

# Doing business in... Handbook 2007: Q&A

## Israel

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### Legal system

1.

#### **What is the legal system (civil law, common law or a mixture of both)?**

Israel's legal system is based on a mixture of common law and civil law.

### Foreign investment

2.

#### **Are there any restrictions on foreign investment (including authorisations required by central or local government)?**

The government encourages foreign investment. However, there are a few sectors, including communications and broadcasting, which have restrictions on foreign investors.

3.

#### **Are there any exchange control or currency regulations?**

In May 1998, most currency controls were abolished following the issue of a general permit in relation to dealings under the Currency Control Law 1978.

4.

#### **What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?**

The government provides a number of grants and incentive programmes to foreign investors.

The Encouragement of Capital Investments Law 1959 promotes private investments of both domestic and foreign origin. It provides direct grants in the form of either:

- A percentage of the total capital investment.
- Tax relief and reduced tax rates.

In addition, R&D grants of between 20% to 66% of the R&D costs are available from the Office of the Chief Scientist at the Ministry of Industry and Trade for a wide range

of projects (*Law for the Encouragement of Industrial Research and Development 1984*).

The Israel Income Tax Ordinance 1961 encourages foreign investors to establish Israeli holding companies for the purposes of managing foreign companies (a participation exemption). From 2006, such Israeli holding companies are exempt from any Israeli taxes on capital gains accrued, or dividends received (except for a 5% withholding tax on dividends distributed to the Israeli holding company's shareholders).

## **Business entities**

### **5.**

**What is the most common form of business entity used by foreign companies to conduct business in your jurisdiction?**

**In relation to this business entity, please state:**

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business entity used by foreign companies is: Foreign companies usually set up a branch or establish an Israeli company.

- **Registration formalities.** Companies must file the following with the Registrar of Companies (Registrar):
  - an application to register the company, signed by each shareholder;
  - a declaration by the first directors of the company of their consent to act as directors;
  - the articles of association;

- a declaration by the shareholders that there is no legal restriction preventing them from setting up the company;
- in the case of a shareholder incorporated outside Israel, a notarised copy of its incorporation documents, either in Hebrew or English; and
- in the case of a non-resident director, a notarised copy of his passport.
- The company must also provide details of its registered office, which must be located in Israel. A registration fee of about NIS 2,100 (about US \$477) is required, plus about NIS 200 (about US \$45) for delivery and administration costs. Registration generally takes about two to three days from filing.
- **Share capital.** The minimum share capital required is one share. There is no maximum requirement.
- **Non-cash consideration.** Shares can be issued for non-cash consideration. No specific formalities are required.
- **Rights attaching to shares.** There are no restrictions on the rights that can attach to shares.
- **Foreign shareholders.** There are no restrictions on foreign shareholders, except in certain regulated industries (*see Question 2*).
- **Management structure.** A private company's management is usually carried out by its board of directors, which must have at least one director. A general manager, who may or may not be a member of the board, is sometimes appointed to run the company's affairs on a day-to-day basis.
- **Directors' liability.** A director is not generally liable for the debts and actions of a company. However, a director can be personally liable if he:
  - breaches his fiduciary duties to the company;
  - acts outside his proper authority;
  - allows the company to participate in unlawful activities; or
  - does not act with the knowledge, skill and experience that may be reasonably expected when carrying out his duties.
- **Parent company liability.** A parent company is not generally liable for the debts of its subsidiaries, other than for any unpaid amounts on the nominal value of its shares, or any guarantee or security that it has given to its subsidiary's creditors. The court can “lift the corporate veil” if it deems it just and correct to do so (*Companies Law 1999*).
- **Reporting requirements.** A company must submit an annual report to the Registrar and notify it of any:
  - amendments to its articles of association;
  - changes affecting its registered office;
  - changes to the board of directors;
  - new issues or transfers of shares; or
  - changes in its share capital.

- Generally, a private company is not required to submit its financial reports to the Registrar.

## Employees

6.

### **What are the main laws regulating employment relationships?**

[Please consider the following points in your answer:

- Whether these laws apply to both:
  - foreign employees working in your jurisdiction?
  - employees from your jurisdiction working abroad?
- Whether there are any mandatory rules of law which apply regardless of any choice of law in the employment contract?]
- The main laws regulating an employment relationship are the following: Collective Agreements Law 1957; Employment Service Law 1959; Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law 1991; Employment of Employee by Manpower Contractors Law 1996; Hours of Work and Rest Law 1951; Sick Pay Law 1976; Sick Pay (Absence due to a Child's Sickness) Law 1993; Sick Pay Law (Absence due to a Parent's Sickness) 1993; Sick Pay Law (Absence due to a Spouse's Sickness) 1998; Sick Pay Law (Absence due to Pregnancy and Childbirth of Spouse) 2000; Annual Leave Law 1951; Employment of Women Law 1954; Male and Female Workers (Equal Pay) Law 1956; Prevention of Sexual Harassment Law 1998; Wage Protection Law 1958; Youth Labour Law 1953, Apprenticeship Law 1953; Discharged Soldiers (Reinstatement in Employment) Law 1949; Settlement of Labour Disputes Law 1957; Severance Pay Law 1963; Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law 1997; Encouragement of Ethical Conduct in the Public Service Law 1992; Labour Courts Law 1969; Employment (Equal Opportunities) Law 1988; Single Parent Family Law 1992; Equal Rights of Persons with Disabilities Law 1998; Retirement Age Law 2004; Acquisition of Undertakings by Employees (Special Cases) Law 1987; Minimum Wage Law 1987; Accidents & Occupational Diseases (Notification) Ordinance 1945; Work Safety Ordinance (New Version) 1970; Labour Inspection (Organization) Law 1954; National Insurance Law (Consolidated Version) 1995; and Advance Notice or Dismissal or Resignation Law 2002.
- The scope of Israeli employment legislation is, in general, territorial, applying within the jurisdiction of the State of Israel. Unless otherwise stipulated in the relevant employment agreement, Israeli law will apply to employment performed in Israel. However, mandatory employment laws—being protective in nature—and laws reflecting fundamental principles of public policy will, in any event, apply to employment performed in Israel, irrespective of a contrary stipulation. Similarly, extension orders and collective agreements apply to employees employed in Israel by the Israeli employer, irrespective of the nationality of the employee.

- The mandatory rules of local labor law which may be applicable, notwithstanding a choice of foreign law, are: the local Severance Pay Law 1963; the Annual Leave Law 1951; the Hours of Work and Rest Law 1951; the Advance Notice or Dismissal or Resignation Law 2002 (the Notice Law); the Annual Leave Law 1951; the Minimum Wage Law 1987 and case law requirements with respect to “due process” in the event of dismissal. In a nutshell, the Severance Pay Law requires payment—in the event of dismissal—of severance pay in the amount of the final monthly salary multiplied by the number of years of service, pro rata for part of a year, no later than 15 days following termination. The Notice Law requires that the notice of dismissal be given in writing and that the date of the notice and the date of actual termination of employment be specified. In addition, one month’s advance notice must be given (though an employer can terminate forthwith and pay compensation equal to a monthly regular salary). In addition, the employer must give the employee a written “certificate” with respect to the date of commencement and termination of employment. The Annual Leave Law requires the employer to provide paid leave for prescribed periods and to redeem, upon termination, lawfully accumulated untaken leave (subject to a relatively short limitation period). The “due process” case-law requirements are to conduct a fair hearing and to notify the employee of the intention to dismiss and so enable him to argue his case (additional duties are imposed in the event an employee representative body exists).
- In addition, there have been enacted laws which are considered to be mandatory or as reflecting fundamental principles of public policy or universal standards of employee protection, such as equality between the sexes, limitation of child labour, limitation on dismissal of expectant mothers, prevention of sexual harassment in the workplace, *etc.*
- Israeli law will apply to Israeli nationals working abroad if Israeli law is the choice of law under the relevant contract of employment.

7.

**Is a written contract of employment required? What, if any, other terms are likely to govern the employment relationship?**

The employment contract need not be in writing. However, the employee must be provided, in writing, with the details of his working conditions, including:

- The identity of the employer and employee.
- The date of the commencement of employment and the duration of the contract.
- A job description.
- The name and title of the employee's direct superior.
- The employees' remuneration.
- In situations where the employee is employed according to a scale governed by a collective agreement:
  - the employee's position on that scale;
  - the length of the working day and week;
  - the day of rest;
  - social payments and the identity of further provident funds; and
  - the identity and address of the union party responsible for the collective agreement (if applicable).
- A provision should also be included in the written employment contract to the effect that the above details do not derogate from any entitlement of the employee under law, extension order, collective agreement or employment agreement.
- Beyond the specific terms of the individual contract of employment, the employment relationship is governed by mandatory laws (*see* above), extension orders of general collective agreements, collective agreements and arrangements (if applicable) and custom.

8.

**Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?**

According to case law, in organized places of employment in which the employees are represented, there is a duty to consult the employees' representatives, and also a duty to reach an agreement with the employee representatives with respect to the employees' entitlements as a result of disposals or redundancy. These duties include the duty to agree upon the criteria for deciding on the identity of the employees who will be dismissed as a result of the disposal or redundancy, and also as to the payments payable to such employees.

The employees are entitled to a fair hearing in which they may argue their case in relation to the criteria mentioned above.

9.

**What statutory rules govern the termination of individual employment contracts?**

[Please consider the following points in your answer:

- Is a distinction made between fair/justified and unfair/unjustified dismissal? If so, what grounds for dismissal are considered to be fair/justified?
- In relation to fair/justified dismissals, is a statutory minimum notice period and/or severance payment required?
- In relation to unfair/unjustified dismissals, what remedies are available to the employee?]
- A distinction is made between fair and unfair dismissal.

Various laws protect employees against unfair dismissal due to, among other things:

- Pregnancy.
- Gender.
- Sexual orientation.
- Parenthood.
- Personal status.
- Age.
- Race.
- Religion.
- Nationality.
- Sexual harassment.
- Exposure of corruption in the workplace.
- Membership in a political party.
- Military reserve duty.
- Disability.
- Trade union activities and membership

Additional protection is provided under case law with respect also to procedural requirements for a fair hearing and, in organized places of work, representation.

Grounds for dismissal considered to be fair are: incompetence, incompatibility, insubordination and redundancy.

- **Notice periods.** Under the Advance Notice for Dismissal and Resignation Law 2001, a monthly employee is entitled to advance notice of dismissal of one month after completing one year's employment. During the first year of employment the notice period for the first 6 months is one day per month of employment and for the remaining six months—6 days plus 2.5 days for each month of employment during this one-year period.

- **Severance payments.** Under the Severance Pay Law 1963 an employee who is dismissed after one year's continuous employment, is entitled to severance pay in the event of dismissal in the amount of one month's salary for each year of employment.
- Remedies in the event of unfair dismissal may include reinstatement (in the case of dismissal contrary to statutory restrictions on dismissal) and/or damages.

**10.**

**Are redundancies/mass layoffs regulated? If so, please give details.**

Redundancies are regulated by collective agreements or arrangements (if applicable). In cases of dismissal due to redundancy, the employees' representatives must be consulted and the procedure adopted must be transparent throughout (including the selection criteria adopted).

There is no statutory definition of the criteria for deciding on the identity of employees to be dismissed in such cases. However, common criteria according to many collective agreements or arrangements include: level of performance, family or economic situation and seniority.

**11.**

**In relation to employees, what constitutes tax residency in your jurisdiction?**

Generally, under the Israel Income Tax Ordinance 1961 (the ITO), an employee is deemed to be an "Israeli resident" for tax purposes if his life is centred in Israel. In order to determine the place where an employee's life is centred, there needs to be taken into account such employee's family, economic and social ties, including:

- his place of permanent residence;
- the place where he and his family dwell;
- the place where he is employed;
- the place of his active and substantive economic interests; and
- the place where his activity in organisations and various institutions takes place.

It is assumed that the employee's life is centred in Israel in a tax year if: (a) he spent 183 days or more in that tax year in Israel; or (b) he spent thirty days or more in Israel in that tax year and the total period of his stay in Israel in the tax year and in the preceding two tax years amounted to 425 days or more. Such assumption may be refuted both by the employee and by the tax authorities.

In addition, a foreign employee may be subject to Israeli income tax with respect to work carried out in Israel. However, under most double tax treaties, the provisions of which supersede the provisions of the ITO, an employee of a foreign company that is sent to Israel on a short-term assignment (broadly, no more than 183 days in any 12-

month period or fiscal year) is likely to be exempt from Israeli income tax on income arising from his employment in Israel.

Please also note that the definition of “residency” for national insurance and health insurance purposes is similar—although not identical—to that used for income tax purposes.

## 12.

### **What income tax or social security contributions must the following pay:**

- **Tax resident employees.**
- **Non-tax resident employees.**
- **Employers, in relation to their employees.**

#### **Tax resident employees**

Israeli resident employees are obliged to pay income tax as well as national insurance and health insurance contributions, all of which are deducted by the employer.

In general, income tax rates are progressive, ranging from 10% up to a maximum of 49% (such maximal income tax rate being correct for the 2006 tax year) of the employee's gross salary. Israel has also adopted a tax credit system which entitles Israeli residents to deduct, in the form of a credit, specified amounts from the income tax payable by them.

Likewise, Israeli resident employees are obliged to pay national insurance and health insurance contributions at a progressive rate of up to a maximum of 12% of the employee's salary, subject to a certain ceiling (approximately, NIS 35,760 = US \$8,127).

Please note that the marginal employee's tax rate (income tax together with national insurance and health insurance contributions) is 49% for the 2006 tax year and a lower tax rate for subsequent tax years (*i.e.*, 44% from 2010 and thereafter).

#### **Non-tax resident employees**

As stated above, the question whether a non-tax resident employee is required to pay tax in Israel on his Israeli-earned income depends, in most cases, upon the period of stay in Israel and certain other criteria as specified in the relevant tax treaty.

Generally, there are two main differences between Israeli resident employees and foreign resident employees seconded to work in Israel:

- the entitlement to credits—Israeli resident employees are entitled to certain tax credits deriving due to their residency status.
- national insurance and health insurance contributions—non-tax resident employees are not expected to pay national insurance and health insurance contributions (nor to pay any minimum sum on account thereof) and thus will not

be entitled to any pension and/or health-related services ordinarily provided to insured Israeli residents.

### **Employers**

Firstly, employers must withhold employees' income tax, national insurance and health insurance contributions, at the time salary payments are made to employees.

Secondly, an employer must pay its contribution of national insurance but is not required to pay health insurance in respect of its employees. National insurance contributions are paid by employers at a progressive rate of up to a maximum 5.68% (for the 2006 tax year) of the employee's salary, subject to a certain ceiling (approximately, NIS 35,760 = US \$8,127).

13.

#### **Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?**

Foreign employees require a special visa, special permits and medical clearance. The request for a permit costs NIS 500 (about US \$113) and there is a yearly fee of NIS 4,000 (about US \$909). It takes about one month to obtain the work permit.

14.

#### **In relation to business entities, what constitutes tax residency in your jurisdiction?**

Generally, a company is defined as an "Israeli resident" for taxation purposes if:

- it was incorporated in Israel; or
- its business is managed or controlled in Israel.

15.

#### **What proportion of a tax resident business entity's income is taxed and what are the main taxes that potentially apply (including rates)?**

The main taxes that potentially apply with respect to Israeli resident companies are:

##### **Corporation tax**

Corporation tax is payable at a rate of 31% for the 2006 tax year (such rate is expected to decrease gradually until reaching a target rate of 25% in 2010).

The rate of corporation tax generally payable in respect of capital gains is 25%.

##### **Value added tax (VAT)**

VAT is generally imposed, on goods and services supplied in Israel (transactions) by businesses, including imported goods and is usually paid by the customer. The current

rate of VAT payable is 15.5%. VAT on expenses is generally set-off by Israeli companies.

### **Immovable property taxes**

Generally, the seller of immovable property in Israel must pay land appreciation tax (a tax similar to capital gains tax) of 25%-31% of the real gain (*i.e.*, the nominal gain derived from the sale, minus the inflationary gain) and sales tax of 2.5% of the value of the sale in respect of assets purchased before 7 November 2001. The buyer must pay purchase tax (of up to 5%).

16.

### **How are the activities of non-tax resident business entities taxed?**

Generally, foreign (*i.e.*, non-tax resident) companies are subject to corporations tax in Israel if income earned by a foreign company was generated or accrued in Israel. However, under most double taxation treaties, non-tax resident companies are taxed on business profits attributable to a permanent establishment set up in Israel on their behalf.

No special branch tax is imposed or payable in Israel.

Non-tax resident companies must also pay real estate taxes on the sale and/or purchase by them of real estate located in Israel.

17.

### **Please explain how each of the following is taxed:**

- **Dividends paid to foreign corporate shareholders.**
  - **Dividends received from foreign companies.**
  - **Interest paid to foreign corporate shareholders.**
  - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
- 
- **Dividends paid.** A withholding tax rate of 20% or 25% may apply, subject to any equivalent provision with respect to the payment of dividends in a double tax treaty.
  - **Dividends received.** An Israeli company is potentially liable to pay tax on dividends distributed by a foreign company, usually at the rate of 25%, subject to a gross-up option mechanism.
  - **Interest paid.** In most cases a withholding tax of 15% or 20% may apply in respect of interest payments, subject to any requirement to make gross payments or deduct a lower tax rate under any equivalent provision in a double tax treaty.

- **IP royalties paid.** In most cases, a withholding tax of 25% is imposed on patent royalties and annual payments, subject to any requirement to make gross payments or deduct a lower tax rate under any double tax treaty.

18.

**Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.**

Israel does not have thin capitalisation rules.

19.

**Are there any controlled foreign company rules? If so, please give details.**

Israel has controlled foreign company (CFC) rules. Under certain circumstances, the foreign subsidiary's passive income is deemed to be distributed to the Israeli parent company.

20.

**Are there any transfer pricing rules? If so, please give details.**

Israel has transfer pricing rules, which will take effect once the Minister of Finance has enacted specific regulations therefor.

21.

**How are imports and exports taxed?**

The main taxes generally imposed on imports and exports are the following:

- **VAT.** VAT is imposed on imports of goods and/or services, the current rate of which is 15.5%. In principle, VAT is also imposed on exports of goods and services but, in most cases, these transactions are zero-rated.
- **Customs.** Certain goods imported into Israel are subject to customs duties, that are calculated as certain rate of the agreed value of the transaction (including certain specific accompanied expenses, e.g., the cost of insurance and freight). The customs rates vary and are usually based on the type of the imported product. However, various trade agreements with the US, the European Free Trade Association and the EU may reduce these customs duties.
- **Purchase tax.** Purchase tax is imposed on imports and/or on sales of certain types of goods. The purchase tax rates vary for different products.

22.

**Is there a wide network of double tax treaties? If so, please give details.**

Israel has entered into double tax treaties with more than forty countries, examples of which include: the US, the United Kingdom, the Netherlands, Germany, France, Japan, China, Switzerland, and many other countries. Under the ITO, the provisions of any double tax treaty in force with respect to any particular taxation issue supersede any corresponding legislation enacted in Israel on such issue.

## **Competition**

23.

**Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.**

Restrictive arrangements are regulated by the Restrictive Trade Practices Law 1988 (RTP Law). A restrictive arrangement is defined as an arrangement made between persons who manage businesses, under which at least one of the parties imposes a restriction on himself that is liable to prevent or reduce competition between himself and all or some of the other parties to the arrangement, or between himself and a person who is not a party to the arrangement. The prohibition applies to both horizontal and vertical agreements.

There are statutory exclusions and block exemptions to certain types of vertical and horizontal arrangements. It is also possible to apply for an individual exemption from the Controller of Restrictive Trade Practices, or for individual approvals from the Restrictive Trade Practices Tribunal.

## **Intellectual property**

24.

**Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:**

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

### **Patents**

- **Nature of right.** An invention, whether a product or process, is patentable if it:
  - is new;
  - is useful and susceptible to industrial use; and

- involves an inventive step.
- Patents are not granted for a method of therapeutic treatment of the human body and for varieties of plants or animals, except for microbiological organisms not derived from nature.
- **How protected.** Protection is by registration at the Israel Patents Office, based on examination.
- **How enforced.** The patent holder or an exclusive licensee can bring an action for infringement, but only following grant of the patent. However, the court can take into account infringement committed after publication of the patent application, when granting relief. Remedies available include:
  - injunctions;
  - damages or an account of profits;
  - delivery-up;
  - destruction of goods; and
  - costs.
- **Length of protection.** Generally, protection lasts for twenty years from the date of filing. In certain circumstances, an extension of up to five years can be obtained for a patent protecting medical preparations, materials or medical devices.

#### Trade marks

- **Nature of right.** Marks consisting of letters, numerals, words, devices or other signs or combinations of these, whether two-dimensional or three-dimensional, which are used or intended to be used by an applicant in relation to goods manufactured or marketed by him, are registrable. The mark must be distinctive, either inherently or through use. Service marks, collective marks and certification marks are also registrable.
- **How protected.** Generally, protection is by registration at the Israel Trade Marks Office, based on examination. A well-known trade mark may also have certain protection, even if it has not been registered.
- **How enforced.** The owner of a registered trade mark or a well-known trade mark can file an action for infringement. The remedies available are the same as for patents (*see above, Patents*). Criminal proceedings may also be brought by the registered trade mark owner by filing a private criminal complaint (including, if required, a request for a search and seizure order).
- **Length of protection.** Protection lasts for ten years from the date of filing for all trade marks registered after 6 August 2003. Once Israel officially becomes a party to the WIPO Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989 (which is expected to occur shortly), registration will be renewable for successive ten-year periods (instead of the current renewal term of 14 years).

### Registered designs

- **Nature of right.** A design is any shape, configuration, pattern or ornament applied to any article, whether by an industrial process or by any other means and whether manual, mechanical, chemical, separate or combined, which, in the finished article, appeal to and are judged solely by the eye. A design does not include any mode or principle of construction, or anything which constitutes a mere mechanical device. A design must be new or original. Only local novelty is required.
- **How protected.** Protection is by registration at the Israel Patents and Designs Office, based on examination.
- **How enforced.** The methods of enforcement and the remedies available are similar to those for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for five years and may be renewable for two further five-year terms.

### Unregistered designs

- **Nature of right.** Generally, no protection is granted to unregistered designs as such. However, they may enjoy protection under copyright rules, the tort of passing off and the Unjust Enrichment Law (*see below, Unjust enrichment, Passing off and Copyright*).
- **How protected.** *See below, Unjust enrichment, Passing off and Copyright.*
- **How enforced.** *See below, Unjust enrichment, Passing off and Copyright.*
- **Length of protection.** *See below, Unjust enrichment, Passing off and Copyright.*

### Copyright

- **Nature of right.** Copyright protects original literary, dramatic, musical and artistic works.
- **How protected.** Copyright subsists automatically from the moment the work is created.
- **How enforced.** The methods of enforcement and the remedies available are similar to those for patents (*see above, Patents*).
- **Length of protection.** Protection lasts until 70 years after the death of the author. Copyright in records, tapes and other contrivances by means of which sounds can be mechanically reproduced, lasts for 50 years from the creation of the master copy. Copyright in photographs lasts for 50 years from the creation of the first negative. Copyright in anonymous and pseudonymous works lasts for 70 years from the date of publication.

### Confidential information

- **Nature of right.** Generally, trade secrets are protected provided that:
  - the information is not generally known or readily accessible;
  - the information has commercial value due to its secrecy; and

- reasonable measures have been taken to protect the information.
- **How protected.** Trade secrets are protected as such and no registration or positive action is required.
- **How enforced.** The methods of enforcement and the remedies available are similar to those for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for as long as the information remains confidential.

### Passing Off

- **Nature of right.** To succeed in an action for passing off, the owner of an unregistered trade mark or design must establish:
  - the existence of goodwill in the name or get-up of his goods which identifies him as the source for the provision of the goods or the supply of the services; and
  - a likelihood of confusion.
- **How protected.** Goodwill is protected as such and no registration or positive action is required.
- **How enforced.** The methods of enforcement and the remedies available are similar to those for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for as long as the owner enjoys goodwill in the name or get-up of his goods.

### Unjust enrichment

In addition, the laws governing the above intellectual property rights do not exclude the possibility of obtaining relief based on the Unjust Enrichment Law.

Under certain circumstances, protection may be granted if the claimant can prove that:

- the defendant has been enriched;
- the defendant's enrichment emanates from the claimant; and
- the defendant's enrichment is unlawful or unjust.

The mere copying of a product, does not, in itself, establish a cause of action. However, in certain circumstances, where an additional element exists (that is, for example, where the copying amounts to unfair competition), copying of a product can also be considered unjust enrichment. Each case is considered individually, having regard to all the circumstances.

### Marketing agreements

25.

**Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:**

- **Agency.**

- **Distribution.**
- **Franchising.**

There are no express regulations relating to agency, distribution and franchising agreements. However, under the RTP Law, there are block exemptions which exempt certain categories of restrictive arrangements from the duty to obtain an approval. These block exemptions include, among others, a block exemption for exclusive distribution agreements and for franchising agreements.

26.

**Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.**

There are no laws relating specifically to e-commerce. The Electronic Signatures Law 2001 provides that electronic signatures satisfy all the legal requirements of a signature.

### **Data protection**

27.

**Are there any data protection laws? If so, please give brief details.**

The Protection and Privacy Law 1981 applies to every collection of data and requires its registration (excluding collections of data which contain only the person's name and address). The Computers Law 1995 deals with certain private rights regarding e-commerce. The Basic Law: Human Dignity and Liberty 1992 provides general privacy protection, which includes data protection.

### **Product liability**

28.

**Are there any laws regulating product liability and product safety? If so, please give brief details.**

Product liability is specifically regulated by the Defective Products (Liability) Law 1980 (Products Liability Law). The Products Liability Law applies only to bodily injury, death and damage to property and imposes no-fault liability on:

- Manufacturers.
- Anyone who represents himself as a manufacturer.
- Importers, where the product is manufactured abroad.
- A supplier, in cases where the manufacturer and/or the importer are not identifiable.

The statute provides limited defences.