

# Insolvency procedures in Israel

Eitan S. Erez provides an introduction to the insolvency landscape in Israel



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## General background on the Israeli Economy

Israel, which was only founded in 1948, is considered to be an island of relative economic stability in the Middle East. With 8 million citizens, the annual per capita income is high (\$32,000 per annum) – 31st in the world. For comparison, Egypt, Israel's neighbour, with 82 million citizens, has an annual per capita income of only \$3,118.

On the HDI (Human Development Index), Israel is ranked 17th in the world out of 200 countries.

Israel enjoys a steady economy which includes *inter alia* a very strong and competitive hi-tech sector (many of today's known IT inventions originated in Israel – for example the firewall, USB key, smartype, digital printing etc.).

Thousands of patents are registered in Israel yearly; many are sold to other countries. For example, 7,266 patents were registered in 2010.

Israel is also leading in the fields of solar energy, sophisticated irrigation solutions and has launched several satellites into space.

3.5 million tourists visit Israel every year; the inflation is very low and the local currency (NIS – New Israeli Shekel) enjoys stability and strength.

The Israeli real estate sector is booming – a four-bedroom apartment in Tel-Aviv costs around \$800,000 and an empty plot designated for building 40 apartments in Tel-Aviv, will exceed \$10 million.

Israel also enjoys recently discovered massive natural gas

reserves, in the Mediterranean Sea.

## The Israeli legal system

Israeli Law is based on several layers, some of them based on the Common Law and in particular the laws of England, as Palestine was under the British mandate in 1917-1948.

Bankruptcy Law in Israel in particular is mostly based on English Law as enacted in Palestine in 1936 during the British mandate.

Most of the Israeli Civil Codex in new Israeli Law enacted since 1948, draws its foundations and relies heavily on European Continental legislation, such as the German BGB.

At the head of the Israeli legal system stands the Supreme Court in Jerusalem which functions as a high court of justice and as a supreme appellate court for civil and criminal appeals. There are six district courts: Tel-Aviv, Jerusalem, Center (Lod), Haifa, Nazareth and Beer-Sheba, and 30 magistrate courts. There are also separate systems of labour law courts, family law courts, and religious courts (Jewish, Muslim, Christian and Druze), who deal mainly with matrimonial issues.

Israel is not a member state of the EU so the Supreme Court is the final tribunal and one cannot appeal on decisions to the EU court in Luxembourg or to the human rights court in The Hague.

## Liquidations and bankruptcy

Bankruptcy proceedings are based on the bankruptcy ordinance

(1980) which replaced the mandatory ordinance which was enacted in 1936. Therefore, the bankruptcy law in Israel resembles the English law as it was more or less in 1936.

In Israel a bankruptcy procedure can be initiated by a creditor only if the debt exceeds 82,000 NIS (€16,000). Bankruptcy proceedings can be opened against an estate of a deceased as well.

Liquidations of companies and reconstruction are governed by the Companies law. The original Companies law was enacted in 1936 by the British and was replaced by a new version in 1983 which included a comprehensive chapter about liquidations. A liquidation request can be filed against a company, a joint communal association (co-operative) or non-profit organisation. In recent years due to the good financial situation there were less liquidation requests in general.

In 1995 a special chapter was enacted (similar to US Chapter 11) regarding reconstruction of companies. In 1999 a completely new and modern Companies law was enacted by the Israeli parliament (the "Knesset"). This modern law has adopted modern principles based on American case law and legislation, but did not interfere with the liquidation issue which stays until today under the original liquidation chapter of the 1983 law.

In 2002, new and lengthy regulations were issued by the Minister of Justice regarding the submittal of restructuring plans for a company. These articles require that such a scheme will include balances, details of the



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inventory and contracts etc. Once a company suggests a restructuring scheme, it must submit a proposal which will specify what will be the ultimate dividend to the different types of creditors. The courts usually give a 30-60 days period of stay of proceedings in order to examine the proposal. The period of stay of proceedings cannot exceed nine months but the time to execute the agreement, if approved, can be longer. The court usually requires guarantees from the shareholders or directors and requires them to bring in new, fresh money, in order to support the rehabilitation scheme, as a sign of good will. If the court or creditors disapprove of the restructuring scheme, then the company is transferred into the track of forced liquidation and a temporary liquidator is appointed.

Sometimes when a restructuring scheme is proposed, the shareholders who have private guarantees also seek a discharge from their private guarantees to various creditors. In such cases, the court might grant them a discharge but it usually demands

that the creditors who have such personal guarantees shall receive a higher dividend than the regular unsecured creditors.

### Recognition of foreign liquidation decrees

Israel started to recognise and enforce foreign liquidation judgments on 28 May 2000, in the Tower Air Case, in the district court of Tel-Aviv (liquidation file 1383/00). In this case, the honorable judge Varda Alsheikh created a precedent and ruled that the Israeli court will recognise an American liquidation decree regarding Tower Air. The outcome was that the Israeli employees of Tower Air were entitled to social security benefits which have to be paid by the social security institute to employees who worked in a company which was dissolved.

In return, Israel also “exported” liquidations. For instance, in 2011, when the largest and leading Israeli company in the field of agricultural export, Carmel-Agrexco, was sold as a going concern under a

restructuring scheme, it had many branches, employees and subsidiaries in Europe. In this case the Israeli trustees were successfully granted recognition of the Israeli judgment in various jurisdictions in Europe.

### Administrators

Trustees and liquidators are normally appointed by the court but 99% of the nominations are according to the request of creditors. Very rarely, especially in cases of conflict of interest, the court appoints an administrator out of its own initiative.

The administrator’s fee is very rarely fixed on an hourly basis, and is usually determined by special regulations. The fees are determined according to three possible criteria:

1. Realisation Sum: roughly, for the first \$1million the fee is \$60,000 and above it 1% only.
2. Managed Turnover: every three months, of a turnover of \$1million, the fee is \$30,000.
3. Distributions made: very rare, 4-12%, from sum distributed to unsecured creditors.



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## MOST OF THE BIG BANKRUPTCY CASES INVOLVE ACTS OF FRAUD



### Bankruptcy cases

One should differentiate between thousands of consumer bankruptcy cases and bankruptcy of businessmen. There are thousands of “small” bankruptcy cases that the official receiver of Israel now recommends to transfer to a “fast lane” offering a discharge after two years only. This has not yet been approved by the Knesset.

Most of the big bankruptcy cases involve acts of fraud. The author is currently handling five

of the largest bankruptcy cases in Israel, all involving international aspects, including these three examples showing the intent of the cross-border insolvency:

#### *Nick Levene:*

This case is heard in the District Court of Jerusalem; the main case is pending in London. The debtor owes over £100 million, and was convicted of serious fraud in England and sentenced to 13 years imprisonment.

Recognition of the English Bankruptcy decree was sought in

Israel and a principal and guiding judgment was given by the honorable judge David Mintz approving the universal approach to recognise foreign procedures and allow foreign trustees to seize and realise assets of the debtor found in Israel. The judge preferred the universal approach on the territorial approach, based on the UN Model Law and EU Bankruptcy Regulations and on the principle of reciprocity (Bankruptcy file 6403/09, Jerusalem). An appeal is pending in the Supreme Court of Israel.

#### *Eli Reifman:*

A leading Israeli businessman convicted of fraud and sentenced to four years imprisonment was the founder and one of the major shareholders of the public company Emblaze (London LSE:BLZ). He has personal approved debts of \$60 million. Here also a precedent was created as the English court recognised the Israeli Bankruptcy and gave the Israeli trustee full authorities in England and Wales, by using the cross border insolvency regulations (CBIR). Now additional procedures to seize and realise the debtor assets take place simultaneously in Cyprus, Switzerland, England, Poland, Namibia and South Africa.

#### *Eran Mizrahi:*

The “Israeli Madoff” – a broker who committed a classic “Ponzi” scheme, estimated at \$25 million. He is indicted and currently arrested, his assets are in the process of being seized (including a villa in a Tel-Aviv suburb valued \$3 million). The case has international aspects regarding assets located in USA, Switzerland etc.

Some businessmen worldwide have a tendency to try and hide their assets in Israel, and therefore asset tracing in Israel is common.

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