly below the OECD average [Annex 6].

Israel maintains few restrictions on *other capital movements*. The purchase of land by foreigners for non-FDI purposes is restricted and portfolio investment may be affected in sectors where restrictions on inward direct investment apply to aggregate foreign ownership.

In the field of *exchange controls*, the convertibility of the domestic currency enables residents and non-residents to freely carry out payments and transfers in connection with current international transactions, as well as with permitted capital account transactions. Israel accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund in September 1993.

In the field of *cross-border trade*, Israel proposed reservations in the following areas: road transport services; insurance services, except reinsurance and retrocession (no restrictions apply to the transfer of social security and social insurance payments and branching); certain banking and financial services; and professional services.

Before accession to the OECD, Israel committed to further liberalise certain items falling under the CLCM and the CLCIO. The liberalisation extended to the conditions of marketing of shares or units in a foreign mutual fund; the provision of underwriting services; and the elimination of the incorporation requirement for investment advisors, investment marketers and portfolio managers. These legislative changes lead to a narrowing or elimination of the proposed reservations under the relevant items.

Israel has confirmed its commitment to comply with the principle of non-discrimination, in accordance with Articles 8 and 9 of the Codes of Liberalisation and as required by the Roadmap for the Accession of Israel. Israel has confirmed that reciprocity clauses will not apply to OECD countries.

Israel maintains national security related measures in the areas of defence and privatisation. Israel has committed to observe the guiding principles of non-discrimination, transparency and predictability, proportionality, and accountability in the implementation of national security related investment measures as expressed in the Recommendation on Guidelines for Recipient Country Investment Policies relating to

National Security, adopted by the OECD Council on 25 May 2009 [C(2009)63]. Israel took part in the development of this Recommendation as a participant in the Freedom of Investment process and formally accepts the Recommendation.

***Declaration on International Investment and Multinational Enterprises***

Israel's updated lists of exceptions to national treatment and of other measures reported for transparency are presented in Annexes 4 and 5 of this Report.

With regard to the Guidelines for Multinational Enterprises contained in the Declaration on International Investment and the subsequent Council Decision on the OECD Guidelines for Multinational Enterprises [C(2000)96], Israel has made efforts to promote the Guidelines and the establishment and operation of a National Contact Point (NCP). No specific instance has been brought before the Israeli NCP so far.

## 2. INWARD DIRECT INVESTMENT

### 2.1. Foreign direct investment trends

In recent years, *foreign investment in the Israeli economy* has primarily been in the form of direct investment (FDI). A comparison of investment between the periods 1997-2000 and 2001-2008 shows a significant increase in direct investment and a considerable decrease in other forms of investment. During the first period (1997–2000), the economy enjoyed large investments in bonds covered by US government guarantees and a boom in greenfield investments in high-technology industries. During the second period (2001-08), there was a decline in these categories of investment, while direct investment in the form of mergers and acquisitions increased. The volume of direct investment in the years 2006-8 was dramatically higher than the average for 2003-05 (Table 1).

**Table 1. Table 1. Inward investment, direct and portfolio, 2001-2008**  
(in USD billion)

	2001	2002	2003	2004	2005	2006	2007	2008
<b>Direct investment</b>	<b>3.6</b>	<b>1.9</b>	<b>4.1</b>	<b>2.5</b>	<b>4.3</b>	<b>14.8</b>	<b>10.0</b>	<b>10.5</b>
High-tech industry	3.1	1.2	2.6	0.1	3.2	5.5	5.1	3.2
Traditional industry	0.4	0.6	1.1	1.6	3.2	6.8	2.6	3.2
Banking	0.1	0.0	0.1	0.0	-1.2	0.8	1.0	0.4
Other	0.1	0.1	0.3	0.8	-0.9	1.6	1.3	3.7
<b>Portfolio investments</b>	<b>0.1</b>	<b>1.8</b>	<b>1.2</b>	<b>6.8</b>	<b>3.5</b>	<b>9.1</b>	<b>1.4</b>	<b>0.2</b>
High-tech industry	1.4	0.6	-0.2	3.5	-0.3	6.1	-0.6	2.2
Traditional industry	-0.6	0.0	-0.2	0.5	2.3	1.0	1.6	0.2
Banking	0.0	0.0	0.2	0.4	1.4	1.4	-0.4	1.4
Other	-0.7	1.1	1.4	2.4	0.3	0.6	0.9	-3.6

Source: Bank of Israel

FDI in Israel is primarily determined by the attractiveness of its high-technology industries and its growth prospects. Most of the investment flows are made up of a few large transactions that are implemented when the negotiations are completed. These investments are less influenced by current market conditions. Total FDI stood at about 5% of the total market value of shares.

*Direct investment abroad by Israeli residents* totalled about USD 7.7 billion in 2008. This is a historically high level which was exceeded only in 2006 (Table 2). Direct investment abroad by Israeli residents is part of the growth process of Israeli companies through which they increase their profitability and their ability to compete globally. Israeli companies, depending on their commercial strategies and levels of productivity, either purchase existing production capacities (if aiming at expanding their markets) or set up greenfield investments (if their productivity is already high).

The average breakdown of FDI outflows by industry during the period 2002–07 shows that most investments were made in pharmaceuticals (63%), real estate (12%), high-technology (9%) and banking and finance (6%). In 2007, more than half of the investment (52%) was made in real estate. As investments

in real estate are characterised by a low proportion of equity capital, with the balance being financed by loans, the value of assets held abroad by Israeli residents is larger than the flow of direct investment. Israeli companies invested in real estate using equity, funds obtained from the global banking system and funds raised through the issue of bonds and shares by their subsidiaries abroad. This model of expansion has its own risks, as is demonstrated during the present financial crisis. Israeli investors face some difficulties in refinancing these loans, although until now this has not led to a systemic problem.

In 2008 about half the direct investments were in the high-tech industry, 20% were in the traditional industries, 20% in chemicals and metals, and 10% in the traditional services (not including one exceptionally large transaction in the high-tech industry in December 2008). By far the largest part of FDI in 2008, as in the previous two years, was in companies that are not traded on the stock exchange. A significant share of FDI in Israel is made in start-up companies, real estate and reinvestment of accumulated profits in Israeli companies. Foreign investments in start-ups expanded markedly in 2008, reaching USD 1.6 billion, with a notable increase in the second half of the year.

**Table 2. Table 2. Total outward investment, direct and portfolio, 2001-2008  
(in USD billion)**

	2001	2002	2003	2004	2005	2006	2007	2008
<b>Total outward investment</b>								
<i>Of which</i>	<b>4.3</b>	<b>4,3</b>	<b>8.4</b>	<b>14.3</b>	<b>18,1</b>	<b>33.9</b>	<b>17.1</b>	<b>13.9</b>
Direct investment	0.7	1.0	2,1	4.5	2.9	14,9	6,8	7,7
Portfolio investment	1,2	2,6	3,2	2.9	8.0	8,0	3,9	1,7

Source: Bank of Israel

## 2.2. General legal framework for FDI

Israel does not have a general law directed at foreign direct investment *per se*. The Companies Law, in effect since February 2000, provides the legal framework for corporate activity. It applies to both domestic and foreign investors. In order to obtain legal status, companies must register with the Registrar of Companies. For companies incorporated pursuant to the Companies Law, there is a distinction between “public companies” - those whose shares are listed for trading on a public stock exchange, or have been offered to the public pursuant to a prospectus, and “private companies” – all others.

The most common form of corporate entity operating in Israel is the limited company. It may be founded by a single person. The minimum number of directors required for private companies is one. However for public companies, at least two of the directors must come from “outside” the company, *i.e.* directors who have no business or other relationship with the company. Generally, outside directors are required to be Israeli residents; however, the Companies Law permits companies that list their shares abroad to appoint a non-resident director.

The Companies Law defines Israeli companies as companies incorporated under Israeli law, and foreign companies as companies “registered outside Israel and any body of persons, other than a partnership, registered or incorporated outside Israel that maintains in Israel a place of business or an office for registration or transfer of shares”. In order to keep a place of business in Israel, including maintaining an office for the transfer of shares or for the registration of shares, a foreign company must be registered and pay registration and publication fees.

Branches of companies incorporated outside Israel, in the meaning of the Codes of Liberalisation, fall under the category of foreign companies. The application for registration as a foreign company must be submitted to the Registrar within one month of setting up a place of business. It must be accompanied by a copy and translation into Hebrew, of the documents under which the company is incorporated or pursuant

to which it operates, as required by the laws of the country in which it is incorporated, including its articles of association, if any; a list of the directors of the company; the name and address of a person resident in Israel who is authorised to receive judicial documents on behalf of the company and to receive notices issued to the company; and a certified copy of a power of attorney authorising an Israeli resident to act on behalf of the company in Israel.

Other forms of business entity include partnerships, which may be general or limited, co-operatives and non-profit organisations. Each of these is a legal entity and needs to be registered with the appropriate business authority. According to Article 57 of the Partnership Ordinance (New Version) of 1975, a limited partnership must be comprised of at least one general partner obligated personally for all the debts of the partnership and at least one limited partner that is obligated only up to the amount it invested in the partnership. There are no restrictions on the participation of foreigners in partnerships established under Israeli law. A foreign partnership, *i.e.* one formed outside Israel, may only conduct business in Israel if it is registered with the Israel Registrar of Partnerships.

None of the above requirements conflicts with the Codes' obligations regarding inward direct investment.

In response to a request by the Investment Committee, the Israeli authorities have indicated that Israel's investment legislation, including the 1959 Law of Encouragement of Capital Investments and the 1984 Law of Encouragement of Industrial Research and Development, applies to the Golan Heights but not to the Gaza Strip, nor to the West Bank. However, the Government does apply the investment incentives under the Law of Encouragement of Capital Investment to certain industrial areas in the West Bank. Foreign-owned enterprises may be established in those areas and are eligible for applying for grants under that law.

### ***Transparency, consultation and accountability in public decision-making***

The Israeli authorities have taken steps to promote transparency and accountability in the making and implementation of laws and regulations affecting foreign investment.

Laws and regulations of interest to investors, as well as requirements to obtain permits and licenses are described and available through the relevant government websites. The Investment Promotion Center is an operational branch of the Ministry of Industry, Trade and Labor, whose principal function is to encourage foreign investment in Israel and cooperation between Israeli and foreign corporations. The Center serves as a clearinghouse for information, which involves answering foreign or Israeli inquiries concerning government investment incentives, costs, referrals to the appropriate authorities, etc.

The Government Rules of Procedure require consulting the public prior to any regulatory changes. Non-governmental bodies may submit comments and participate in discussions which take place in the Knesset committees before the adoption of new or modified laws. The full text of proposed government (primary) legislation is published in the Official Gazette and on the website of the Ministry of Justice. Draft bills are published on the websites of the ministries in charge of preparing the bills. In the case of secondary legislation (regulations) each ministry is required to prepare a list of bodies which it would be advisable to consult during the preparations of regulations. These should include bodies that will be substantially affected legally, economically or socially by the proposed regulations.

The Israeli authorities have indicated that impact assessments of policies and planned measures are generally carried out to ensure that they meet their intended purposes and are proportionate to the objectives pursued.

In order to guarantee the procedural fairness and integrity of the approval processes, judicial redress is available to domestic and foreign investors alike. The Israeli court system is open to any legal or natural person who has a right of action under Israeli law. Arbitration and mediation procedures are also available in Israel. They are not part of the regular judicial system, but can be used upon agreement between parties to disputes. The arbitrator's decision has the status of a final court judgment, unless the parties have agreed to be able to appeal the decision. A foreigner may also bring an action before the administrative court system or the High Court of Justice against a decision made by government authorities arguing that the decision was *ultra vires* or patently unreasonable.

### ***Operations in real estate***

The purchase, including for business purposes, of land administered by the Israel Land Administration (ILA) by foreign nationals and foreign-controlled legal entities is subject to prior approval by the ILA. There are various reasons for this requirement: Israel being a densely populated country, the authorities consider it necessary to ensure some land is reserved for public infrastructures. Other reasons are national security and limiting price speculation of land.

These restrictions call for the proposed reservations under items I/A (inward direct investment by non-residents) and III/A (operations in real estate in the country concerned by non-residents) of the CLCM (Annex 2). The restrictions were already reflected in Israel's list of exceptions under the NTI (Annex 4).

According to the Israeli authorities, the practical impact of this requirement on foreign investors is not significant. In the last four years there were no refusals regarding the transfer to, and tenancy of real estate by foreign nationals. Foreigners submit a request in writing to the relevant District Office of the Israel Lands Administration in order to receive its approval for acquiring rights in land. The District Office sends the request to the sub-committee of the ILA Council, which within 6 weeks returns with a recommendation to be adopted by the Chairman of the Council. For lands designated for industrial purposes and being allocated without a tender procedure, a recommendation from the Minister of Industry, Trade and Labor is required. For lands designated for construction of hotels, a recommendation from the Minister of Tourism is required. Enterprises with "approved status" under the Law of Encouragement of Capital Investments<sup>5</sup> are virtually automatically granted approval by the Council.

### ***Essential security interests***

At the time of its adherence to the OECD Declaration on International Investment and Multinational Enterprises in 2002, Israel had indicated that it reserves the right to deny a foreign investment or an activity of an enterprise in which substantial holdings are held by foreigners, if there is evidence that this investment or activity would hinder the maintenance of essential public security interest and if other laws are insufficient to deal with this risk. This mechanism had been reflected in a trans-sectoral statement in Israel's list of national security measures reported for transparency under the NTI (Annex 5).

In response to the Committee's request for information on the legal basis under which the government reserves the right to deny a foreign investment for essential public security interest reasons, Israel explained that its approach is based on the government's general duty to protect the country's security. The Israeli government reserves the right to deny a foreign investment or an activity of an enterprise if there is evidence that this investment or activity would hinder the maintenance of essential public security interests and if other laws are insufficient to deal with this risk. Indeed, as many countries, Israel does maintain general laws which, while not discriminating between domestic and foreign investors, may be used in relevant situations where certain activities related to national security issues arise, for example, control of

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5 Further information on this Law can be found below, in the section on investment incentives.

certain types of imports (arms and ammunitions), money laundering regulations and penal law provisions (state security, foreign relations and official secrets). At the same time, like most OECD countries, Israel does not have specific legislation mandating a general screening/prior approval process for all foreign investments for the purpose of protecting its national security.

The all-sector reference to the right to reject a foreign investment based on public order and essential security considerations introduced in its transparency list in 2002, when Israel adhered to the National Treatment instrument, is in fact not based on laws and regulations specifically directed at foreign investment. In retrospect, it was therefore not necessary to include the statement in the list of measures reported for transparency under the NTI, and it has now been deleted from the current list.

As correctly reflected in the first examination report, Israel maintains only sectoral laws and regulations which can be used for restricting foreign investment based on essential security interests. These laws and regulations adequately address national security concerns relating to foreign investment and Israel is not considering new, specific comprehensive regulations which would review foreign investments systematically by using national security as a criterion for potentially restricting investments.

Israel is committed to continue to promote an open investment policy and welcomes inward investments. It would therefore consider invoking Article 3 of the Codes of Liberalisation and paragraph II.1 of the OECD Declaration on International Investment only as a last resort, in cases where sectoral and general regulations were not available.

The Israeli authorities further indicated that, should Israel have to exercise its right under the Codes of Liberalisation or the National Treatment instrument to restrict foreign investment on public order and essential security grounds, it would do so by observing the guiding principles of non-discrimination, transparency and predictability, proportionality and accountability in the implementation of national security investment measures, as provided for in the OECD Recommendation on Guidelines for Recipient Country Investment Policies relating to National Security, which Israel, as a participant in the Freedom of Investment process, contributed to develop and has accepted.

The Israeli authorities indicated that restrictions based on national security remain in the defence sector, specifically: (1) enterprises may not be granted certain defence procurement contracts, where overriding security reasons apply; (2) defence corporations may be subject to an order restricting the holdings of means of control by foreign investors; and (3) the transfer of defence know-how to a corporation under foreign control is subject to prior approval by the Minister of Defence.

In the area of privatisation, the Committee for Privatisation decides the process and the conditions for privatisation, taking into account essential security interests. These can include limiting acquisitions by foreign investors.

These measures are recorded in the list of measures reported for transparency under the NTI (Annex 5).

### ***Monopolies and concessions***

A number of activities are covered by monopolies and concessions in Israel. The most significant among these is that the land is held by the Jewish National Fund. In the transport sector monopolies cover civil airfields (except a few airfields handling mainly general aviation, sport aviation and aviation for agricultural purposes) and railways. Environmental concerns led to the state monopoly of nature and national parks and hazardous waste disposal. Israel also reports public monopolies in water transmission.

Concessions are reported for satellite TV; public radio channels and regional radio; Dead Sea mineral exploitation; light rail systems and oil pipe transport.

The list of activities in which monopolies and concessions exist is reflected in the updated list of measures reported for transparency under the NTI.

### ***Privatisation***

Israel's Government Companies Act of 1975 governs the privatisation of government-owned companies. As a rule, the government encourages privatisation and the participation of foreign companies in privatisation processes. When appropriate, privatisation announcements are translated into English and published in international media, in addition to Israeli government websites. Furthermore, when privatisation is undertaken through public offering of shares on organised capital markets, both domestic and non-Israeli banks are sometimes used as advisers to the Government Companies Authority to help design the privatisation process.

The Government Companies Act allows the government to maintain certain safeguards to ensure that specific privatised companies continue to perform essential services and that interests, such as national security, are protected. This concerns such enterprises as oil refineries and national telecommunications.

While in the past the safeguards used by the government took the form of "golden shares", in recent privatisation cases the government's approach was to use so-called "Vital Interest Orders". Published in accordance with the Government Companies Law which stipulates the terms of limitations that can be imposed on privatised enterprises, a Vital Interest Order may include a restriction on foreign ownership among the limitations.

Since the inclusion of the provisions regarding Vital Interest Orders in the Government Companies Law in 2003, four orders have been published. One order determined that the direct control of one particular company should be held by an Israeli person or by a company which was incorporated in Israel and whose main business is in Israel. The company is a leading supplier of technologically advanced systems and components for international aerospace, defence, automotive and other industries. The privatisation procedure for this company was published in 2004, but the procedure was later cancelled.

The above order and two others in the oil refinery sector include limitations regarding control or holdings of 5% or more or holding a significant influence in the company by a hostile State, a citizen or resident of a hostile State, a corporate body which was registered or incorporated or whose main business is in a hostile State, and a company which is controlled by a citizen and resident of a hostile State.<sup>6</sup>

The Israeli authorities have stated that measures taken under the Government Companies Act are not intended to discriminate against foreign investors and that any limitations which may apply will be exercised in accordance with the country's rights and obligations under the Codes.

### ***Conflicting requirements***

As an adherent to the Declaration on International Investment and Multinational Enterprises, Israel has committed to co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises and to report any measures which may conflict with the legal requirements or policies of an OECD member country and lead to conflicting requirements being imposed on MNEs operating in different jurisdictions. At this stage, Israel does not maintain such measures.

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<sup>6</sup> A hostile State is defined as a State with which Israel does not maintain diplomatic relations.

## ***Sovereign Wealth Funds***

Israel adheres to the OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies adopted by the OECD Council on 5 June 2008.

### **2.3. Sectoral regulations other than financial services**

#### ***Maritime transport***

Foreign controlled enterprises established in Israel are entitled to register a vessel in Israel. Registration of a vessel under the Israeli flag is conditional upon the holding of majority ownership in the vessel by the State, an Israeli national or a corporation established under Israeli law. These limitations affect both international transport and cabotage. They constitute a restriction under item I/A of the CLCM and an exception under the NTI.

Cabotage operations are limited to Israeli vessels or to foreign licensed vessels from countries having reciprocity with Israel. The Israeli authorities have committed to use the flexibility offered by the law not to apply reciprocity to investment in, and establishment of, maritime transport companies by investors from OECD countries for the purpose of item I/A of the CLCM.

There is a restriction on investment in Israeli companies that provide port services at ports open to international shipping for the general public, which gives rise to a proposed reservation under item I/A of the CLCM.

#### ***Road transport***

No restriction on the nationality of the license holder applies for the operation of buses in bus service lines and on the establishment of bus transport companies in Israel.

Special transportation (transportation by order placed, such as transportation for excursions, for children, etc.) is regulated under the Supervision of Products and Services Order (Tour Transportation, Special Transportation, and Vehicle Rental) of 1985, according to which an applicant for a license to provide transportation services of this kind must be a corporation registered in Israel. A similar rule exists in the area of taxi service lines (Section 14H of the Transportation Ordinance). These requirements do not call for reservations under item I/A of the CLCM as incorporation is the usual form of commercial presence practised by the taxi and other road transport profession.

#### ***Railways***

In accordance with Chapter 9 of the Port Authority Law of 1961 (as amended in 2002), national train services in Israel are provided exclusively by a government-owned company (Israel Railways Ltd.). As of today, there is no possibility for a private corporation to provide national train services in Israel. This does not constitute a restriction under the Code as this market access limitation applies both to foreign and domestic private investors, but it is listed among the measures reported for transparency under the NTI.

Light trains (local) are defined as "local railroad" in the 1972 Railroad Ordinance (New Version). Section 46A stipulates that the Minister of Transportation is entitled, with the approval of the Government, to "grant a franchise for the construction, operation, and management of a local railroad to an entity that is not the government agency, provided that it is a company registered in Israel..." This does not constitute a restriction for the purpose of item I/A of the CLCM. The consortium comprising the franchise holder may include foreign-controlled corporations not established under Israeli law.

### ***Air transport***

Foreign ownership of an Israeli airline company may not exceed 49% of its capital. This constitutes a restriction under item I/A of the CLCM. Until recently, an Israeli majority of two thirds of the airline company's capital was required. This step towards liberalisation is reflected in a modification to Israel's list of exceptions under the NTI.

### ***Energy***

The primary energy market is open to foreign investors, including through governmental concessions on a non-discriminatory basis and licence tenders. A few limitations to foreign investment exist for some electricity-related services. The restrictions apply only to licenses for essential services – transmission, distribution, and system operation – which are considered natural monopolies. Israel has no access to the electricity grid of neighbouring countries. The government encourages foreign participation in electricity generation and no limitations are imposed on licenses for generation and supply of electricity in any technology, including renewable energies.

Under the Electricity Sector Law of 1996, which governs the generation, transmission, distribution and sale of electricity, licenses for the provision of services (excluding licences for essential services) may not be granted to individuals who are not Israeli citizens. The Minister of National Infrastructures can require that the granting of a licence to provide essential services be subject to the condition that control of the licensee remains in the hands of resident Israeli nationals. The Minister is also charged with determining the maximum participation that may be held, directly or indirectly, by non-Israeli nationals or residents. These restrictions call for a reservation under item I/A of the CLCM. They are already reflected in Israel's list of exceptions under the NTI. The Israeli authorities have indicated that there are no plans to remove these restrictions in the near future.

### ***Telecommunications***

The telecommunications sector has been gradually opened to competition since 1996. Bezeq, the incumbent fixed-line telecommunications monopolist, was privatised in 2004. Significant competition exists in the fixed line (telephony and broadband access), mobile, internet and international telephony segments. However, under the Communications Law of 1982, a number of restrictions on foreign investment remain, which call for proposed reservations under item I/A of the CLCM. They also constitute exceptions to national treatment, and are already reflected in Israel's list under the NTI.

Entry into the telecommunications sector in Israel has traditionally been on the basis of independent, physical infrastructure networks, with each new entrant constructing and operating their own fixed or mobile network. According to the Israeli authorities, restrictions on foreign direct investment in the sector are designed to safeguard essential interests, including, *inter alia*, national security interests and proper functioning of networks during times of crisis. There are no plans to remove these restrictions in the near future.

The law provides for a ceiling to restrictions that may be enforced; in practice, the government may, and in the past did, authorise foreign investment in percentages higher than those set out in the telecommunications regulations. For example, following the privatisation of the telecommunications incumbent "Bezeq" in 2005, Israeli holdings in the company are only approximately 3%. According to the Israeli authorities, future regulatory changes, leading to a wholesale market in telecommunications services, may lead to the relaxation of investment criteria for license holders who do not operate essential infrastructures.

A service supplier holding a general license must be incorporated under Israeli law and maintain the main place of business in Israel. Generally, the supplier's articles of incorporation must state that the purpose of the incorporation is to provide telecommunication services.

The control of a fixed-line domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least 20% interest. This requires a reservation under item I/A of the CLCM.

Israeli law also imposes nationality and residency requirements on members of the boards of directors: 75% of the members of the board of directors of fixed line domestic licensed communications companies must be Israeli citizens and residents. In the case of mobile phone and international communications services, the nationality and residency requirement apply to the majority of board members. This is recorded in the list of measures reported for transparency under the NTI.

For the supply of radio and mobile telephone services, a local partner is required, and at least 20% of the control in a licensee must be held by nationals who are citizens and residents of Israel. In the case of international communications services, satellite broadcasting, and cable broadcasting, at least 26% of the control in a licensee must be held by nationals who are citizens and residents of Israel.

Under the Communications (Telecommunications and Broadcasting) Law of 1982, a license for cable broadcasting is not granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorise an indirect holding in the licensee of up to 10% by such a corporation.

Under the Second Authority for Television and Radio Law of 1990, at least 51% of the control in a concession must be held by nationals who are citizens and residents of Israel.

#### **2.4. Special incentives to attract foreign investment**

Israel encourages both local and foreign investment by offering a wide range of incentives and benefits to investors in industry, tourism and real estate. Special emphasis is given to high-technology companies and research and development (R&D) activities. These incentives have taken various forms, including grants, tax reductions, infrastructure support and training. Israel's investment incentives are generally made available to foreign investors on conditions "no less favourable" than those applying to domestic investors. However, a non-negligible portion of incentives to foreign investors, in the form of tax breaks, has been granted to them on more favourable terms than those applied to domestic investors.

Under the Decision on International Investment Incentives and Disincentives to which Israel adhered in 2002, adhering countries recognise the need to give due weight to the interest of other adhering countries affected by the laws and practices in this field, endeavour to make measures as transparent as possible and are prepared to consult one another on the above matters. The Israeli authorities are aware that excessive reliance on investment incentives can create vulnerabilities for the economy and that incentives should not become a substitute for broader policies aimed at establishing a sound enabling regulatory environment for investment. They consider that the duration of investment incentives should not exceed that of the shortcomings for which they have been established. This is the reason why the Israeli incentives programmes have been modified several times and continue to be subject to scrutiny.

Periodical net cost-benefit reviews are carried out in order to assess the appropriateness of the incentive programs in light of their goals and to ascertain whether they are the proper tools for achieving the intended goals, including whether to continue with the programs. This practice conforms to the recommendation of the OECD Checklist for FDI Incentive Policies. Various bodies are represented in these reviews, including the Israel Investment Center (an agency within the Ministry of Trade, Industry and

Labor), the Bank of Israel, the Ministry of Finance, the Knesset (Israel's Parliament), Israel's Manufacturer's Association and representatives from academia.

### ***Investment incentives***

Adopted in 1959, the Law for Encouragement of Capital Investments was the first legislation to introduce a comprehensive investment incentive programme in Israel. It is currently one of Israel's most important regional economic development instruments. The benefits vary depending on the location and the size of the investment. The incentive programs can be divided into two main types: the Grants Program, administered by the Israel Investment Center (IIC – a department of the Ministry of Industry, Trade and Labor), and the Automatic Tax Benefits Program, administered by the tax authorities.

To qualify, investment projects must meet certain criteria, including: international competitiveness, minimum designated investment, high added value and registration of the company in Israel. An enterprise meeting these criteria gains “Approved Enterprise” status from the IIC, if it chooses the Grants Program and “Beneficiary Enterprise” status by the tax authorities, if it chooses one of the tax benefits programs. It is then eligible for incentives, such as grants of up to 24% of tangible fixed assets (grants program only) and/or reduced tax rates, tax exemptions and other tax-related benefits.

#### ***Grants Program***

The Grants Program includes investment grants, according to the National Priority Area in which the enterprise is located. Priority Area A includes the Galilee, the Jordan Valley, the Negev and Jerusalem. Priority Area B includes Haifa, Lower Galilee and Northern Negev. Area C includes the rest of the country. The program further includes tax benefits and accelerated depreciation. The amount of the government grant is calculated as a percentage of the original cost of land development and investment in buildings (except in Area C), in machinery and equipment. This cost includes installation and related expenses. Benefits range from 10% to 24%, depending on the amount of total investment and the Priority Area in which the project is located.

In addition, companies choosing this program receive tax benefits for a period of seven consecutive years, starting with the first year in which the company earns taxable income (grants are not considered income). Tax benefits are determined by the percentage of foreign control: the more foreign control in the enterprise, the higher the benefits. If at least 25% of an Approved Enterprise's owners are foreign investors, the enterprise is eligible for a 10 year period of tax benefits (based on 25% standard dividend tax for the controlling shareholder).

#### ***Automatic Tax Programs***

There are three types of automatic tax programs: the alternative tax program, the priority area program and the strategic program. A company may choose the *alternative tax program* by waiving the project's rights to a grant and will receive complete exemption from corporate tax on its undistributed income. Should the company decide to pay dividends during a period when the tax exemption is in effect, the dividend tax rate will be 15% and the corporate tax rate from which the company was exempted will be payable. Investments in Priority Area A benefit from 10 years of complete tax exemption; those in Area B six years of complete tax exemption and one year of tax benefits (four years for a foreign investor) and those in Area C and Central Israel, two years of complete tax exemption and five years of tax benefits (eight years for a foreign investor).

Under the *priority area program*, for companies investing in Priority Area A, benefits include a corporate tax rate of 11.5 % and a dividend tax rate of 15%. For foreign investors, the dividend tax rate is

4% and the total tax rate of 15%. The benefit period is for seven years. If at least 25% of the company is foreign-owned, the benefit period is 10 years.

The *strategic program* is intended mainly for large multinational enterprises meeting the following criteria: a) for projects in the outer periphery of the country, an annual turnover of at least USD 3.44 billion and a minimum investment of USD 158.81 million in the project itself and b) for projects located in Priority Area A, an annual turnover of at least USD 5.29 billion and a minimum investment of USD 238.22 million. There is a possibility for lowering these thresholds by the Minister of Industry, Trade and Labor and the Minister of Finance. Benefits include complete exemption from corporate tax and dividend tax. The benefit period is 10 years. A company that is 90% foreign owned, which has an approved investment programme of at least USD 20 million and is internationally competitive, will be granted an extra five years of tax benefits.

### ***R&D incentives***

Israel also provides a range of incentives to support R&D. The Law of Encouragement of Industrial Research and Development has set the parameters of government support in this area since its adoption in 1984. Foreign-owned companies established in Israel may fully participate in the programme, provided they conduct their research and development in Israel, subject to the provisions of the above Law.

### ***International support***

International support programs include bi-national funds for competitive R&D, enabling joint R&D programs with foreign counterparts. To date, bi-national funds have been established with Australia, Canada, Korea, Singapore and the United States. In addition, international R&D agreements with Belgium, China, France, Germany, Ireland and the Netherlands, among others, provide access to sources of national funding. Under these agreements each country provides funding to its own companies.

Another initiative, the Global Enterprise R&D Cooperation Framework, encourages cooperation in industrial R&D between Israel and multinational enterprises (MNEs). This program shares the high risks and costs inherent in high-technology development with the partnering companies. Joint R&D projects between MNEs and Israeli companies, authorised by the Office of the Chief Scientist (OCS), are entitled to financial assistance of 50% of the Israeli company's R&D approved costs. Direct investments in joint R&D projects with Israeli companies are credited with up to 150% of the value of such investment for "buy-back" liabilities.

## **2.5. International investment agreements**

### ***Bilateral investment treaties in force and under negotiation***

Israel has bilateral investment treaties (BIT) in force with the following 31 countries: Albania (1997), Argentina (1997) Armenia (2003), Belarus (2003), Bulgaria (1996), Croatia (2003), Cyprus (2003)<sup>7</sup>, Czech Republic (1999), El Salvador (2003), Estonia (1995), Ethiopia (2006), Georgia (1997), Germany (1976), India (1997), Kazakhstan (1997), Latvia (1995), Lithuania (1996), Moldova (1999) Mongolia (2006),

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7 Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus."

Poland (1992), Romania (1992), Serbia-Montenegro (2006), Slovak Republic (2000), Slovenia (1999), South Korea (2003), Thailand (2003), Turkey (1998), Turkmenistan (1997), Ukraine (1997), Uruguay (2004) and Uzbekistan (1997).

Israel is in the process of ratifying BITs with Azerbaijan, China, Guatemala and South Africa. It is negotiating BITs with Russia and Vietnam and is in the process of pre-negotiations with Colombia and Ukraine.

Israel is a Party to the ICSID Convention. So far, no investment disputes involving the Israeli government have been brought to international arbitration.

### ***Main characteristics of Israel's BITs***

Israel accepts the 1967 OECD Draft Convention on the Protection of Foreign Property. The main provisions of Israel's Model BIT include, in particular:

- The *promotion and protection* clause (Art. 2) commits Israel to encourage and create favourable conditions for investments by investors of the other Contracting Parties, to accord them fair and equitable treatment and guarantee them full protection and security in its territory.
- Under the *Most Favoured Nation and National Treatment* clause (Art. 3), Israel commits not to subject investments or returns of investments of investors of the other Contracting Party in its territory to treatment less favourable than that which it accords to investments or returns of investments of investors of any third State or, subject to its legislation, to investments or returns of its own investors; subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to investors of any third State, or subject to its legislation, to its own investors. Article 7 (*Exceptions*) provides that these provisions do not oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from any international agreement such as customs unions, regional economic organisation, free trade area agreement, or any similar international agreement as well as any international agreement or arrangement, and domestic legislation relating wholly or mainly to taxation.
- The *compensation for losses* clause (Art. 4) requires Israel to compensate for the losses suffered by investors of the other Contracting Party due to war, armed conflicts, revolution, a state of national emergency, revolt, insurrection, riot or other such similar events happening in its territory, and in a manner that such compensation be as favourable as that accorded to Israeli investors or to investors of any third State. Payments resulting from the accorded restitution or adequate compensation are freely transferable.
- The provision on *expropriation* (Art. 5) restates the international law principle ruling that a State will take measures with effects equivalent to nationalisation or expropriation only where justified by a public purpose related to internal needs, on a non-discriminatory basis, with judicial review and against prompt, adequate and effective compensation amounting to the market value of the expropriated investment. The Israeli standard of compensation in case of expropriation is equivalent to the market value of the expropriated investment immediately before the date of expropriation or nationalisation was publicly announced. Moreover, the payment of compensation is required to be without delay, fully realisable and freely transferable.

- Under the provisions on *repatriation of investments and returns* (Art. 6), Israel commits to guarantee to investors an unrestricted transfer of their investment and returns, which must be effected without delay and in freely convertible currency and in terms no less favourable than those accorded to its own investors.
- The *dispute settlement clause* (Art. 8), holds that if any dispute arising between an investor of one Contracting Party and the other Contracting Party in connection with an investment made in the territory of the latter cannot be settled through negotiations between the Parties within a period of six months from the notification of the dispute, the investor is entitled to submit the dispute either to a court of competent jurisdiction of the Contracting Party in whose territory the investment was made; conciliation; arbitration by the International Centre for the Settlement of Investment Disputes (ICSID); an arbitrator; or an international *ad hoc* tribunal.

Changes to the Israeli model BIT decided in July 2003 concern:

The *definition of investor*, which was broadened to include legal entities that are controlled, directly or indirectly, by persons who are nationals or permanent residents of the Home Contracting Party and fulfil one of the following conditions: (i) their registered office, centre of management, or practical management is located in the territory of either Contracting Party; (ii) a substantial part of their economic activity is located in the territory of either Contracting Party; (iii) they were incorporated, constituted or otherwise duly organised under the legislation of the Host Contracting Party.

The *transfer of investments and returns*: Following the elimination of foreign exchange controls, the model agreement was modified accordingly and the requirement that transfers of investments and returns be made in accordance with the Currency Control Law was suppressed. A provision was added that relates to situations in which a Contracting Party is in serious balance of payments difficulties or in serious difficulties for the operation of the exchange rate policy or monetary policy, or under threat thereof.

The *national security exception*: A general exception was added, allowing either Contracting Party to take measures strictly necessary for the maintenance or protection of its essential security interests. Such measures must be taken and implemented in good faith, in a non-discriminatory fashion so as to minimise the deviation from the provisions of the Agreement.

*Intellectual property*: Intellectual property rights (IPRs) are covered by Israel's international investment agreements. Certain new provisions concerning intellectual property were introduced in the new model agreement, which are in accordance with international intellectual property agreements. The new model BIT includes specific references to IPRs in Articles 1 (definition of investment), 5.2 (expropriation) and 7. 2 (iii) (exceptions). These are discussed in section 1.6 of this report.

*Settlement of investment disputes between a Contracting Party and an investor*: The new model stipulates that when an investor chooses to settle a dispute in an ad hoc arbitration tribunal (one of the options provided in the agreement) this tribunal must be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). A time limit for rendering a decision by the tribunal was also added. A provision was added clarifying that each Contracting Party gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of the Article concerning settlement of investment disputes between a Contracting Party and an Investor. The model specifies that this consent and the submission by a disputing investor of a claim to arbitration has to satisfy the requirements of Chapter II of the ICSID Convention or the Additional Facility Rules of ICSID for written consent of the parties and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("The New York Convention"), on an agreement in writing.

*Settlement of investment disputes between the Contracting Parties:* In the framework of a possible settlement of disputes through diplomatic channels, the option of conciliation was added. The new model further stipulates that when the Parties resort to the use of an arbitral tribunal, this tribunal will be established under the Arbitration Rules of the UNCITRAL, unless otherwise agreed. A time limit for rendering a decision by the arbitral tribunal was also added.

*Insurance and guarantee:* A provision was added that in any proceeding involving an investment dispute, a Party will not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

### ***Investment provisions in free trade agreements***

Israel has entered into a number of free trade agreements. While their principal focus is trade, some also contain provisions on international investment.

The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States and the State of Israel came into being in June 2000. The Parties agreed to widen the scope of the Agreement in order to cover the right of establishment of firms of one Party in the territory of another Party and the liberalisation of the provision of services by one Party's firms to consumers of services in the other. Under the Agreement, the Parties, in the form of the Association Council, will make recommendations for the implementation of such objectives, taking into account the past experience of implementation of the reciprocal most-favoured-nation treatment and of the obligations of each Party under Article V of the GATS. They also agreed not to impose any restrictions on the movement of capital nor discrimination based on the nationality, the place of residence of their nationals, or the place where such capital is invested. Therefore, all current payments connected with the movement of capital involving direct investment within the framework of such Agreement have to be free of all restrictions.

Under the 1985 Free Trade Agreement with the United States,<sup>8</sup> the Parties are committed not to impose, as a condition of establishment, expansion or maintenance of investments by nationals or companies of the other Party, requirements to export any amount of production resulting from such investments or to purchase locally produced goods and services. Moreover, no requirements must be imposed on investors to purchase locally produced goods and services as a condition for receiving any type of governmental incentives.

## **2.6. Intellectual property rights and other aspects of the broader framework for investment**

### ***IPR laws, regulations and commitments under international agreements***

#### *Regulatory framework*

Effective protection and enforcement of intellectual property rights (IPRs) are important aspects of a country's investment environment and one of the factors which influence location decisions of investors. This review focuses on the impact that Israel's regime for the protection and enforcement of IPRs may have on the investment environment and notes that the review of Israel by the Trade Committee includes a more comprehensive review of IPR protection and enforcement.

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8 The FTA Agreement with the United States also contains offset provisions on government procurement which are beneficial to investors originating from the Parties to the Agreement.

Israel has a significant number of knowledge-based industries, such as information technologies and software, life sciences, pharmaceuticals, medical devices and chemicals, which also attract foreign investment. Israel is a member of the World Intellectual Property Organisation (WIPO), and a signatory to the principal multilateral agreements covering IPRs.<sup>9</sup> As a WTO member, Israel is a Party to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS agreement).

IPR protection is granted through a statutory and common law system for the acquisition, maintenance and enforcement of such rights, including patents; copyrights and related rights; industrial designs; trademarks, geographical indications; confidential information including trade secrets; integrated circuits; and plant breeders' rights.

The primary IPR statutory law includes: the Patents Law of 1967 as amended to date; the Designs Ordinance; the Trademarks Ordinance of 1972 as amended; the Commercial Wrongs Law of 1999, which protects, *inter alia*, unregistered trademarks and trade secrets; the Law for the Protection of Appellations of Origin and Geographical Indications of 1965 as amended; the Law for the Protection of Integrated Circuits of 1999; the Law for the Protection of Plant Breeders Rights of 1991 as amended; the Copyright Act of 2007; and the Performers and Broadcasters Rights Protection Law of 1984 as amended. Related protection can be found by way of statutory laws that are not primarily dedicated to IPR, such as the Customs Ordinance, the Pharmacists Ordinance (drug data protection), the Civil Procedure Law, the Law Against Unjust Enrichment and the Torts Law. Additionally, there is secondary legislation that further defines the means to carry out the aforesaid primary legislation. A broad exclusion for intellectual property licenses in Israel's competition legislation is construed narrowly, to forestall abuse.

IPRs are also included in the non exhaustive, asset-based definition of investment in Israel's 2003 model BIT, including, but not limited to patents, trademarks, geographical indications, industrial designs, technical processes, copyrights and related rights, undisclosed business information, trade secrets and know how, topographies and integrated circuits and plant-breeders' rights. Royalties are also covered in the form of returns. The clause on expropriation (Article 5) provides that Contracting Parties may allow "the unauthorised use of an intellectual property right" provided such authorisation is in conformity "with the principles set forth in the TRIPS Agreement". IPRs are also referred to in the provisions on exceptions to National Treatment and Most Favoured Nation (Article 7), which provide that they "shall not be construed so as to oblige one Contracting Party to extend to the investors of the other, the benefit of any treatment, preference or privilege resulting from (...) any existing or future bilateral or multilateral agreement concerning intellectual property." Earlier BITs entered into by Israel, including those signed before becoming a Party to the TRIPS Agreement, do not include the qualifications and exceptions to the protection of IPRs provided for in the new model. Israel's BITs provide strengthened protection of IPRs to the extent they allow recourse to investor-State dispute settlement, unlike WTO agreements.

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9 Israel is a member of the Paris Convention for the Protection of Industrial Property, Stockholm revision (1967); the Berne Convention for the Protection of Literary and Artistic Works; Brussels revision (1951); Stockholm revision, Articles 22 to 38 (1967); the Patent Co-operation Treaty, (PCT) (Washington 1970); the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891); Lisbon revision (1958); Stockholm revision (1967); the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), Stockholm revision (1967); the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), Stockholm revision (1967); the Strasbourg Agreement Concerning the International Patent Classification (1971); the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (1971); the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977); the International Convention for the Protection of New Varieties of Plants (UPOV) (1991 Act); the Universal Copyright Convention (1952) and the Convention Establishing the World Intellectual Property Organisation (1967).

## *Enforcement*

A number of improvements would bring Israel closer to the practice generally found in OECD countries. Such improvements relate to enhancing protection in specific areas of copyright and patent protection and improving administrative efficiency.

The Israeli system provides for pre-judgment remedies, including injunctions, ex parte orders of attachment of goods, revenue or accounts, detention and seizure orders to discover infringements and preserve evidence and customs detentions and seizures. Final remedies include permanent injunctions, monetary damages, receipts of infringer's profits, delivery up of infringing goods to the legitimate licence holder, and destruction of the infringing goods and costs.

According to the Israeli authorities, civil and criminal enforcement of IPRs is effective. They report that, for example, for the last several years the Business Software Alliance (BSA), an international trade organisation, has consistently ranked Israel among the top 16 countries in the world for lowest levels of software piracy. Statistics from the WIPO and the Israel Patent Office for 2007 indicate a high level of patenting activity in Israel. For example, the WIPO ranks Israel among the top 20 countries in the Patent Cooperation Treaty from which patent applications originate. This, according to the Israeli authorities, indicates a high level of research and development taking place in Israel together with the financial investment needed to support such research and development activities. The WIPO also ranks Israel among the top 20 countries as a destination for patents from countries which are Parties to the Patent Co-operation Treaty. In 2007 approximately 40% of the patent applications filed in Israel were in the field of pharmaceuticals; 10% in the field of biotechnology; 15% for computing and medical equipment and the remaining 35% in the fields of electronics and mechanics.

The enforcement infrastructure includes the Ministry of Justice, police units dedicated solely to intellectual property crimes, the Customs Authority, the tax authorities, the Ministry of Finance and the Commissioner of Consumer Protection, who have combined efforts to operate in coordination to fight IPR violations. A special Ministerial committee, chaired by the Ministry of Justice, was established to deal expressly with the issue of enforcement of IPRs. Its members include the Ministers of Justice, Finance, Industry and Trade, Internal Security, Social Affairs, Science, Immigrants and Tourism. Timely judicial remedies are available.

The Israeli authorities report that the customs authority has, since 2000, reinforced its border measures and works closely with right holders to detect and prosecute the importation of infringing goods, including active and regular examination of imported goods for possible infringement, standardised contact with parties whose rights have allegedly been infringed, development of sophisticated computerized data bases and training programs in cooperation with other countries, *e.g.* the United States.

The Israeli authorities consider that Israel maintains levels of protection for pharmaceutical products which are above TRIPS levels, and comparable to those in OECD countries.

Disagreements with OECD partners still exist over the scope and duration of protection for undisclosed drug test data and the method for calculating the duration of patent term extension orders for drugs.<sup>10</sup> The Israeli authorities report that discussions with other governments over the last few years have led to new legislation that has significantly increased the levels of protection for pharmaceutical products. The Government is currently engaged in additional discussions regarding the protection of new pharmaceutical products.

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10 Patent term extensions are not required under the TRIPS agreement. Israel grants patent term extensions of up to 5 additional years and drug data protection for up to 5 years.

## *Competition*

### *Regulatory framework*

Israel's open environment for foreign investment is supported by its competition law and policy. Sound competition policy also helps to transmit the wider benefits of investment to society.

Israel adopted its comprehensive competition law, the Restrictive Trade Practices Law (RTPL), in 1988, replacing a law dating from 1959 and embodying a new approach to supporting stronger market competition. Since then there have been some important legislative reforms, supplemented by court and administrative decisions. The law covers restrictive agreements, hard-core cartels, mergers, monopolies and abuse of dominant position. Amendments to the law have reinforced competition-related proceedings and have extended responsibility for antitrust activities beyond corporate entities to also include company executives.

Most commercial activity is subject to the competition law. Other laws and regulatory regimes displace the RTPL only in cases of irreconcilable conflict, which has not arisen. Government companies and agencies operating in a commercial capacity are fully covered. Competition law enforcement is generally well coordinated with regulatory regimes, and the only sector exclusions from the competition law are in agriculture and international sea transport. The exclusion of international air transport agreements from the RTPL's restrictive arrangement prohibitions was eliminated in 2007.

### *Enforcement*

Effective enforcement of competition rules is considered by the Israeli authorities to be an essential complement to the liberalisation process of local markets and to opening the country's borders to the free movement of goods, services and capital. Reforms in telecommunications, transportation, energy, and financial markets have been structured to encourage entry by facilitating network access or lowering barriers. The full reform tool-kit has been deployed, including structural separation of competitive from non-competitive activities.

The Israel Antitrust Authority (IAA) was created in 1994 as an independent agency to enforce the competition law. The IAA has put competition issues and competition law compliance on the business community's agenda. Its decisions are well regarded for the quality of their analysis. The IAA has been closely involved in virtually all of Israel's reform efforts. Successful IAA advocacy has facilitated pro-competitive reform in numerous markets, and IAA enforcement efforts have supported reform in others.

In assessing conduct that involves an international aspect, the IAA applies the same standards used for evaluating domestic commerce, and does not consider such extra-competitive concerns as protecting domestic producers from imports or improving the Israeli trade balance. Foreign and domestic firms are treated equally in IAA proceedings. The IAA is willing to share confidential information and cooperate in investigations with foreign authorities in accordance with conditions in Israeli law, including particularly the International Legal Assistance Law.

### 3. OTHER CAPITAL MOVEMENTS

#### 3.1. Regulatory environment and practice

Since 1987, Israel has gradually eased foreign exchange controls. Previously, exchange controls were based on the notion that a foreign exchange operation which is not specifically allowed, is forbidden.

Israel liberalised current account operations first and capital account operations later.<sup>11</sup> The sequence of the liberalisation of the capital account was determined according to guiding principles which gave priority to the relaxation of controls limiting capital inflows, as compared to capital outflows; liberalisation of long-term capital movements over the relaxation of short-term capital restrictions; and transactions of the business sector over transactions of households. The opening up of the current and capital accounts was accompanied by the implementation of a flexible exchange rate (later inflation targeting), fiscal discipline and the strengthening of the financial system.

Effective 1 January 2003, the Israeli currency became fully convertible, with the elimination of exchange controls and most of the foreign exchange restrictions. Nevertheless, even after the restrictions on investment abroad were removed, a certain element of tax discrimination remained for the acquisition of foreign assets in comparison with local investments. This tax discrimination was abolished in 2003 and 2005. The Israeli authorities considered that full liberalisation yields significant benefits by boosting international integration and modernisation of Israel's capital markets, encourages competition and efficiency, as well as improves the public's portfolio diversification while lowers volatility and reduces the exposure to fluctuations in the domestic market. At the same time, they trusted that they will be able to maintain the openness of their current and capital account even in situations of stress.

The latter confidence was underpinned by the events of 2006, when the Israeli economy experienced the geopolitical shock of the war between Israel and the Hezbollah in Lebanon. Unlike in previous episodes of instability, when controls were reinforced, the Israeli authorities did not resort to capital and exchange controls and stability was restored even faster than during the previous episodes.

Israel's view is that in the current context of financial crisis, given the level of interdependence of economic activity and of financial linkages among economies, the traditional forms of exchange controls seem to be useless as tools with which governments may seek to isolate the domestic economy from external shocks. Thus, based on their general approach to liberalisation and positive experience until now, the Israeli authorities' commitment not to resort to controls remains unchanged.

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11 Part of this section is based on the presentation made by the Israeli delegation to the Investment Committee in March 2007 and its written note: "Israel: Macro-economic Policy, Episodes of Capital Account Liberalizations, and a Case Study of an Open Economy Facing a Negative External Shock," DAF/INV/RD(2007)5.

### **3.2. Capital Inflows**

#### ***Securities***

There are no restrictions on the admission of domestic securities on foreign capital and money markets (items IV/A1, V/A and VII/A of the CLCM).

There are no restrictions either for the purchase by non-residents of capital market, money market and collective investment securities in Israel (items IV/C1, V/C1 and VII/C1 of the CLCM), except that portfolio investment may be affected in sectors where restrictions on inward direct investment (reflected in proposed reservations under item I/A of the CLCM) apply to aggregate foreign ownership rather than individual investors' shares of the enterprise's capital.

Residents may sell securities freely abroad (items IV/D2, V/D2 and VII/D2). For banks, changes and increases in ownership are subject to prior approval above certain limits, but these rules apply in a non-discriminatory manner (*i.e.* whether the acquirer of banks' shares is a resident or a non-resident).

#### ***Credit, loans and deposits***

Non-residents may freely provide loans to residents, but there is a reporting requirement pertaining to loans above USD 20 million. This reporting requirement is only intended to provide information for the compilation of the balance of payments and conforms to Article 5 of the CLCM on controls and formalities. Banks in Israel may open accounts for non-residents, be they natural persons or corporations, by verifying their particulars (item XI/A). The procedure for non-residents is not different from the one employed in the case of residents, except for obvious differences in the form of documents to be presented.

#### ***Other operations***

The Israeli authorities confirmed that they have no restrictions on capital inflows arising from operations in negotiable instruments and non-securitised claims (item VI), sureties, guarantees and financial backup facilities (item X), operations in foreign exchange (item XII), life assurance (item XIII), personal capital movements (item XIV) and the physical movement of capital assets (item XV).

### **3.3. Capital Outflows**

#### ***Securities***

There are generally no restrictions on the admission (issue and introduction) of securities on domestic markets (items IV/B, V/B and VII/B), the sale in Israel of securities by non-residents (items IV/C2, V/C2 and VII/C2) and the purchase of foreign securities by residents (items IV/D1, V/D1 and VII/D1). Banks, pension funds and insurance companies face no restrictions regarding their holdings of foreign assets.

Non-residents may list their securities on the Israeli securities markets after complying with the requirements (including the publication of a prospectus) laid down in the Securities Law of 1998 regulating these activities. These rules do not discriminate between resident and non-resident issuers. In addition to this general rule, easier listing requirements are placed on "foreign corporations" that have already complied with stringent listing requirements abroad. These "foreign corporations" may list their securities in Israel based on a simple registration. Moreover, the Israeli Securities Authority (ISA) may exempt such corporations from the requirements regarding the prospectus. "Foreign corporations" are defined in Chapter 5C of the Securities Law of 1998 as corporations incorporated in Israel whose securities have already been listed for trade on certain foreign stock exchanges. These stock exchanges (altogether five) are enumerated in the annexes of the Securities Law of 1998 and have been selected based on their high

requirements for listing securities. To the extent that no restrictions in the meaning of the Code apply to the listing of foreign securities through the normal route in the first instance, this facility for listing does not give rise to an issue of discrimination among OECD countries. However, the Israeli authorities have confirmed that they are ready to consider, through mutual recognition agreements, other stock exchanges in OECD countries that meet equivalent requirements.

With regard to open-end mutual funds, the Joint Investment Trust Fund Law of 1994 provides that the value of a security (other than a bond) held by a fund must not exceed 5% of the amount listed for trading of that security multiplied by its value at the end of the trading day on the Israeli market. For the holding of bonds, this ceiling is 10%. This means that as a practical matter, these open-end mutual funds may not hold foreign securities not traded in the Israeli markets above the limits indicated above.

In the case of those open-end funds whose unit and unit redemption prices are calculated on the Israeli securities markets twice on a trading day, the value of foreign securities held may reach 10% of the net value of their assets. These open-ended funds are tailor-made products that follow the trading system on the Tel-Aviv Stock Exchange (TASE) which allows Opening Phase stock trading. Securities that are not traded on the Opening Phase may not be held by the funds regardless of whether these securities are foreign securities or securities listed for trading on TASE. However, in order to encourage liberalisation in the market, an exception to this rule was made for the funds to hold 10% of their assets in foreign securities, even if they are not traded on the Opening Phase. Out of about 1200 mutual-funds, only 4 calculate their prices twice a day.

To the extent that these limitations derive from the statute under which the fund has opted to establish itself and that other categories of open-end mutual funds not subject to these limits may be established, these provisions would not be considered as restrictions under the Code. The Israeli authorities have confirmed that other types of open-end funds may be set up that are allowed to hold up to 100% of their assets in foreign securities. Hence, no reservation is needed under the related items for Operations in Collective Investment Securities.

Shares or units in a foreign mutual fund may by law be marketed in Israel. However, this is only possible after a prospectus of the foreign fund has been prepared in accordance with Israeli regulation, has been approved by the ISA and a fund agreement has been established under the law. No foreign fund has ever actually been offered in Israel. Since issuing a prospectus is also required from resident funds, this requirement does not necessitate that Israel lodge a reservation. Moreover, under Amendment 13 to the Joint Investment Trust Fund Law, the Finance Minister will be authorised to enact provisions that, if fulfilled by the fund manager, will allow the ISA to permit the offer of units of foreign funds in Israel based on their home regulation without further need to comply with Israeli regulation. These provisions will be included in secondary regulation, but their parameters have not yet been finalised. However, the provisions might cover the law under which the fund was established and characteristics of the fund's manager. The Israeli authorities have confirmed that the new rules will not be intended to discriminate among OECD countries and will be based solely on objective prudential considerations. The Israeli authorities have explained that the process of changing the regulations is underway, but they could not yet indicate the time of the conclusion of the process.

### ***Other operations***

The Israeli authorities have confirmed that Israel has no restrictions on operations in negotiable instruments and non-securitised claims (item VI), sureties, guarantees and financial backup facilities (item X), operations in foreign exchange (item XII), life assurance (item XIII), personal capital movements (item XIV) and the physical movement of capital assets (item XV). There are no non-resident-owned blocked funds (item XVI). Banks face limits on their net open foreign exchange position. These limits, as the Israeli

authorities have explained, are in conformity with the Basel Core Principles. Under the CLCM, countries may regulate the net external positions of domestic financial institutions dealing in foreign exchange.

## 4. FINANCIAL SERVICES: ESTABLISHMENT AND CROSS-BORDER TRADE

### 4.1. Overview of financial sector developments

Since the mid-1980s, substantial deregulation and liberalisation have been undertaken and the role of market forces has grown. Programmes to develop and liberalise the capital market were pursued through the 1980s and 1990s. Under the 2002-2003 liberalisation measures, institutional investors were given much greater freedom in their portfolio decisions, further spurring the development of the capital market. Non-bank sources now account for a growing share of business credit, while domestic bond and equity markets have thrived.

Over the years, it was perceived that there was a problem with the domination of a small number of banks over all facets of financial intermediation. Therefore, policy has sought to enhance competition in the financial system by various means. The “Bachar” reforms of 2005 required banks to lessen their presence in securities underwriting and the organisation and management of collective investment schemes and provident funds.

Nevertheless, the banking sector itself remains very concentrated, with the two largest banks accounting for more than 60% of total business and the five largest banking groups for approximately 95%. A 2007 analysis by the Financial Stability Unit of the Bank of Israel (BOI) compared Israel to the OECD countries, using the financial soundness indicators of the IMF as of end-2005. While Israel generally fell within an acceptable range on most measures, a need to improve was noted on two key indicators: 1) the ratio of regulatory capital to risk-weighted assets; and 2) the ratio of non-accruing credit to total credit, which were considered to be less favourable in Israel than the average of OECD countries.

The Israeli authorities have indicated that it has been their policy to encourage greater foreign involvement in their financial system in order to spur competition, raise domestic efficiency and support financial stability. However, even though Israel has opened up its financial sector to foreign establishment, banks owned by foreigners and Israeli branches of foreign banks account only for approximately 18% of the total assets of the Israeli banking system. Four foreign banks have established branches in the country and one bank a subsidiary (there are altogether 14 commercial banks in Israel).

On the other hand, investment banking was the first area to experience widespread foreign activity in Israel, not only in arranging international operations, but also participating in local activity by Israeli corporations in offerings of mergers and acquisitions. Several investment institutions have local representative offices and four foreign institutions, Citibank, Deutsche Bank, HSBC and UBS are members of the Tel-Aviv Stock Exchange.

Regarding securities companies, while only a few foreign securities firms are established in Israel, the largest securities firm is foreign-owned. Moreover, foreign institutions play a significant role in asset management and their presence in this field is expected to grow.

The insurance regulatory framework has been modernised during the last few years, intended, *inter alia*, to make the sector more attractive to foreign investors. Several foreign companies have made investments in the insurance sector in the last three years, either based on full ownership of companies or in partnership with resident investors. As a result, five foreign insurers operate currently in Israel. Three of

them have been granted an Israeli insurer's license to operate in the form of subsidiaries. Generali, the dominant insurer in Israel, holds 70% of the largest domestic insurance group. The two other insurers operate through branches, which are subject to the same capital requirements as resident insurers (including subsidiaries of foreign insurance companies). The share of foreign participation in the various parts of the financial sector, as reported by the Israeli authorities, is shown in Table 3.

**Table 3. Table 3. Foreign Participation in Financial Markets, as of October 2008  
(in per cent)**

<b>Financial sector</b>	<b>Basis of calculation</b>	<b>Share</b>
Pension Funds	(market share)	22
Provident Funds	(market share)	23
Life Insurance	(assets)	31
General Insurance	(assets)	15
Mutual Funds	(market share)	37
Banks	(assets)	18

The Israeli authorities have explained that the country derived several benefits from foreign participation in the financial sector. These benefits include: (i) innovative approaches and methods that spread to the domestically-owned financial institutions; (ii) more sophisticated instruments transmitted to domestic financial institutions; (iii) increased competition in some areas (e.g. among market makers for government bonds); and (iv) the positive impact of superior technology.

Currently a number of measures are under consideration to strengthen the legal and regulatory framework. These include:

- New legislation that would heighten the independence of the central bank and provide a clearer mandate for central bank supervision of the payments and settlement systems;
- Reform to the structure of financial supervision. For instance, some proposals include delegation of authority for insurance, provident funds and pension funds from the Ministry of Finance to an independent entity.

The present crisis has, until now, mainly affected the economy via the downturn in international trade. Nevertheless, the financial sector has experienced difficulties in credit flows and there have been significant portfolio losses. In particular, the market for corporate bonds has suffered markedly. However, the banking sector has, so far, remained relatively unscathed; in part because of conservative strategies that meant limited exposure to toxic assets. The Bank of Israel has taken various steps to ease credit conditions, not only through reductions in its main policy rate but also technical adjustments to monetary policy operations. The government has set up public-private credit schemes to support the corporate bond market, credit lines to SMEs and credit guarantees to banks. As of late May 2009, other proposals were being finalised.

The Israeli authorities have indicated that, notwithstanding the current financial crisis, Israel will remain open and commits itself not to introduce any new measures that might negatively affect foreign presence in the sector.

## 4.2. Establishment

### *Banks*

Permits from the Governor of the Bank of Israel (BOI) are required to establish a banking corporation and for obtaining 5% or more of the shares of a bank. Permits are granted after a thorough examination by the Banking Supervision Department and consultation with the Licenses Committee. The authorisation procedures are intended to ensure the banks' ability to operate smoothly and prevent unsuitable owners and managers from owning or substantially influencing a banking corporation.

Foreign banks wishing to establish a banking subsidiary in Israel are subject to the same licensing criteria imposed on an Israeli entity. The criteria used include: stability in respect of capital and financial firmness of the parent bank; high international rating; supervision on a consolidated basis; abiding by the laws; adaptation of the regulations applicable to domestic banks; a track record of safe and sound operation and prudent management; the consent of the home country supervisor; the consent of the foreign bank given to the BOI to transfer information between home-host supervisors; and complete information regarding the identity of the shareholders controlling the bank, including background checks on identifiable controllers. The BOI also checks the level of the control and regulation in the home country of the foreign bank (the application of international standards, the lack of restrictions on the free flow of capital and the international rating of the foreign parent company), in accordance with the Preconditions for Banking Supervision included in the Basel Core Principles.

The Israeli authorities have confirmed that the indicators used to assess applications by non-resident investors in the banking sector are in accordance with international standards set by the Basel Committee. The standards of performance required of a non-resident applicant are equivalent to those applicable to resident applicants.

Foreign banks wishing to operate in Israel are permitted to operate a branch if they meet the following criteria, in addition to what is required for setting up a subsidiary:

- banking supervision in the home country is performed on a consolidated basis, also covering the branch to be opened in Israel, and in accordance with the international standards set by the Basel Committee; and
- the bank provides “endowment capital” to the branch to enable stability restrictions to be applied.

In addition, a condition for granting a permit for the acquisition of controlling interest in a bank<sup>12</sup> is that the investor should maintain a stable controlling interest for up to five years. Following this period, the permit holder may sell the means of control. This kind of requirement is not usually applied internationally. During the accession review process, the Israeli authorities announced that the Governor of the Bank of Israel has decided not to apply this mandatory investment duration requirement any longer. Since this requirement has been an internal criterion for permitting foreign investment in the sector, the change does not necessitate the modification of the Banking Law and hence can be implemented immediately. The original purpose of this requirement has been solely to avoid risks to the stability of the banking corporation that could arise from frequent changes of control over it or its board of directors. In the future, this purpose will be met by examining the business plan of the potential investor before granting an authorisation for the acquisition of controlling interest.

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12 Controlling interest in large Israeli banks is 20-26%, whereas in smaller banks, it is majority ownership.

The Banking Law of 1981 stipulates that one of the considerations in deciding on an application by a foreign bank to establish a branch is whether the country which is the centre of the applicant's business offers reciprocity. The Israeli authorities have committed to use the flexibility offered by the law to not apply reciprocity as a condition for granting banking licenses to applicants from OECD countries.

The Israeli authorities have confirmed that any financial requirements for the establishment of foreign bank branches conform to the provisions of item E/7 of the CLCIO. There are no statutory time limits for the authorities to reply to applications for a banking license. However, the Israeli authorities have confirmed that in accordance with the provisions of item E/7 of the CLCIO, applications for authorisations will be decided not later than six months from the date on which the application has been completed in full and that decisions will be notified to applicants without further delay. Applicants, including foreign banks, are permitted to request a review of the decision.

Before the OECD accession discussions, a prior authorisation procedure, rather than a simple advance notice has been in effect for the establishment of a representative office of a foreign bank if the word "bank" appeared in the name of the representative office. This rule would have required proposing a reservation under item E/7 of the CLCIO, and the issue was raised by the Investment Committee as a possible area for further improvement of Israel's position

During the accession review process, the Israeli authorities indicated that they had reconsidered the issue. Consequently, the Governor of the Bank of Israel intended to grant a general consent to entities that have been incorporated and licensed to operate as banks in an OECD country and are supervised by the regulatory authority in that country on a consolidated basis, to use the word "bank" in the name of the representative office that they will open in Israel. The representative office will be subject to the following conditions:

- i) it will engage solely in promoting business on behalf of its parent bank<sup>13</sup>;
- ii) a notice is given prior to the opening of the representative office in Israel;
- iii) it will clearly indicate, while promoting business, the fact that it is a representative office.

The granting of this general consent obviates the need for a reservation to cover bank representative offices under item E/7 of the CLCIO.

### ***Insurance and private pensions***

The supply of most types of insurance services requires incorporation or registration as a branch in Israel. Foreign investors wishing to operate through a subsidiary are granted an Israeli insurer's license, while branches of foreign insurers are registered as a foreign company. The Law on Supervision of Insurance Services of 1981 lays down the conditions for issuing the insurance licence and requires that the acquisition of more than 5% of the capital of an insurance company be conditional upon receiving a permit from the Insurance Commissioner. These permits are granted to each person (natural or legal) individually, are non-transferable and apply to both foreign and domestic investors.

In scrutinising the application for a license, the Insurance Commissioner takes into consideration a variety of factors, including: ensuring the stability of the insurer; the financial means and business background of the entities requesting the license or the permits; competition in the insurance sector and the

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13 The CLCIO allows OECD Members to limit the activities of representative offices to promoting business on behalf of the parent bank.

level of service in the sector; prevention of suspicion of conflict of interest; ensuring proper management of the insurer and additional considerations for the good of the policy holders and the advancement of the insurance sector. The Israeli authorities have committed not to apply a market needs test and confirmed that competition and other additional considerations mentioned in the law only refer to ensuring compliance with existing non-discriminatory laws in accordance with Article 5 of the Code on controls and formalities.

Until recently, a condition for granting a permit for the acquisition of ownership in an insurance company was that the investor should maintain a stable controlling interest up to five years. Following this period, the permit holder could sell the means of control, but only if the transfer was of all the controlling interest or the transfer was of a portion of the controlling interest to an entity that continuously cooperated with the rest of the group's components and a lawful permit was obtained initially. This rule did not appear in legislation, but was based on internal guidelines. While the requirement did not intend to discriminate against non-residents and could be waived on a case-by-case basis, this kind of requirement is not usually applied internationally. The Israeli authorities also appreciated that no OECD country maintains reservations under item II/B (liquidation of direct investment). In November 2008, they decided not to apply this requirement any longer and to use other methods of achieving their legitimate prudential objectives.

Branches of foreign insurance companies are required to maintain a surplus of assets over liabilities determined as a function of the activity. The assets must be tangible and may not be guarantees from third parties. At least 110% of this surplus must be invested in Israel, unlike for domestic insurers, which are allowed to invest all of their surplus assets outside Israel. The rule constitutes a restriction under item I/A of the CLCM and item D/6 (Conditions for establishment and operation of branches and agencies of foreign insurers) of the CLCIO. This requirement can be waived for a branch of an insurer which is subject to supervision of high standard, whose level of activity is high and which is considered a first-class company. In response to the Investment Committee's request, the Israeli authorities confirmed that they are ready to eliminate this requirement. To achieve this goal, they have drafted a legislative amendment to replace this requirement with the investment regulations applicable to domestically-owned insurers. The legislative process was completed in July 2009. This led to the narrowing of the reservation under item I/A of the CLCM in the area of insurance and private pension services and allowed the elimination of the reservation under item D/6 of the CLCIO.

### ***Securities firms and other non-bank financial institutions***

The required form of establishment of securities firms and other non-bank financial institutions is incorporation. The Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law of 1995 requires that: all individual licensees be either Israeli citizens or Israeli residents [Sections 7 (a) (2) and 8 (a) (2)]; all corporate licensees be incorporated in Israel and only employ licensed individuals to render investment advice, marketing or portfolio management services. The supply of pension fund management services and the establishment of private pension funds require incorporation, by virtue of the Control of Financial Services (Insurance) Law of 1961. The conditions and procedures for licensing do not discriminate between applicants for incorporation.

While there is no legal requirement to respond to an application within six months, normally responses are issued much earlier than that. The Israeli authorities have committed that applications for authorisations will be decided not later than six months from the date on which the application has been completed in full and that decisions will be notified to applicants without further delay.

Because of the above incorporation requirements, reservations regarding the establishment of branches are needed to item I/A of the CLCM and item E/7 of the CLCIO in the following areas: a)

investment advisors; b) investment marketers; c) portfolio managers; d) pension fund management; and e) private pension funds. During the accession discussions, the Israeli authorities agreed to eliminate the restriction on the establishment of branches of investment advisors, investment marketers and portfolio managers. Following the necessary change in legislation, the reservations under item I/A of the CLCM and item E/7 of the CLCIO would be narrowed to cover only the establishment of branches of pension fund management services.

According to the Joint Investment Trust Law of 1994, a foreign mutual fund manager endeavouring to operate in Israel must be registered in Israel as a “foreign corporation” which is licensed to manage a mutual fund in Israel and must appoint a trustee. The trustee may be a foreign company. The manager must appoint two independent directors (Section 16) to its board, who, according to Section 240 of the Companies Law of 1999, are also required to be Israeli residents or citizens. Employees of mutual fund managers who are involved in choosing the management of the fund’s investment portfolio are required to be Israeli residents if they participate in making decisions with regard to domestic securities (including foreign securities issued by companies registered in Israel). If the employees deal only with foreign securities, it is sufficient that these persons be authorised to engage in investment management under the laws of their country of residence. These provisions fall outside the scope of the Codes and are reported for transparency among the list of measures other than exceptions to national treatment under the NTI.

A Stock Exchange member is defined as a company that is incorporated and registered in Israel. The conditions for qualifying as a member are detailed in the Tel Aviv Stock Exchange (TASE) by-laws. A Stock Exchange member may be a foreign bank with a branch in Israel, which meets rating standards equivalent to levels required of domestic banks.

The rules for membership of a foreign bank in TASE are mostly the same as applicable to residents, except that the Board of Directors of the TASE may prescribe additional qualifications. In doing so, it may take into account the following elements: 1) the conditions prescribed for the foreign bank in the framework of the foreign bank license it received from the BOI; 2) the laws applicable to the foreign bank in its main place of domicile; 3) the foreign bank’s experience on the capital market; 4) the volume of the foreign bank’s activity on the capital market; 5) the foreign bank’s reputation and 6) the foreign bank’s main place of domicile. The Israeli authorities have confirmed that these elements are not used to discriminate against and among banks from OECD countries.

#### **4.3. Cross-border provision of financial services**

Cross-border insurance, banking and other financial services are covered by items D and E of the CLCIO. Several of these financial services may not be offered on a cross-border basis directly by non-residents in Israel. Promotional activities are also restricted for most insurance services. At the same time, Israeli residents may purchase abroad financial services at their own initiative.

##### ***Insurance services***

The provision by non-residents of insurance services, except reinsurance and retrocession, requires registration as a branch or incorporation as a resident company. The cross-border provision of insurance services is therefore not allowed, except at the initiative of the proposer. Foreign insurers are prohibited from advertising in Israel the cross-border provision of their services. These restrictions give rise to reservations to all items D, except items D/1 (transfers relating to social security and social insurance) and D/5 (Transactions and transfers in connection with reinsurance and retrocession).

Regarding item D/1, according to the Israeli authorities, there are no restrictions on the transfer abroad of insurance premiums by proposers. Transfers of premiums which are payable in another country and to

an insured person or beneficiary residing in another country or, for their account, to a social security or social insurance authority in that country, are free. This is without prejudice to the fact that the underlying transaction to which payments and transfers are related needs to be recognised by countries, including through mutual recognition arrangements.

Regarding item D/2 (insurance relating to goods in international trade), Israeli residents may acquire any insurance abroad to cover events in Israel and outside. However, foreign insurers are not permitted to market these services in Israel. In response to the request by the Investment Committee, the Israeli authorities indicated their willingness to ease the restrictions on the cross-border provision of insurance relating to goods in international trade, at least for corporate and sophisticated proposers. The details and the timetable of this revision are, however, not available yet and Israel therefore maintains the proposed reservation under item D/2 of the CLCIO.

The Israeli authorities confirmed that they apply restrictions on the cross-border provision of life assurance services. The restrictions concern the fact that: (i) only insurance services purchased abroad at the initiative of the resident proposer are liberalised and (ii) tax benefits are accorded only to (specific) insurance products issued by insurers established in Israel, which have savings components and which – as all the other life insurance products – have been approved by the supervisor. The restrictions on the cross-border provision and the tax treatment of life assurance services give rise to a proposed reservation under item D/3.

Concerning item D/4 (all other insurance), restrictions also apply, except if the risk cannot be covered in Israel, in which case a resident may obtain insurance from a foreign insurer. The tax treatment of these insurance services is the same, because whenever the premiums are allowed to be deducted totally or partially for tax purposes, the same benefits accrue whether the contract has been concluded with an insurer established in Israel or abroad. Thus, the proposed reservation covers only Annex I to Annex A, Part I, D/4, paragraph 4. Events which call for compulsory insurance under the motor vehicle insurance ordinance and covering compulsory railway insurance must be insured by established insurers licensed by the Israeli authorities. The Israeli authorities have confirmed that non-compulsory railway insurance may be provided on a cross-border basis; hence the reservation under this item of the CLCIO can be narrowed. For all other compulsory insurance (air and ship) Israeli residents may avail themselves of the services of non-resident insurers. Compulsory insurance, however, falls outside the scope of item D/4. Transfers related to permitted insurance transactions are free.

Israel proposed reservations under items D/7 (entities providing other insurance services) and D/8 (private pensions) because restrictions apply to the cross-border provision and promotion in Israel by non-residents of intermediation services, except services purchased abroad at the initiative of the proposer.<sup>14</sup> During the accession discussions, the Israeli authorities confirmed that restrictions do not apply to other services also falling under this item, like auxiliary and representation services. The tax advantages enjoyed by residents for contracting with resident pension funds are not extended to non-resident providers of the same service, which is also reflected in the proposed reservation to item D/8. No authorisation is required to establish a representative office in Israel to promote, on behalf of the parent enterprise, those cross-border insurance services that are allowed in Israel.

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14 In accordance with the Seventh Examination of Members' Reservations to the Insurance and Private Pensions Provisions of the CLCIO [C(2008)4], the term "resident" includes a branch established by a foreign provider.

### ***Banking and investment services***

There are no restrictions on the cross-border provision of payment services (item E/1). This area has been liberalised after the lifting of foreign exchange controls that was completed at the end of 2002.

Until the end of 2007, the cross-border provision of underwriting services was not permitted. Then the Minister of Finance issued regulations prepared by the Israeli Securities Authority (ISA), to open the underwriting market. These regulations are intended to facilitate the entry of foreign underwriters into the local underwriting market, from which they were absent. The reform provides that companies, the control and management of which are situated outside Israel, may apply to the ISA to be registered as underwriters in Israel so long as they comply with the conditions set out in section 2 of the Regulations. The main conditions are that the company is authorised to act as an underwriter of securities offered to the public and admitted to trading on an exchange in a country outside Israel and that in that country this activity is subject to regulatory supervision. The term “an exchange in a country outside Israel” is defined in section 1 of the Securities Law, which in its annexes provides the list of exchanges that are accepted by the Israeli supervisor. This list was established after examining the disclosure requirements and the quality of supervision of the relevant countries and stock exchanges. The stock exchanges included in the list were recognised by Israel as providing adequate protection for investors. To date, the stock exchanges of two OECD countries are recognised for the purpose of section 1 of the Regulations.

The Israeli authorities recognise that to meet the non-discrimination requirements of the OECD Codes of Liberalisation, they must either eliminate the incorporation requirement for underwriters or offer to all OECD countries the opportunity to benefit from the exemption currently enjoyed by two OECD members. The Israeli authorities have decided to amend the Securities (Underwriting) Regulations of 2007 to remove the incorporation requirement so that non-resident underwriters will be able to be registered by the ISA in the Underwriters Register if they comply with the same requirements as apply to resident underwriters. No reservation is lodged by Israel for item E/2 of the CLCIO.

For the settlement and clearing services (item E/3), the Tel Aviv Stock Exchange Clearing House has an exclusive relationship with the Tel Aviv Stock Exchange (TASE) in which transactions are cleared and settled solely by TASE clearing house members through the TASE clearing houses.

In addition, as regulated in the Bank of Israel Law of 1954, banking corporations, the government or any other entity fulfilling the conditions under section 57A of the law, may operate an account at the Bank of Israel. When the Real-time Gross Settlement System (RTGS) will be set up, its rules will prescribe that only an entity managing an account at the BOI will be permitted to be a participant in the system. Therefore, foreign banks established in Israel will be permitted to open an account in the BOI and access the central bank's RTGS system.

During the accession discussions, the Israeli authorities have indicated that non-resident banks are allowed to provide custodial or depository services in Israel, even if they are not incorporated in Israel, as may non-resident non-banking institutions. Because of the operational structure of the local market, if the non-resident institutions wish to be custodians for TASE securities – and are not members of the Clearing House – they can do so through a TASE member as their designated sub-custodian. To the extent this provision does not amount to a local presence requirement, this rule is not considered a restriction requiring a reservation under item E/3. Moreover, there are no restrictions on foreign custodian and depository service providers to offer to residents their services for securities or for non-securitised claims traded outside Israel. Therefore, no reservation is required under item E/3 of the CLCIO.

According to the Companies Law of 1999, the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law of 1995 and the Financial Services (Insurance) Law

of 1981, the provision of portfolio management and pension fund management services is restricted to incorporated entities in Israel. At the same time, the Israeli authorities indicated that acting as a mutual fund manager does not require incorporation in Israel, only registration with the Registrar of Companies. These rules give rise to a reservation under item E/4 for pension management and portfolio management services. However, a planned amendment to the Investment Law (Amendment 11) – if enacted – would remove the restrictions on portfolio management.

Under the Regulation of Investment Advice and Investment Portfolio Management Law of 1995, any non-Israeli intermediary wishing to offer investment advice and/or management services must comply with all the licensing conditions applying to Israeli providers, including the requirement that the provider be an Israeli corporation (i.e. a foreign corporation that has registered itself as such with the Israeli Registrar of Companies) or person (i.e. a foreign national resident in Israel) and that the licensed employees of the license holder be Israeli citizens or residents.

However, the amendment to the Investment Law (Amendment 11) currently under preparation will facilitate the provision by non-residents of advice, marketing and management services. The Israeli authorities have included the elimination of the residency requirement in the proposed amendment, covering portfolio management, advice, marketing and management services. The service providers will have to fulfil the same requirements as applicable to Israeli residents and thus the rules will be non-discriminatory. These requirements include the same registration procedure as applied to resident intermediaries and comprise information on the identity of the non-resident's home regulator and the size of its capital.

In addition to the above general rule, to facilitate non-residents' activities in Israel, the proposed amendment allows a non-resident intermediary licensed outside Israel to enter into an arrangement with an Israeli licensed intermediary, whereby the local intermediary will bear full regulatory liability for the activities in Israel of the non-resident intermediary. It is intended that this arrangement will be open to all foreign intermediaries without additional conditions, such as the identity of its home regulator or the size of its capital.

Overall, after the enactment of Amendment 11, the reservation to item E/4 will apply only to the cross-border provision of pension fund management services and there will be no reservation under item E/5. Amendment 11 has been submitted to the Knesset by the Government; however it is unclear when it will be enacted. Therefore, until its enactment, the reservations under items E/4 and E/5 of the CLCIO, described above, have been retained.

There are no restrictions on the payment, receipt or collection of fees and other charges in relation to any permitted underlying banking and financial transaction. As a result, no reservation is necessary under item E/6.

## **5. CURRENT INVISIBLE OPERATIONS OTHER THAN FINANCIAL SERVICES**

### **5.1. Current transfers and payments**

Israel provides for free payments and transfers in connection with current international transactions covered by the Code of Liberalisation of Current Invisible Operations.

### **5.2. Trade in non-financial services**

#### ***Road transport***

Cargo transport is regulated by the Transport Services Law, which in Section 1 defines "transport service" as the transport of cargo in a commercial vehicle, whether as a service to another or for the needs of the transporter. According to Regulation 2(A) (1) of the Transport Services Regulations of 2001, one of the conditions for receiving a transporter's license is that the applicant for the license "is a resident of Israel, and if a corporation, is registered in Israel." Therefore, it is not possible in Israel for a foreign corporation to provide cargo transport services to the public. This requires a reservation under item C/3 of the CLCIO.

The requirement that companies providing special transportation and local light train services must be established in Israel also gives rise to reservations under item C/3 of the CLCIO.

#### ***Air transport***

The provision of flight services for passengers and cargo, both in scheduled and charter flights, is regulated by the 1963 Flight Services Licensing Law. According to Section 5 of this Law, the activity of a foreign operator in scheduled flights is governed by a bilateral agreement with the country in which the relevant aircraft is registered, which regulates mutual granting of aviation rights. The operation of aircraft or the rental of aircraft for a commercial flight to or from Israel or within its territory requires a license granted by the Minister of Transportation. These flight services may be provided by a foreign corporation or foreign aircraft. For regular flights, the Minister of Transportation may refuse to grant a license, among other things, if granting such a license would be inconsistent with an international agreement regarding civil aviation between Israel and a foreign country; or between an Israeli company and a foreign company; and if the license could impair the execution of such agreements. These measures appear to relate to cross-border provision of air transport services without an establishment in Israel. However, they fall outside the scope of the CLCIO which only covers payments and transfers related to permitted air transport services. There are no restrictions on payments and transfers.

#### ***Films***

Israel does not impose restrictions on the import and use of printed films (item H/1 of the CLCIO). Films produced under international co-production agreements enjoy treatment as favourable as that given to domestically produced films. Israel has signed several co-production bilateral agreements. Israel accepts the Recommendation concerning the Conclusion of Bilateral Agreements for the Co-Production of Films [C(64)124]. The Israeli authorities indicated that foreign participation in film production may be less than 30% of the cost of the film. Hence, no reservation is needed under item H/1.

## *Professional services*

### *Legal services*

As a rule, under the Israeli Bar Law of 1961, it is not possible to carry out actions reserved for attorneys or to use the title “Attorney” without being a member of the Israeli Bar. The conditions for admission to the Israeli Bar include higher education in law, a one-year internship in law, a qualification examination and residency. As an exception, any person who is not a licensed attorney according to Israeli Law, including foreign attorneys not licensed in Israel, may provide legal advice on any type of law (including Israeli law) to attorneys in Israel or to state authorities. Another exception is representation before arbitrators when one of the parties to the procedure is a non-resident or a corporation registered outside Israel by a non-resident licensed to practice law in his or her country of residence. Legal companies need to be registered in Israel. Israel has committed not to restrict the cross-border provision of legal services under the GATS. No reservation is lodged under item L/6 of the CLCIO.

### *Accounting services*

To serve as an accountant, or to perform actions reserved uniquely for accountants by law, a license issued by the Israel CPA (Certified Public Accountants) Council is required. Accounting companies must be registered in Israel to provide accounting services. All members and managers of the company or a partnership must be accountants, *i.e.* must have an Israeli licence, and those who do not have it are not allowed to share in the profits. No residency or nationality requirements are imposed as a condition to obtain a licence. The applicant for a licence needs to pass exams, some of which are translated into English, and to have internship experience in Israel. If the accountancy level of the applicant is determined by the Council to be equivalent to Israel’s, a six-month internship is required. These requirements are not discriminatory and do not call for a reservation under item L/6 of the CLCIO, taking into account that under Article 16 of the Codes, a Member that would consider liberalisation to be frustrated by non-discriminatory internal arrangements can refer the matter to the Organisation.

The duration of internships in accountancy is six months for accountants from countries considered “equivalent” and 2 years for accountants from countries deemed to be “non-equivalent”<sup>15</sup>. In the case of the latter, the applicants may request that the CPA Council reduce the time of the internship. This request is usually granted and then the duration of the internship would be one year.

### *Engineers and architects*

There are no nationality or residency requirements for engineers and architects. However, in order to carry the title of engineer or architect, or to practice in the engineering or architecture sectors, registration, and for large-scale projects, licensing is needed. Registration requires, among other conditions, proof of adequate training. A pre-condition for the issuance of a license to execute large-scale projects is the requirement to have worked at least three years in an architect’s office (in Israel or abroad) and at least an additional year in Israel. Unless the requirement of one-year experience in an architect’s office in Israel is interpreted to amount to a residency requirement, these rules do not require the lodging of a reservation under item L/6.

### *Tour guides*

According to the Tourism Services Law of 1976, the Ministry of Tourism is responsible for supervising the tourism sector, encompassing hotels, travel agencies, camping sites, and listed tourist

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15 The list of equivalent countries is listed in the guidelines of the Israeli Council of Certified Accountants.

shops. Tour guides are licensed by the Ministry and required to be Israeli residents. An exception is made for foreign clergy guiding their congregation. Only licensed tourist guides may be employed by travel agencies to guide their tours. Because the cross-border provision of this service is restricted, it requires the proposed reservation under item L/6.

## 6. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

### 6.1. Experience and performance of Israel's National Contact Point

The OECD National Contact Point (NCP) for Israel is located in the Foreign Trade Administration in the Ministry of Industry, Trade and Labor. Israel has created, in addition, an Advisory Committee to the NCP comprised of representatives from the Ministries of Finance, Foreign Affairs, Justice, Environment and Industry, Trade and Labor, which meets bi-annually.

The Advisory Committee works directly with other authorities and civil society to promote the OECD Guidelines for Multinational Enterprises (the Guidelines). The Committee and the NCP are guided by the core criteria for activities of NCPs, namely visibility, accessibility, transparency and accountability. While no changes have been made in the NCP structure since its establishment, there is willingness to revise the current structure and contemplate changes, should they be needed, to assist the NCP to operate in a more efficient manner.

The Israeli authorities have indicated that the NCP is taking full advantage of shared experiences on emerging NCP practices as discussed under the auspices of the annual meetings of NCPs, including inclusiveness of the NCP's operation, capacity-building to facilitate conciliation and mediation, and ensuring objectivity of NCP assessment in the handling of specific instances arising under the Guidelines.

The authorities have stressed that Israel is committed to the implementation of the Guidelines and considers them an important element in the promotion of responsible business conduct in Israel and abroad. Israel promotes the Guidelines through the internet, including a dedicated webpage with links to the NCP's activities, with translations into Hebrew and Arabic, the official languages of Israel, and in meetings with relevant parties and as part of seminars. Recent examples include meetings with the Israeli Foreign Trade Risk Insurance Corporation and the Israeli Manufacturer's Association and with environmental NGOs. The Guidelines and the NCP have been presented before senior government officials in the Ministry of Industry Trade and Labor. A NCP representative is invited on a regular basis to activities of Israel's Manufacturer's Association and Israel's investment promotion agency in order to promote the Guidelines. In cooperation with the Israeli – Jordanian NGO "Friends of the Earth and the Middle East" and the Bar Ilan University's Law Department a booklet was published, in Hebrew, that can be used as a manual on how to work effectively with Israel's NCP. The booklet is available on the web.

Israeli companies doing business abroad are made aware of the Guidelines both through direct promotional activities in Israel, such as direct-mailing of a printed version of the Guidelines, seminars through intermediaries (such as the Israel Export and International Cooperation Institute), as well as via economic and commercial representatives posted in Israeli embassies abroad who are in contact with Israeli companies in their host country.

The NCP is considering taking steps to raise further awareness of the Guidelines in the business community through official export credit overseas investment insurance programs and other relevant government support programs and increased utilisation of Israel's network of economic and commercial representatives abroad. In addition, the NCP is currently working to increase the on-line dissemination of the Guidelines, by creating or maintaining links to the Guidelines on the websites of government ministries and agencies which deal directly or indirectly with inward and outward investment.

There have not been any specific instances so far brought to the NCP for mediation and conciliation. This is primarily due to the relatively small size of Israel's economy in comparison with most OECD members. The only specific instance considered by the NCP was a notification in 2003 regarding illicit

sourcing from the Democratic Republic of Congo (reported in the NCPs annual report for 2005-2006). Following an enquiry by the NCP, the accused company ceased the sourcing.

## **6.2. Government policies and initiatives to promote responsible business conduct**

Israel has ratified or otherwise adheres to the various international instruments mentioned in the Guidelines. These include the following: Universal Declaration of Human Rights; Copenhagen Declaration for Social Development; ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977 Tripartite Declaration); ILO Declaration of Fundamental Principles and Rights at Work (1998 Declaration); ILO Convention 29 of 1930 and C.105 of 1957 (Elimination of all forms of compulsory labour); ILO Convention 111 of 1958 (Principle of non-discrimination with respect to employment and occupation); ILO Convention 138 of 1973 (Minimum age for admission to employment); ILO Convention 182 of 1999 (Elimination of the worst forms of child labour); ILO Recommendation 94 of 1952 (Consultation and co-operation between employers and workers on the level of undertaking); ILO Recommendation 146 of 1973 (Minimum age for admission to employment); Rio Declaration on Environment and Development; Agenda 21; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus); UN Guidelines on Consumer Policy.

Israel became a Party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in May 2009 and is a full participant of the Working Group on Bribery in International Business Transactions.

The last few years have also seen a number of regulatory developments geared to facilitate and enable an environment for responsible business conduct. These developments include, *inter alia*, the following labour laws:

- *Protection of Employees (Disclosure of Offenses, Unethical Conduct and Improper Administration) Law*: An amendment from 2008 establishes criminal liability for an employer who impairs the rights of an employee who has complained to a competent government authority or aided another employee to complain, regarding a violation of a law, including the violation of labour laws.
- *Equal Opportunities Law*: As a result of a 2006 amendment to the Equal Opportunity Law of 1988, an Equal Opportunity Commission has been established to promote the recognition and the exercise of rights pursuant to the equality legislation.
- *Women's Employment Law*: The 1954 law has been amended several times in 2007-8, ensuring a full range of rights for working women.
- *Rights of the Disabled Employed During Rehabilitation*: A law has been passed in 2007 whose aim is to promote the integration of the disabled into the work force and to improve their rehabilitation process. The amendment grants rights to the individuals undergoing rehabilitation which are similar to the rights granted under Israel's labour laws.
- *Wage Protection Law and Minimum Wage Law*: An amendment has established new legal arrangements concerning the obligation of an employer to give his employees pay slips detailing their wages and deductions. Criminal sanctions and exemplary compensation may be imposed on employers who knowingly violate this obligation. A 2002 amendment obligates the employer to post a notice concerning the rights of the workers in accordance with the Minimum Wage Law.

In February 2004 a general collective agreement was reached between the employer organisations in the labour contracting sector and the employee's organisations representing workers in this sector. The purpose of the agreement is to protect the rights of the contract labour workers, including the conditions of their employment and their social benefits. The agreement covers working conditions such as working hours, yearly vacation, travel expenses, sick pay, clothing expenses, pension arrangements, contributions to mutual funds etc. The agreement will apply through an expansion order to labour contractors even if they are not members of the employers' organisations that signed the agreement. In January 2008, an expansion order of a collective agreement concerning pensions was promulgated. The order obligates all employers to pay pension insurance for employees who do not enjoy benefitted insurance pension plans. The order has been introduced gradually and will be fully implemented by 2013.

In the field of environment, Israel uses regulatory, economic, educational and cleaner production measures to help mitigate the adverse environmental impacts of industrial development. Several measures have been adopted over the years, in order to increase deterrence of environmental nuisances through the imposition of penalties on polluters in the industrial sector. These include implementation of the "polluter-pays principle," incremental daily fines for continuing violations, establishment of offenses as strict liability offenses, imposition of personal liability on corporate managers, and administrative injunctions to prevent, stop or minimise nuisances or to take steps to restore previous conditions (cleanup orders). Recent years have seen a gradual shift in emphasis from "polluter pays" to "pollution prevention pays." In order to promote this shift, educational and financial measures have been used to convince industry that expenditure on prevention is lower than expenditure on repair and that pollution control and waste reduction can strengthen economic competitiveness through more efficient use of raw materials and the development of a "green" corporate image.

Examples of the new regulatory developments in the field of environment aimed to promote corporate business conduct and to implement key environmental principles include the Clean Air Law, which will come into effect in January 2011 and provides a comprehensive framework for the reduction and prevention of air pollution by setting responsibilities and imposing obligations on the government, local authorities and the industrial sector. The Law takes a precautionary approach, the use of which is also consistent with the Guidelines' commentaries on their Environment chapter. Another example is the Tire Disposal and Recycling Law of 2007, based on the principle of "producer responsibility" which places responsibility for the environmental impact of a product on the producer or importer of the product, aims to reduce waste and promote recycling of used tires.

The Israeli authorities consider that, as an emerging economy, Israel is an increasingly active player in the global investment landscape. They see the OECD Guidelines as providing the normative benchmark for responsible business conduct by Israeli companies operating abroad. The Israeli NCP maintains constant contact with Israeli companies operating abroad, both directly as well as indirectly via Israel's network of commercial representatives stationed abroad. The Guidelines and their content have been distributed to all Israeli companies with a presence abroad.

Proposals to promote the Guidelines among Israeli companies operating abroad include taking into account companies' compliance with responsible business conduct when awarding 'exporter of the year' awards and making explicit reference to such conduct when presenting the award; collecting examples of good practices utilised by both Israeli and non-Israeli multinationals operating in a country, and disseminating these examples via newsletter to target audiences; and making reference to responsible business conduct a permanent part of the introductory packets distributed to Israeli companies looking to do business in these countries. The Israeli authorities expect that such activities will raise the awareness level of Israeli multinationals with respect to the importance of adopting responsible business conduct and contribute to the quality of discussion regarding the implementation of the Guidelines.

## 7. OECD PRINCIPLES FOR PRIVATE SECTOR PARTICIPATION IN INFRASTRUCTURE

Israel accepts the Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [C(2007)23] and has indicated that its policy is consistent with the principles therein. It is actively opening up its infrastructure projects to the private sector, including to both national and foreign companies. In doing so, Israel wishes to ensure the population benefits from private sector advantages over public sector capabilities, such as more efficient execution and implementation, technical expertise and innovative approaches and technologies.

At present, private participation in infrastructure focuses primarily on four sectors, with a total volume of operations of USD 9 billion: transport (70% of total investment); energy (15%), water desalination (11%) and construction (3%). Recent examples include:

- Transportation-Railroads/Mass Transit Systems and HW-Roads: Two projects related to construction and operation of the Cross-Israeli Highway (one of USD 1 200 million, already in operation, the second of USD 180 million, currently under construction) involve private participation both in their operation and financing. The Highway 432 project (with a cost of USD 475 million), currently under construction, includes private financing both from Israeli banks and a foreign bank (HSBC).
- Water desalination: The Ashkelon plant (NIS 225 million) already in operation, includes 50% participation by Veolia in the consortium. The Hadera plant (NIS 300 million), currently under construction, includes financing by several banks, including Calyon, the European Investment Bank, Espirito Santo and Dexia.
- Energy: The project for the construction of Solar Power plants in the Negev desert (NIS 750-1000 million) will likely include foreign participation but companies have not been selected yet.
- Public Construction: The operational company for the construction of the Beer Sheva Prison (NIS 60 million) will be a foreign entity and in the current bidding process for the construction of the Training Center for the Israeli police; foreign participants are among the bidders.

The Secretariat has examined Israel's policies and approaches in the field of private involvement in infrastructure and has concluded that:

- Israel is aware of the high importance of private sector involvement for economic development to encourage competition and contribute to economic development. It views private participation in infrastructure as an important means to attract investment, including foreign investment, and to enhance the quality of services which were traditionally provided by the government.
- Israel is aware of both the challenges involved in increased private sector participation, *inter alia*, in terms of financial risks, performance and public buy-in, and the advantages, such as bringing in innovation, improving synergies between the public and the private sector and between Israeli and foreign companies, increased competition, entry of financial and human resources, new technologies and know-how.

- Israel's practice in involving the private sector in infrastructure projects appears in line with the principles set out in the OECD Recommendation on Principles for Private Sector Participation in Infrastructure and consistent with Israel's declared acceptance of the Recommendation.

Israel's approach and experience can be summarised as follows, along the headings of the OECD Recommendation.

#### *Deciding on private or public provision of infrastructure services*

Before deciding on the execution of an infrastructure project involving the private sector, a three-phase feasibility study is carried out. The first step is to ensure that the project is economically and technologically feasible; the second is to ensure that the envisaged project meets the criteria for public-private partnerships; the third is to show that the outcome is likely to be better than public sector implementation. When the feasibility study concludes in favour of private sector involvement, a tender to select the private partner is issued.

One key aspect in public-private partnerships is the appropriate allocation of risks between the government and the private partner. The allocation of risks aims to draw the maximum of each party's capabilities. Thus, issues such as detailed design, construction, operation, technology development and financing are typically in charge of the private partner, whereas the government takes care of land acquisition and expropriation, and where needed, changes in legislation. The government also assumes the political risks, as well as some financial risks (such as exchange rate related risks). Shared responsibilities include initial planning, market risks, and situations of *force majeure*. In certain cases, there may be a need for the government to assume those risks which the private sector may not be able to assume.

While Israel is satisfied with its experience in involving the private sector, it is also aware of the difficulties of opening up certain sectors to private participation. One of them is the high cost of issuing tenders, especially in areas where this is done for the first time. To reduce costs, the Israeli authorities tend to standardise contracts.

#### *Enhancing the enabling institutional environment*

In the last two decades the Israeli economy has experienced strong economic growth and has obtained high ratings by leading international rating agencies. The Israeli authorities consider Israel to be an attractive, innovative, dynamic market for foreign investors, and that, following capital market and exchange rate market liberalisation, it offers good business opportunities and a stable economic and competitive environment.

In order to encourage participation of international investors in infrastructure projects, tender documents for international designated projects (*e.g.*, desalination plants, solar energy, liquefied natural gas, light trains) are published in English. Furthermore, the government provides certain incentives, such as willingness to make payments in US dollars or Euros, protection against changes in foreign interest rates and various indexation protections at the different project stages.

#### *Goals, strategies and capacities at all levels*

Before launching a public-private partnership initiative, the end-users and the interested parties are consulted. For instance, in the light train project in Jerusalem, the municipality is an active player in promoting the project together with relevant governmental ministries and authorities.

Prior to the execution of each project, a statutory plan has to be approved by a planning committee. The approval process includes an appraisal of environmental impacts, a consultation phase, and handling

requests of information from interested parties. After the approval of the plan, representatives of the planning committee supervise how the authorised project is being executed and ensure that all instructions are fully implemented, with emphasis on environmental issues. For instance, in the case of desalination plants, the Environment Ministry is closely involved in issuing regulations for the building and operating of the plants.

#### *Making the public-private co-operation work*

The Israeli authorities consider it important to include the private sector in the early phases of the planning process.

For each project an inter-ministerial tender committee is appointed for the conduct of the tender process. All potential bidders are publicly invited to consult the invitation to participate in the tender process, which includes a brief description of the contemplated project, tender rules and requirements for the pre-qualification stage of the tender process. Tender documents issued for the next stage, in which bidders who qualified are entitled to participate, include a detailed description of selection criteria.

Notices of new tenders and updates thereto are published in the press and are available through various government websites; the tender documents are made available for review by the public, and in most cases, are also available on the web. The protocols and decisions of the tender committees managing such tenders are available for the review of the participants in these tenders (subject to strictly commercial information being deemed as confidential) which can, in turn, appeal against such decisions either to the tender committees or to the applicable courts. At different stages of the tender process, participants are invited to submit their comments to the tender documents prepared by the government, to attend bidders' conferences or assist to meetings with representatives of the Tender Committee. All communications made by the Tender Committee are sent to all the participants in the tender and the whole process is monitored by legal advisers in order to ensure full transparency and equal treatment of all participants.

The bid appraisal process is split into two steps. During the first step professional teams evaluate the bids and grant a quality scoring. During the second step, price proposals are opened to determine the final scoring and the winning bid. In case of disagreement between the public and the private sectors during the execution of the agreement, the tender documents require parties to negotiate in order to resolve the dispute. If they fail to reach agreement, they have recourse to dispute resolution mechanism: disputes are brought first to the examination of a commonly appointed independent expert; in case of disagreement, an arbitration procedure is foreseen prior to court proceedings.

The contract provides for a compensation mechanism, agreed upon in advance in case of early termination or special circumstances like force majeure. The contract also provides for a procedure for the timely termination of the contract.

#### *Encouraging responsible business conduct*

For the Israeli government, it is important that companies involved in private-public partnerships meet high standards of corporate conduct. Among other tools, the Israeli authorities refer to international ratings to assess the quality of their partners. As part of their bids, participants in tenders have to submit a signed copy of the contract, which includes a wide range of commitments, in terms of respect of different regulations, including conditions of employment for workers. All government tenders contain requirements for compliance with the Law in general and also specific requirements for compliance with labour and environmental laws.

Bids must be backed by bank guarantees. Commitments taken in the signed contract are to be honoured by both sides and a mechanism for determining fines in case of violation of contractual

commitment is agreed upon in advance. During the construction and operation phase of the project, the government appoints an Implementation Authority for each project, responsible for the close supervision of the proper execution of the contract signed with the private sector. The Implementation Authority is the “one shop” point of contact with the private sector partner; regular status meetings are held between the parties, and the private partner has to submit regular progress reports.

Changes to the project during the construction and/or the operation phase are possible, however the framework for discussing such changes is agreed upon in advance in the contract. Financial institutions involved in the financing also closely monitor implementation of the projects.

The importance of providing information to and ensuring communication and dialogue with the local communities in projects such as the one on light trains in Jerusalem or Tel Aviv, has been clearly recognised as key for implementation of the project, and the government has allocated funds to co-ordinate these activities.

**ANNEX 1 EXTRACTS FROM THE ROADMAP FOR THE ACCESSION OF ISRAEL  
TO THE OECD CONVENTION [C(2007)102/FINAL]**

**APPENDIX A.I**

**Investment Committee**

*Candidate countries should commit to the following set of core principles on cross border capital movements and services, foreign direct investment and multinational enterprises:*

- full compliance with the principles of non-discrimination, transparency and standstill, in accordance with the OECD Codes of Liberalisation and the National Treatment instrument of the OECD Declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);
- an open and transparent regime for FDI including in key sectors. Restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;
- liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;
- no restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;
- relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;
- fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;
- effective enforcement of intellectual property rights;
- key commitments under investment protection and other international agreements;

capacity to present a credible plan for the establishment of a visible, accessible, transparent and accountable National Contact Point for the OECD Guidelines for Multinational Enterprises; evidence of the candidate's commitment to the various international instruments cited in the Guidelines.

*These principles are reflected in the Instruments, Recommendations, Guidelines and Best Practices outlined below.*

#### A) OECD Decisions and other legally binding instruments

- Decisions on the Codes of Liberalisation of Capital Movements and Current Invisible Operations (1961 and subsequent amendments).
- Decisions related to the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments).

*The Investment Committee (and its subsidiary bodies) will review and assess the willingness and ability of the candidate countries to accept the obligations of these instruments.*

#### B) OECD Recommendations and Declarations

*i) The following key instruments have specific policy implications requiring an assessment of the candidate countries' position through a review by the Investment Committee and the subsidiary bodies concerned:*

- Recommendation on the OECD Benchmark Definition of Foreign Direct Investment (1995, currently being revised).
- Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments).

In addition, the candidate countries would be required to complete the IMF/OECD Survey of Implementation of Methodological Standards for Direct Investment and agree to report data for the compilation of the OECD International Direct Investment Yearbook and the annual report on FDI trends published in International Investment Perspectives, in accordance with the timetable and template agreed by Members.

*ii) The following instruments are primarily of a technical or operational nature. The position of the candidate countries will be assessed through a technical review by the Secretariat:*

- Recommendation on OECD Principles for Private Sector Participation in Infrastructure (2007).

### **OECD LEGAL INSTRUMENTS UNDER THE PURVIEW OF THE INVESTMENT COMMITTEE FOR THE PURPOSE OF THE ACCESSION DISCUSSIONS**

#### **Decisions**

Decision of the Council on the OECD Guidelines for Multinational Enterprises C(2000)96

Decision of the Council on National Treatment C(91)147

Decision of the Council on Conflicting Requirements being imposed on Multinational Enterprises C(91)73

Second Revised Decision of the Council on International Investment Incentives and Disincentives C(84)92

Decision of the Council adopting the Code of Liberalisation of Capital Movements OECD/C(61)96

Decision of the Council adopting the Code of Liberalisation of Current Invisible Operations OECD/C(61)95

### **Recommendations**

Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to National Security C(2009)63

Recommendation of the Council on the OECD Benchmark Definition of Foreign Direct Investment C(2008)76

Recommendation of the Council on Principles for Private Sector Participation in Infrastructure C(2007)23

Recommendation of the Council on Member Country exceptions to National Treatment and Related Measures concerning Access to Local Bank Credit and the Capital Market C(89)76

Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures in the Category of Official Aids and Subsidies C(88)131

Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector C(88)41

Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures concerning Investment by Established Foreign-Controlled Enterprises C(87)76

Recommendation of the Council on Member Country Measures concerning National Treatment of Foreign-Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order and Essential Security Interest C(86)55

Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production of Films C(64)124

### **Other Instruments**

Declaration on Sovereign Wealth Funds and Recipient Country Policies C/MIN(2008)8/FINAL

Declaration on International Investment and Multinational Enterprises C(76)99, including the Guidelines for Multinational Enterprises

1967 Draft Convention on the Protection of Foreign Property

**ANNEX 2**  
**ISRAEL'S RESERVATIONS TO THE CODE OF LIBERALISATION OF CAPITAL**  
**MOVEMENTS**

List A, I/A Direct investment:

- In the country concerned by non-residents.

*Remark: The reservation applies only to:*

- i) *establishment of branches by non-resident providers of investment advice and marketing, portfolio management and pension fund management services;*
- ii) *establishment of branches by non-resident private pension funds;*
- iii) *air transport to the extent that foreign equity participation in an airline company is limited to 49% of its capital;*
- iv) *maritime transport, to the extent that:*
  - a) *the acquisition of 49% or more in Israeli flag vessels is reserved for Israeli residents and*
  - b) *the establishment in Israel for the purpose of providing port services at ports open to international shipping for the general public requires majority control by Israeli nationals;*
- v) *telecommunication services to the extent that*
  - a) *in international communications services, a foreign operator may hold only up to 49% of the controlling interest of a licensee and at least 26% of the control in a licensee must be held by nationals who are residents of Israel;*
  - b) *in a domestic licensed fixed line operator the controlling interest must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least 20% interest;*
  - c) *in radio and mobile telephone services, where at least 20% of the shares must be held by Israeli residents;*
  - d) *in satellite broadcasting, where at least 26% of the controlling interest in a licensee must be held by nationals who are residents of Israel;*
  - e) *in cable broadcasting ,where a) at least 26% of the controlling interest in the licensee must be held by nationals who are residents of Israel and b) a license may not be granted to an applicant in which a foreign government holds shares, unless the Minister of Communications authorises an indirect holding in the licensee of up to 10% by such an applicant; and*
  - f) *in commercial television and regional radio, where at least 51% of the controlling interest in the concession must be held by nationals who are residents of Israel;*

- vi) *electricity, where the maximum proportion of investment in a company licensed to transmit, distribute or produce a substantial part of electricity to be held, directly or indirectly, by a non-resident, is subject to a determination by the Minister of National Infrastructures and the controlling interest of the company must be held by a national who is a resident of Israel;*
- vii) *investment in real estate, where the acquisition of land by companies controlled by foreign nationals is subject to the prior approval of the Israel Land Administration Council.*

List B,  
III/A1

Operations in real estate:

- Building or purchase in the country concerned by non-residents.

*Remark: The reservation applies only to the purchase of land by foreigners, which is subject to the prior approval of the Israel Land Administration Council.*

List A,  
IV/C1

Operations in securities on capital markets:

- Purchase in the country concerned by non-residents.

*Remark: The reservation applies only to the purchase of shares and other securities of a participating nature which may be affected by the laws on inward direct investment and establishment.”*

**ANNEX 3**  
**ISRAEL'S RESERVATIONS TO THE CODE OF LIBERALISATION OF CURRENT INVISIBLE OPERATIONS**

C/3. Road transport: passengers and freights, including chartering.

*Remark: The reservation applies only to special transportation, light trains and cargo transportation.*

D/2 Insurance relating to goods in international trade

Annex I to Annex A, Part I, D/2

*Remark: The reservation, which includes the activity of promotion, does not apply to insurance services purchased abroad at the initiative of the proposer.*

D/3 Life assurance.

Annex I to Annex A, Part I, D/3, paragraphs 1 and 3

*Remark: The reservation under paragraph 1, which includes the activity of promotion, does not apply to insurance services purchased abroad at the initiative of the proposer.*

*The reservation under paragraph 3, which includes the activity of promotion, applies only to insurance contracts with saving components benefiting from tax deductions.*

D/4 All other insurance.

Annex I to Annex A, Part I, D/4, paragraph 4

*Remark: The reservation, which includes the activity of promotion, does not apply to*

*(i) insurance services purchased abroad at the initiative of the proposer;*

*(ii) non-compulsory railway insurance.*

D/7 Entities providing other insurance services.

Annex I to Annex A, Part IV, D/7

*Remark: The reservation, which includes the activity of promotion, applies only to the cross-border provision by non-residents of intermediation services. Residents, at their own initiative, may purchase these services abroad.*

D/8 Private Pensions.

Annex I to Annex A, Part IV, D/8

*Remark: The reservation does not apply to services purchased abroad at the initiative of the proposer.*

E/4 Asset management.

*Remark: The reservation applies only to the provision by non-residents of pension fund management and portfolio management services to residents in Israel.*

E/5 Advisory and agency services

*Remark: The reservation applies only to the provision by non-residents of advisory and agency services in Israel.*

E/7 Conditions for the establishment and operation of branches, agencies, etc. of non-resident investors in the banking and financial services sector.

Annex II to Annex A, paragraph 1

*Remark: The reservation concerns only the establishment of branches by non-resident providers of investment advice and marketing, portfolio management and pension fund management services.*

L/6. Professional services (including services of accountants, artists, consultants, doctors, engineers, experts, lawyers etc.)

*Remark: The reservation applies only to the provision in Israel of services by non-resident tour guides.”*

**ANNEX 4**  
**ISRAEL'S UPDATED LIST OF EXCEPTIONS UNDER THE NATIONAL TREATMENT**  
**INSTRUMENT**

**A. Exceptions at national level**

**I. *Investment by established foreign-controlled enterprises***

*Land and real estate:* Acquisitions of rights to use land and real estate by foreign nationals or companies controlled by foreign nationals are subject to the prior approval of the Israel Land Administration Council.<sup>16</sup>

Authority: Israel Land Law (1960) and Israel Land Administration decision number 342.

*Air Transport:* The licensing of an airline as an Israeli airline is conditional upon the holding of at least 51% of the capital by Israeli nationals.

Cabotage operations may only be conducted by Israeli airlines.

Authority: Aviation Law (1927); Licensing of Aviation Services Law (1963)

*Maritime Transport:* Maritime transport companies must be under Israeli majority ownership.

Authority: Ministry of Transport; legislation pending.

*Domestic Fixed Line Operator:* The control of a domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least a 20% interest.

*Radio and Mobile Telephone Services:* No more than 80% of the shares may be owned by a non-resident.

*Satellite Broadcasting* At least 26% of the controlling interest in a licensee must be held by nationals who are residents of Israel.

*International Communications Services:* At least 26% of the controlling interest in a licensee must be held by nationals who are residents of Israel. A foreign operator may hold up to 49% of the controlling interest of a licensee.

*Cable Broadcasting:*

- a) At least 26% of the controlling interest in the licensee must be held by nationals who are residents of Israel;

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16. The legal regime regarding land and real estate rights is currently under reform.

- b) A license shall not be granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorise an indirect holding in the licensee of up to 10% by such a corporation.

*Commercial Television and Regional Radio:* At least 51% of the controlling interest in the concession must be held by nationals who are residents of Israel.

Authority: Communication Law (1982); Second Authority for Television and Radio Law (1990).

*Electricity:* An applicant for a license to transmit, distribute or produce a substantial part of electricity may be required to fulfil the following conditions:

- a) The controlling interest of the licensee to be held by a national who is incorporated in Israel;
- b) The maximum proportion of control in the licensee to be held, directly or indirectly, by a non-resident of Israel, is subject to a determination by the Minister of National Infrastructures.

Authority: Electricity Economy Law (1996).

*Education Services:* Co-operation between an affiliate of a foreign university and equivalent Israeli institutions is subject to the approval of the Council for Higher Education.

Authority: The Council for Higher Education Law (1959).

## **II. Official aids and subsidies**

*Films, education, religion, academic research, arts and sports:*

- a) The Government may set conditions for granting state aid in the above-mentioned sectors.
- b) The State does not contribute to the budget of an affiliate or branch of a foreign institution of higher education operating in Israel.

Authority: The Film Law (1999); Foundation of Budget Law (1985); The Council for Higher Education Law (1959).

## **III. Tax obligations**

None.

## **IV. Government purchasing**

None.

## **V. Access to local finance**

None.

**ANNEX 5**  
**ISRAEL'S UPDATED LIST OF OTHER MEASURES REPORTED FOR TRANSPARENCY**  
**UNDER THE NATIONAL TREATMENT INSTRUMENT**

**A. Measures Reported for Transparency at the Level of National Government**

**I. Measures based on public order and essential security considerations**

**a. Investment by established foreign-controlled enterprises**

*Defence:*

- i) Defence corporations may be subject to an order restricting the holdings of means of control by foreign investors.
- ii) The transfer of defence know-how to a corporation under foreign control is subject to prior approval by the Minister of Defence.

*Privatisation:* The Ministers' Committee for Privatisation shall decide the process and the conditions for privatisation.

Authority: The Israeli Government Companies Act (1975)

**b. Corporate organisation**

Certain directors, officers and position holders in the licence-holder or in a corporation may be required to be nationals who are residents of Israel in some cases with security clearance and are subject to approval in the following activities:

- Transmission or distribution of electricity or production of a substantial part of electricity.
- Natural gas operator.
- Domestic fixed-line operator.
- Radio and mobile telephone services operator.
- Satellite broadcasting operator.
- International communications services operator.
- Cable broadcasting operator.
- Television and radio operator.
- Israeli airlines.
- Defence corporations.

Authority: Communication Law, Second Authority for Television and Radio Act (1990); Natural Gas Act (1999), Electricity Economy Act (1996), and Licensing of Aviation Services Act (1963).

c. *Government purchasing*

*Defence:* Enterprises may not be granted certain defence procurement contracts, where overriding security reasons apply, in some cases due to foreign holdings.

d. *Official aids and subsidies*

None.

**II. *Other measures reported for transparency***

*Investment by established foreign controlled enterprises*

*Trans-sectoral:* Only an individual who is a resident of Israel and who is qualified for appointment as a director may be appointed as an outside director, except in companies whose shares are listed abroad.

Authority: Companies Law (1999), Relief for Foreign Companies Regulations

*Mutual funds:* Employees of mutual fund managers who participate in making decisions about the management of the fund's investment portfolio are required to be Israeli residents if they participate in making decisions with regard to domestic securities.

Authority: Joint Investment Trust Law (1994).

**B. *Measures Reported for Transparency at the Level of Territorial Subdivisions***

None.

**C. *Activities Covered by Public, Private, Mixed Monopolies or Concessions***

**At the level of national government**

**I. *Public monopolies***

In accordance with special laws, the following activities or state-owned enterprises are in a *de jure* or *de facto* monopoly situation:

- Land: Jewish National Fund (Keren Kayemeth LeIsrael)
- Communication:
  - Inland line operator (telephony, transmission data, data communication, infrastructure)
  - ADSL infrastructure
- Transportation
  - Civil airfields operation, except a few airfields handling mainly general aviation, sport aviation and aviation for agricultural purposes that are operated by local municipalities or the private sector
  - Railway

- Environment
  - Israel Nature and National Parks Protection Authority
  - Hazardous Waste Disposal
- Water transmission
- Production and marketing of dairy products

**II. *Private or mixed (public/private) monopolies***

None.

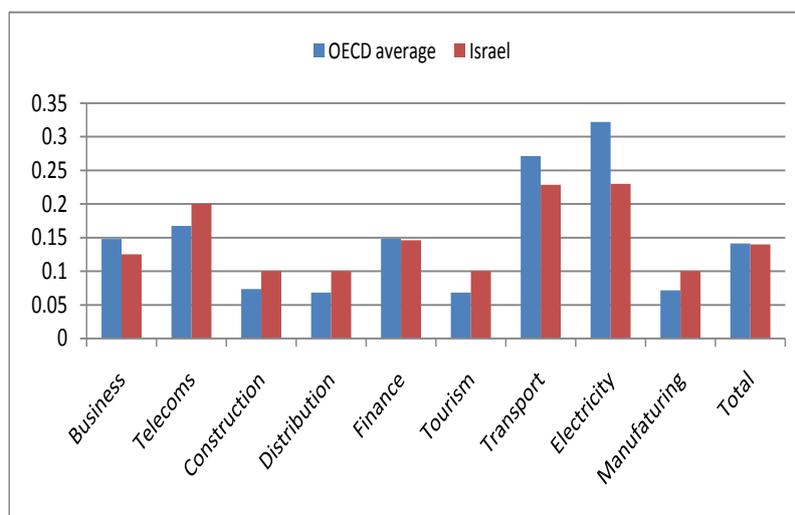
**III. *Concessions***

- Satellite TV
- Public radio channels and regional radio
- Dead Sea mineral exploitation
- Light rail systems
- Oil pipe transport.

**At the level of territorial subdivisions**

None.

## ANNEX 6 ISRAEL'S FDI REGULATORY RESTRICTIVENESS INDEX



Source: OECD Secretariat

### Methodology:

The OECD FDI Regulatory Restrictiveness Index covers the following sectors: investments in i) professional services (including legal, accounting, architectural and engineering services); ii) telecommunications (fixed and mobile); iii) transport (air, road and maritime); iv) finance (insurance and banking); v) distribution; vi) construction; vii) tourism; viii) electricity and ix) manufacturing.

For each sector, the scoring was based on the following elements: 1) the level of foreign equity ownership permitted; 2) the screening and discriminatory notification requirements; and 3) other restrictions (including nationality and residency requirements for companies' key personnel and restrictions on branching). The restrictions are evaluated on a 0 to 1 scale ("0" is the absence of restrictions and "1" is a closed sector). The overall restrictiveness index is a weighted average of the indices, using fixed average FDI and trade shares as weights.

There are a number of important qualifications in using the index, in particular: national security related investment measures are not reflected and primary sectors are not covered. While only statutory restrictions are taken into account and not their actual enforcement, when combined with other factors beyond statutory restrictions, the Index has proven to be a good predictor of FDI performance.



