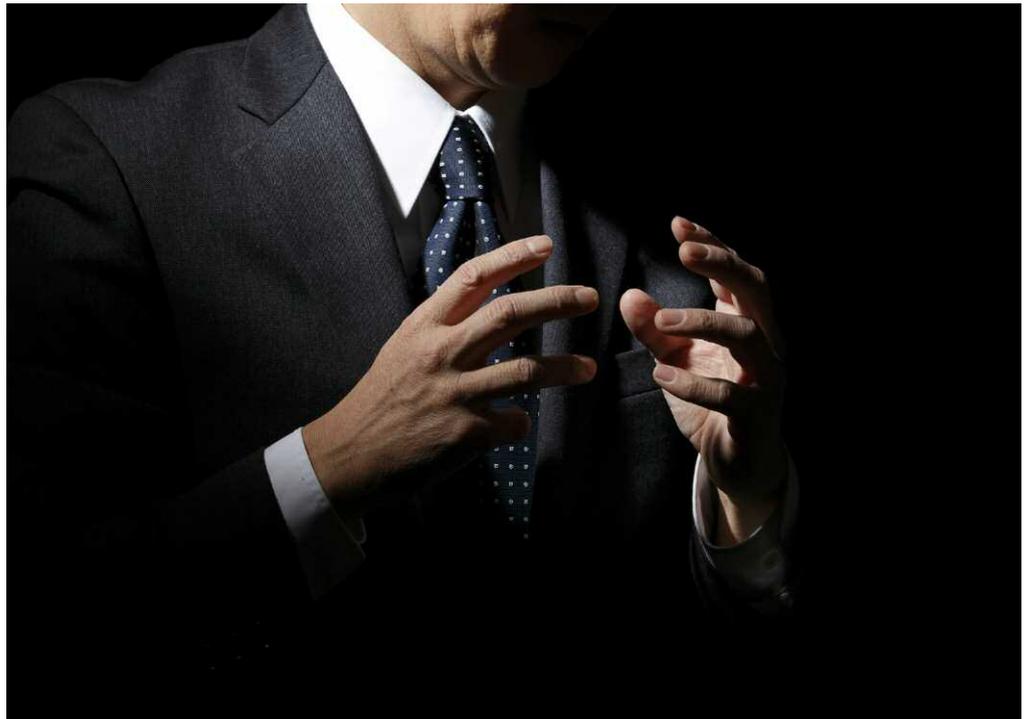


# Fraudsters: How to detect and deal with them?

Eitan Erez advises on how to detect fraudsters proactively and how to deal with them when they have been exposed



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**I**n recent years there has been an increase in frauds around the world.

One need only mention the case of Bernard Madoff, who was sentenced to 150 years' imprisonment in the United States, and the "Carbon Scandal" in Europe (relating to CO<sub>2</sub> emission levels according to the Kyoto Protocol).

As insolvency practitioners, we have an interest in being able to detect fraudsters proactively and in dealing with them when they have been exposed.

In this context, it's good to be aware of several unique characteristics that are common to fraudsters, in order to identify them effectively and expeditiously.

In this article, I shall try to

share some of my experience regarding practical tools to deal with fraudsters.

The State of Israel is no exception to the "tsunami of fraud" (as my colleague David Ingram defined it in *Eurofenix* in 2013), and it has special characteristics that unfortunately can make it a fertile ground for acts of fraud.

The Madoff and carbon scandals have some connection to Israel. In the Madoff scandal, \$110 million found their way to Israel via a mysterious corporate entity and were distributed to some universities. In the carbon scandal, according to media reports, some of the suspects absconded to Israel and France has requested their extradition.

Cases of fraud are usually perpetrated in relatively rich countries where there are large movements of money, some of which is dirty money that people are trying to launder. Israel falls within this definition because of its great economic success in recent years, especially in the fields of hi-tech, smart industries and real estate.

Israel naturally acts as a country that absorbs Jews from all corners of the world as a result of the 'Law of Return,' which grants Israeli citizenship to all Jews who apply for it. In addition, the rapid growth in the population (currently 9,000,000 people, as compared with 600,000 in 1948), the enduring shortage of new apartments and a 'zero interest'

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environment create opportunities for acts of fraud.

When there is a large amount of money and no reason to invest it in banks and people are looking for high returns, a fertile breeding ground is created for all kinds of fraudsters.

In the last five years alone, dozens of fraud scandals have been revealed, some of which are described below.

### What does the average fraudster look like and how can we identify him?

Naturally, a fraudster is always a sympathetic and friendly person. He will always greet you cheerfully, dress in impressive clothes, wear a luxury watch and drive around in a fancy new car. It also doesn't hurt to join a golf club.

Moreover, many fraudsters become in a very short timescale – of months, weeks or even days – over familiar and treat you like their best (or only) friend!

A 'good' fraudster is also careful to make charitable donations or at least to make sure people think he makes charitable donations. He likes to be seen at Gala openings of restaurants and clubs, and has a tendency to donate to soccer teams that he does not even support, or to buy a box at a soccer or basketball stadium, in order to appear successful.

The fraudster also likes to eat at expensive restaurants where people will see him and think that he is a successful businessman. By doing this, he creates for himself an image of success, so that naïve people think it is safe to leave their money with him.

Fraudsters are very fond of the use of off-shore companies and every 'respectable' fraudster must own a company in Panama, the British Virgin Islands or Anguilla.

When you examine a fraudster from close up and meet him face to face, there are a few more proven signs:

As long as the fraudster is interested in your money, he will

be very interested in you and pay attention to you.

Once he has your money, he will vanish into thin air and it is very hard to reach him.

Over the years, *from my experience*, I have recognised several additional signs that indicate dishonesty. For example, shifty eyes, head scratching and a weak or sticky handshake, or a partial handshake that does not reach the wrist. This may sound amusing, but believe me, it works!

The methods used by fraudsters are becoming more and more sophisticated all the time, and in recent years many frauds have been perpetrated via the Internet or by faking emails or Facebook pages.

### The legal tools for dealing with fraudsters

- The insolvency practitioner (IP) should be innovative, always take the offensive and act quickly.
- A good IP needs a good private detective.
- In relevant cases, he also needs the help of the police or should file complaints with the police.
- Another important tool is the filing of motions to rescind transactions at an undervalue.
- In this regard we should distinguish between transfers that are void and transfers that are fraudulent.
- Most jurisdictions distinguish between two kinds of transfers made by a debtor: a void transfer and a fraudulent transfer.
- Such motions are an effective tool in the trustee's search for assets that can be used to pay creditors.

### Additional tools

#### *The filing of ex-parte motions:*

Israeli courts have clearly recognised the right of a trustee in bankruptcy to file classified motions.

#### *Seizing mail with court approval (only applies to physical mail, not email):*

Under Israeli law, this is possible.



This is an *ex-parte* motion that is filed with the court. By virtue of this remedy, any item of mail that is addressed to a debtor against whom a receivership order has been made will be referred for a period of no more than three months to the trustee. This remedy makes it possible to discover, for example, bank accounts concealed by the debtor. In one case I received by mail gold medals that one bankrupt individual ordered by mail for himself...

#### *Carrying out covert investigations*

In order to locate the debtor's assets, covert investigations may be required. A motion regarding these should be filed as an *ex parte* motion for court approval to carry out the investigation, stating the cost and purpose of the investigation, and it will be kept in the court safe.

#### *A monthly payment order*

Under Israeli law, it is possible to apply to the court to order a bankrupt debtor to make regular payments to the trustee. This is a particularly effective method of dealing with evasive debtors. If the trustee conducts investigations and accumulates sufficient evidence that the debtor is enjoying a high standard of living, significant payments will be

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ordered. If the debtor does not pay the amount ordered, it is possible to petition the court to imprison him for contempt of court.

***Imprisonment petitions for non-compliance with court orders***

This type of motion is suitable for an ongoing order, when the bankrupt that is required to comply with the court order has breached it once before. After the first breach, the court can impose a fine or imprisonment pursuant to the Ordinance.

***Criminal proceedings against fraudsters as a deterrent***

It is important that the punishment fits the crime. After all, if a person steals \$10,000,000 and sits in jail for only five years, it may be assumed that there are many people who will be happy to earn \$2,000,000 a year net of tax, and this will merely increase the temptation to commit acts of fraud. Recently, there has been a praiseworthy increase in the filing of indictments for acts of fraud and also offenses committed in the

course of bankruptcy in order to increase the deterrent.

***Motions to recover fictitious profits in cases of Ponzi schemes (to sue the first persons who profited)***

The debtor takes money from the first round of investors and promises them high yields. At this stage the debtor begins to buy luxury clothes, fancy cars, etc., in order to create an impression that his investments are profitable, and he recruits a second round of investors. The money of the second round of investors is used to pay the first round of investors the 'yield' on their investment. In practice, the first round of investors receive money that was stolen from the second round, and therefore the first round of investors should be sued to recover this money.

***Motions against Income Tax to return tax that was charged on 'profits' from Ponzi transactions.***

The fraudster sometimes pays income tax on fictitious profits. In

practice, this money does not belong to the tax authorities as there was no profit and therefore the income tax on the 'profits' for this transaction should be returned.

**An incentive for creditors who discover property of fraudster**

The president of the Tel-Aviv District Court, the honourable Justice Eitan Orenstein, gave a precedent-making decision in February 2016 in which he held that when there are several 'indifferent' creditors and an industrious creditor who finds property of the debtor and brings it to the trustee, the industrious creditor is entitled to an additional 70% above the amount of his proven claim.

The judge expressly held that the purpose of the ruling was to solve the 'free rider' problem.

It may be assumed that this ruling will help to locate property of fraudsters in the future. ■

**Recent cases in Israel**

*The following are several examples of acts of fraud that took place in Israel in recent years.*

**Nicholas Levene**

Currently serving a 13-year prison sentence in England, for a Ponzi scheme committed in England and Israel. He invited his victims to his yacht on the French Riviera and promised them high yields. He created debts of tens of millions of GBP.

**Eran Mizrahi**

Nicknamed 'the Israeli Madoff' – currently serving a 12 year prison sentence for a Ponzi scheme. He promised his victims, most of whom were his friends and family members, interest of 4% per month. He promised these yields at his swimming pool in his lavish mansion while entertaining his victims to barbecues. He even furnished his victims with forged documents from the Swiss-based Heritage Bank

that he typed at home. Meanwhile he spent \$1,000 a night in the Maldives, and paid another \$1,000 to have a private chef in his room. He created debts of \$15,000,000.

**Eli Reifman**

A young genius who graduated from an elite unit in the Israeli Defense Forces. He spent \$2 million on his wedding. He served a four-year prison sentence for forgery and his was the largest bankruptcy case in Israel. A high-tech mogul, at his peak when he was only 28 years old, he employed 6,000 people. He invented streaming e-mails and an Israeli cellphone. He owes \$55 million personally. Nowadays he is out of prison and works on new legitimate inventions.

**Kobi Oren**

A young entrepreneur who ran a 'real estate Madoff scheme,' marketing agricultural land as a development site. He bought a \$6 million mansion in Tel Aviv for himself and a Maserati car for \$300,000, all with victims' money. He is currently under arrest.

**Inbal Or**

A charming 40-year old lady, who started her career as a realtor and became an entrepreneur. She left 600 families without money or apartments. Her companies accumulated debts of \$50 million. She bought herself \$1 million-worth of jewelry, paid her ex-husband \$0.5 million out of victims' money, and so on. Her companies were dissolved and a receiver was appointed to her assets.