COMMENTS

THE PROMISED LAND: AN EXAMINATION OF THE ISRAELI HIGH-TECH INDUSTRY

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"Moses didn’t have a geographical positioning system... so when he led us to the promised land, instead of taking us to a nice country like Switzerland, he left us in the middle of the desert."1

1. INTRODUCTION

The State of Israel declared its independence on May 14, 1948, one day before the official end of the British Mandate.2 Minutes after the British Mandate expired on May 15, the United States and the Soviet Union recognized Israel as a nation, as the armies of

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2 Arnold Blumberg, The History of Israel 77 (1998). In a letter to Lord Rothschild of the Board of Deputies of British Jews dated November 2, 1917, Lord Arthur James Balfour, the British secretary of state for foreign affairs, wrote, "His Majesty’s Government view with favor the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors the facilitate the achievement of that object...." On February 18, 1947, Great Britain repudiated its Mandate for Palestine, effectively renounced the Balfour Declaration, and submitted the problem of a Jewish state to the United Nations ("UN"). Id. at 41, 71.
Egypt, Iraq, Jordan, and Syria joined the Arab Liberation Army in an attack on Israel.\footnote{Id. at 78. Israel had actually been at war with the Arab Liberation Army since November 29, 1947, the day the UN voted to accept the partition. Id.}

Israel's subsequent War for Independence was only the beginning of a long series of conflicts, official and unofficial, with its neighboring countries. Due to these continued hostilities, most of the attention focused on Israel has been on its seemingly constant military entanglements. However, Israel has now partially shifted the spotlight to its emerging role as a leader in the market for high technology. This Comment seeks to analyze the rise of the Israeli high-tech industry and examine the likelihood of its continued success.

Section 2 of this Comment traces the development of Israel's economy from one of agriculture and armaments to one focused, and potentially dependent, upon high-technology. This Section focuses on the various factors that have spurred the growth of the Israeli high-tech industry. In particular, the Section will concentrate on the role of the Israeli military, which has served as both an incubator of technological development and personnel training, as well as the government, which has played a key role in creating programs to encourage start-ups and external investment. Section 3 analyzes the current and potential problems that Israel faces in sustaining this newly-developed industry. These problems include not only those peculiar to Israel's isolation—an isolation both self-imposed and geographically proscribed—but also those inherent to the development of a high-tech industry in an economy without a legal structure ready to foster and support it. Preeminent examples of such problems include a labor shortage of managers and salespeople, and a body of corporation law that does not encourage businesses to incorporate in Israel. This Section examines the implications of the recent reemergence of sustained violence between Israel and Palestinians, as well as the Nasdaq's rapid decline in value in 2000 and 2001. Section 4 examines Israel's competition with the United States over incorporation and physical location. While Delaware is Israel's mightiest competitor with respect to incorporation, various other states actively encourage Israeli high-tech companies to relocate offices and manufacturing plants to the United States. Finally, Section 5 offers possible solutions to the difficulties faced by Israel as it adapts to its new industry, and exam-
in the question of whether Israel can truly develop a mature high technology industry.

2. THE RISE OF THE ISRAELI HIGH-TECH INDUSTRY

From October 1999 through October 2000, Israel experienced a growth in its electronics and computer industry of nearly 140%. Manufacturing and software accounted for seventy-three percent of Israel's exports in 1999, making high technology the largest export in a country which, thirty years ago, depended on oranges for more than half of its export earnings. Agriculture as a whole now makes up only three percent of Israeli exports, and citrus foods account for less than 0.5%.

This Section summarizes the Israeli economy as it stood in the 1980s and analyzes the factors that led the country into its high-tech revolution.

2.1. In the Beginning

In the early 1980s, Israel's economy was focused on agriculture and armaments, with little money spent in the private high-tech sector. Inflation surpassed 500% a year, its foreign debt of $21 billion was the largest debt per capita in the world, and government expenses, which primarily consisted of military and welfare expenditures, required seventy-two percent of its gross national product ("GNP").

It was in this atmosphere that two brothers, Zohar and Yehuda Zisapel, created RAD Data Communications in 1982. RAD started out by exporting simple communications products, such as modems. Although the company succeeded, the brothers had a larger vision for their company, fostered by their contact with markets outside of Israel. That vision became Lannet, a supplier

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5 Id. at 9; Jenny Sinclair, Israel Hits the Switch, AGE, June 27, 2000, 2000 WL 21653895.

6 See Sinclair, supra note 5, at 6.


8 See Levine, supra note 7.

9 See id.
of Ethernet and asynchronous transfer mode switching solutions for local area networks.\textsuperscript{10} One of Israel’s first high-tech start-ups, Lannet went public in 1991 with a $100 million market valuation. Israel, and the Zisapel brothers, have not looked back since.\textsuperscript{11}

2.2. Various Factors Behind Israel’s High-Tech Industry

Despite the appearance that Israel sprang onto the high-tech scene from nowhere, many factors have slowly melded together to create an environment in which the creation of high technology has begun to thrive.

2.2.1. The Israeli Government

The government has played the dominant role in the development of the high-tech industry, both intentionally and inadvertently. The driving force behind the creation of the technology requisite for a high-tech industry came from an inadvertent, though not surprising, source—the conversion of telecommunications technology created for the military into products for civilian use.\textsuperscript{12} As mentioned above, Israel has a long history of spending a large percentage of its GNP on its military.\textsuperscript{13} Even today, Israel spends ten to fifteen percent of its GDP on defense, most of which goes to state-of-the-art communications technology.\textsuperscript{14} Thus, the atmosphere was ripe for a military-industrial complex, where technology created for the army could be used for the benefit of civilians.\textsuperscript{15}

However, the military has done more than just supply some of the technology needed for such products; it also plays an important role in labor supply, training Israeli citizens, all of whom are required to serve in one of the most technologically advanced ar-

\textsuperscript{10} See id.

\textsuperscript{11} Lannet was later purchased in 1998 by Lucent Technologies for $117 million. Id. RAD Data Communications now has fourteen sister companies guided by the RAD Group, a holding company. Seven of the companies under the RAD Group umbrella are currently traded on Nasdaq. See The RAD Group, RAD Group Homepage, at http://www.rad.com/radgroup/group.htm (last visited Feb. 25, 2001) (homepage for the RAD Group).

\textsuperscript{12} Japan, US, Israel Investors Plan Fund for Israeli Firms, ASIA PULSE, July 12, 1999, 1999 WL 18764286.

\textsuperscript{13} See supra note 7 and accompanying text.

\textsuperscript{14} See Levine, supra note 7.

mies in the world.\textsuperscript{16} Through the army, Israeli citizens can get technological training not only in how to fly jet fighters, but also as managers of multibillion-dollar research and procurement programs.\textsuperscript{17} Due to the mandatory service requirement, the Israeli army can hand-pick the best and brightest students to work in its high-tech operations.\textsuperscript{18} These students, intelligent to begin with, and now trained in the complex areas of telecommunications and software, leave the army after their service is completed and put their newly-acquired knowledge to use in the capital market.

It seems a natural progression that a country that supplies a large number of its citizens with mandatory technological training would develop a high-tech industry. Former soldiers have become the crux of Israel's high-tech work force, and many have become entrepreneurs.\textsuperscript{19} However, despite the military's impact on the Israeli high-tech industry, a formal alliance between the two entities does not exist. Instead, engineers, who put their skills to civilian use after leaving military service, or contractors, who are employed in both arenas, conduct this transfer of knowledge between the two sectors.\textsuperscript{20}

Moreover, Israel's government plays a direct role in the growth of its high-tech sector, providing substantial support for start-up companies.\textsuperscript{21} Since 1991, the Ministry of Trade and Industry has invested in start-ups through its incubator program.\textsuperscript{22} Through the Office of Chief Scientist ("OCS"), the Ministry runs a system of twenty-four incubation centers that partially fund accepted entrepreneurial ideas.\textsuperscript{23} To be accepted, ideas for business and requests for money must be based in research and development ("R&D"), technologically focused, and adaptable to the export market.\textsuperscript{24} Once a business is accepted, the OCS provides a significant portion


\footnotesize{\textsuperscript{17} See Hiltzik, \textit{Boot Camp}, supra note 15, at C13.}

\footnotesize{\textsuperscript{18} See Hausman, \textit{supra} note 16.}

\footnotesize{\textsuperscript{19} See id.; Symons, \textit{supra} note 16, at 41.}

\footnotesize{\textsuperscript{20} Kruger, \textit{supra} note 1.}

\footnotesize{\textsuperscript{21} See Land of Milk and Telephony, \textit{Bus. & Fin.}, June 29, 2000, 2000 WL 9643516.}

\footnotesize{\textsuperscript{22} See Levine, \textit{supra} note 7.}

\footnotesize{\textsuperscript{23} See id.; Land of Milk and Telephony, \textit{supra} note 21.}

\footnotesize{\textsuperscript{24} See Land of Milk and Telephony, \textit{supra} note 21.}
of the money needed for the business to get started. The government also helps with the more mundane tasks of starting a business, such as an R&D plan, administrative counseling, secretarial services, and legal and accounting advice. If the project succeeds, the government receives a percentage of the profits from the enterprise; in the event of failure, however, they do not require repayment. Out of the 592 projects that were started through the incubator program, 308 are still going, 225 found venture capital funding, and 83 were still negotiating for venture funding.

The government also plays a large role in encouraging external investment and attracting potential customers. Its first major step came with a program called Yozma. Yozma aimed to aid Israel's own venture capital community by enticing foreign venture capital with partially matching government funds. If a foreign venture capital firm agreed to commit money in a partnership with an Israeli investment group, the Israeli government would match a significant portion of the venture capital. The joint partnership could then buy out the government's portion at a nicely discounted purchase price if the partnership prospered. Yozma succeeded in achieving its goals: not only did Yozma create ten funds, nine of which exercised their option to buy out the government, several of these funds are now among Israel's leading investment groups and are given much of the credit for the development of the high-tech sector. The Israeli government has also set up U.S. offices, which promote trade and investment between the two countries.

The Israeli government further seeks to aid its new industry by placing an emphasis on "pre-competitive" technologies and by en-

25 Id.; Levine, supra note 7. The individuals whose ideas are being funded must also contribute a portion of start-up capital. Levine, supra note 7.
26 Levine, supra note 7.
27 Id.
29 See Hiltzik, High Gear, supra note 7, at A9. "Yozma" is Hebrew for "initiative." Id.
30 Id.
31 See id.
32 See id.
33 See id.
34 See Brenda Sandburg, Silicon Valley Looks to Israel, RECORDER, May 27, 1998, at 1.
encouraging links to academia.35 By focusing on pre-competitive
technologies, the government hopes that Israeli development will
shape the market instead of following the trends developed else-
where.36 Furthermore, the government bolsters academic peer re-
view of commercial research to evaluate a project or idea and
strengthen the ties between industry and the academy.37

2.2.2. Israel’s Culture and Immigrant Nature

Another factor that contributed to the growth of Israel’s high-
tech sector is the Israelis themselves. A high-tech industry has
been deemed a good “fit” for Israel, a country lacking in natural
resources but abundant in the resource of knowledge.38 Israeli
workers have a reputation for being innovative, competitive,
committed, and hard-working.39 This may be explained by how
seriously Israel takes education. Israel’s commitment to a learned
population is demonstrated by the statistics: the country invests
over nine percent of its annual GDP in education.40 Israel ranks
first in the world for engineers as a percentage of the workforce
and third in the world for percentage of residents with a college
degree.41 In patents per capita, Israel ranks behind only the United
States and Japan.42 Furthermore, although Hebrew is the first lan-
guage of Israelis, English, the “first language of technology,” is
readily spoken.43

2314266.
36 See id. As an example, the government began advocating research into
wave division multiplexing for broadband communications three years ago. Id.
37 Id.
38 See Hausman, supra note 16.
39 See Nicholas Booth, Power of the Promised Land, TIMES (London), Sept. 30,
1998, at 14; Larry Kaplow, Brainpower Draws U.S. Chip Makers to Israel, PALM
BEACH POST, June 18, 2000, at 3F [hereinafter Kaplow, Brainpower]. It has also been
colorfully noted that Israelis have the uncanny ability to “find[] a niche and dog-
gedly exploit[] it.” Booth, supra at 14.
40 See Levine, supra note 7. By comparison, the United States invests less than
seven percent of its GDP in education. Id.
41 See MINISTRY OF FINANCE, supra note 4. Israel has 135 engineers per 10,000
employees. The United States and Japan, which rank second and third, have sev-
enty and sixty-five engineers per one thousand workers respectively. Id. Twenty
percent of Israeli citizens have undergraduate degrees, behind only the United
States and the Netherlands. Id.
42 See Hiltzik, High Gear, supra note 7, at A8.
43 See Kaplow, Brainpower, supra note 39, at 3F.
The wave of highly educated Russian immigrants that fled to Israel following the collapse of the Soviet Union in 1989 also dramatically enhanced Israel's labor market. About one million immigrants from the former Soviet Union, including a large number of mathematicians, chemists, material scientists, and engineers, have come to Israel over the past decade and now constitute a major part of the technical workforce. This influx of one million immigrants to a country with a population of only five million could have been hazardous to a country whose economy was at first unable to support them; for a time, former college professors were forced to sweep the streets of Tel Aviv. The Israeli government then implemented the aforementioned incubator programs, due in part to this wave of educated Russian immigrants. Since the economy could not otherwise absorb these immigrants, they worked for the start-up companies developed in the incubator program, thus giving Israel an "entrepreneurial edge."

Many also credit Israel's geography for the rise of its high-tech industry. Israel's lack of natural resources has forced its inhabitants to create an industry that provides for a more stable economy. Commonly referred to as the Silicon Wadi, Israel is often compared to California's Silicon Valley, not only in terms of production, but also geographic location. Like the claustrophobic location of Silicon Valley, a piece of land with bodies of water on both sides and cities (San Francisco and San Jose) on either end, Israel is bordered by the Mediterranean Sea and pressed between several countries. A small and isolated country, Israel's geography naturally lends itself to networking and idea-sharing. Israel's precarious military situation, stemming from its location in the


45 See Hiltzik, High Gear, supra note 7, at A8.

46 Kruger, supra note 1.

47 Id.; see supra Section 2.2.1.

48 Kruger, supra note 1.

49 Id. Israel does have a strong mineral sector. For a complete analysis of the current industry, see Peter Harben, Mining Annual Review: Israel, MINING J., Oct. 1999, LEXIS Publications File.

50 See Hiltzik, High Gear, supra note 7, at A8; Sandburg, supra note 34, at 1. "Wadi" means "oasis" or "valley" in Arabic. Id.

51 See Hiltzik, High Gear, supra note 7, at A8.
midst of hostile neighbors, also prepared the population for the high-risk nature of technology start-ups. Again, because of the required military service, young Israelis are practically trained to mesh responsibility with risk. Further, a history of boycotts and embargoes by the surrounding Arab countries has forced Israelis to be self-reliant.

2.2.3. Foreign Investment

In the early 1990s, venture capital in Israel was practically non-existent. In 1991 there was one venture capital firm in Israel, Athena Venture Partners Fund. In 1994, foreign investments in Israel accounted for only $26 million. Soon after, Israeli companies caught the attention of the venture capital world for two reasons. First, Israeli companies became the darlings of the Nasdaq. Israel ranks third in the world for the number of Nasdaq-listed companies, with eighty-eight. Second, Israeli companies are popular targets for buyouts by other companies.

While initial investments came from Europe, the past few years have been dominated by American cash flows. In just the past few years, venture capital investments in Israeli companies have gone from $429 million in 1997, to $568 million in 1998, $1 billion in 1999 and $3.1 billion in 2000. Israel now ranks second only to the

52 See Levine, supra note 7. See also supra Section 2.2.1 (giving information regarding required military service).
53 See Hiltzik, High Gear, supra note 7, at A8.
55 See Levine, supra note 7.
57 For example, Lucent bought Lannet, a supplier of Ethernet and asynchronous transfer mode switching solutions for local area networks, in 1998 for $117 million; VerticalNet Inc acquired Tradeum Inc., a company that powers business-to-business exchanges, for $475 million in stock in 2000; AOL acquired Mirabilis, an instant messenger system, for more than $400 million in 1998; BMC Software acquired New Dimension Software for nearly $700 million; and SunGuard Data Systems bought Oshap Technologies for $210 million. Hausman, supra note 16; Levine, supra note 7; Silicon Wadi For Sale, JERUSALEM REP., Apr. 12, 1999, at 42.
58 See Levine, supra note 7. From 1997 to 1998, U.S. investment in Israeli industries increased by forty-eight percent. Id.
59 See MINISTRY OF FINANCE, supra note 4.
United States in the amount of venture capital raised for its high-tech industry. Nevertheless, increased tensions in the Middle East, coupled with a sagging world economy, have dramatically impacted the amount of venture capital available for Israeli high-tech companies.  

3. ISRAEL'S PROBLEMS IN SUSTAINING ITS HIGH-TECH INDUSTRY

Although Israel continues to have tremendous success in the high-tech sector, the past few years of achievement, expansion, and prosperity have begun to take its toll on the country. A labor shortage of technical workers and an utterly inadequate supply of the managers, marketers, and salespeople needed to sustain a mature industry threatens to plague the country. A fear that the high-tech sell-outs that put Israel on the map and attracted the needed venture capital are fostering an incentive to build in order to sell pervades the news. Additionally, the geography of Israel that many credit for giving its citizens the proper combination of responsibility and risk assumption for the high-tech field also endangers the stability and peace that cultivates development and investment. Furthermore, Israeli intellectual property ("IP"), corporation, and tax laws have not been updated to sustain a mature high-tech industry. Finally, the dependency of the industry on venture capital funding and its shortage over the past year has resulted in a significant setback for the industry.

3.1. The Labor Shortage

Israel's expected labor shortage has several components. Israel's major source of high-tech training, the military, may become a victim of its own success. As mentioned in Section 2.2.1, the military helped to fuel the nation's high-tech revolution by providing training to its soldiers and officers, who in turn applied that training to civilian use. However, as an increasing number of officers leave the military to pursue more lucrative careers in the private sector, "Israel's high-tech progeny is consuming its patriarch." This problem has become so pervasive that in September 2000 the navy refused to call reservists to duty because too many of

60 See infra Section 3.5 for further discussion of this topic.
them used their time trying to lure away officers. Although the military has tried to reverse this trend by offering its high-tech officers increased pay, better housing, new cars, and other perks, the real problem lies in the inevitable conclusion that if the computer experts do not stay in the military, then it becomes very difficult to justify the expense of training them. This is a dangerous proposition to an industry that depends upon the military to supply its high-tech workforce.

Second, the supply of engineers and programmers, considered the backbone of a high-tech industry, is becoming dangerously inadequate to meet the demand for such workers. The shortage was staved off for several years by the influx of Russian immigrants starting in 1989, but that wave has stopped, and no one knows for certain from where the next group of skilled high-tech workers will come. Israel’s strict immigration laws make it nearly impossible for non-Jews to even get work visas. The industry even offered the Israeli government money in exchange for admitting foreign workers on temporary visas, but the idea floundered in the fear that such a move would bring too many non-Jewish immigrants to Israel.

The shortage of high-tech employees in 2000 and 2001, estimated to number anywhere from 5000 to 25,000, has other sources as well. Many Israeli engineers are moving to the United States in search of higher salaries. Despite the fact that engineers located in Israel are paid almost eighty percent of their U.S. counterparts, rising salaries in the United States often prove too tempting to turn down. Another bottleneck in the supply of engineers and programmers is the low number of computer scientists graduating from universities. Acceptance into a university’s computer science program is extremely difficult; only eight percent of high

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62 See id.
63 See id.
64 See Hiltzik, High Gear, supra note 7, at C13; Lai, supra note 44.
65 See Land of Milk and Telephony, supra note 21.
66 See Kaplow, Brainpower, supra note 39, at 3F.
67 See id.; Land of Milk and Telephony, supra note 21.
68 See Kaplow, Brainpower, supra note 39, at 3F.
69 See id.
70 See Michele Gershberg, Israeli High-Tech Leader Sees Industries Tripling in 10 Years, Dow Jones Int’l News, Dec. 15, 1999, 12/15/99 WL DJINS 08:00:00.
school seniors get a high enough grade on the math matriculation exam required to enter such programs.71

While the threat of a shortage in engineers and programmers is not as intense a problem in the current economic climate,72 the other segment of the labor shortage—the lack of executives, managers, marketers, salespeople, and other support professionals required to sustain a mature industry—threatens to further destabilize an already vulnerable economy by harming the infrastructures of companies otherwise able to withstand an economic downturn.73 Israeli entrepreneurs readily admit that despite their skills in developing and producing technology, their sales, marketing and management abilities need help.74

Perhaps the most significant gap in the Israeli corporate structure is the lack of managers; several components seem to exacerbate this dilemma. First is a lack of experience.75 The high-tech industry is so new that there are not enough people who have seen the various stages a company goes through as it progresses from start-up to established company who can share that experience with entrepreneurs.76 Second, some blame lies with how Israeli companies are formed.77 Since many engineers and entrepreneurs come from the military, there is a greenhouse effect of isolation, where engineers develop a product that may be the best in the world, and only after completion do they check if a market exists for this new product.78 Another source of the problem is likely to

71 See Gwen Ackerman, Low Tide for Hi-Tech, JERUSALEM POST, Sept. 29, 2000, Rosh Hashana Supp., at 18 [hereinafter Ackerman, Low Tide].

72 Some indicators lead to the conclusion that the labor shortage is now a labor surplus. See All Things Considered: Decline of Israel’s High-Tech Industry (NPR radio broadcast, May 10, 2001) (interviewing recently laid-off employees of Versiware Israel); Demand for High-Tech Workers Drops 83%, JERUSALEM POST, Dec. 11, 2001, at 3 (noting that a survey of want-ads in Israeli newspapers shows a demand drop for high-tech workers).

73 Nicky Blackburn, Desperately Seeking Israel’s First Nokia, JERUSALEM POST, June 20, 1999, (Hi-Tech Supp.), at 10.

74 See Levine, supra note 7. One entrepreneur, Izhak Tamir Zizapel of Orckit Communications, notes that Israeli problems in marketing and sales are due to the difference in social customs from Americans. “Every American,” he notes, “was born in front of the television. Americans are much better at positioning their companies, doing marketing, building up their image.” Id.

75 See Blackburn, supra note 73, at 16.

76 See id.

77 See id.

78 See id.
be common in any start-up around the world—not knowing when to create a formal management structure. Entrepreneurs begin a company with their fingers on every pulse; at some point, however, they must delegate some of their responsibilities to grow their companies effectively.79 The quandary is knowing when that point comes.

3.2. High-Tech “Sell-outs”

Israeli companies bought out by larger non-Israeli companies, predominantly American, have forced the world to stand up and take notice of the nation’s high-tech industry.80 Such high-tech “sell-outs” have brought money and interest into the once fledgling economy. However, both foreign money and interest are feared to have negative ramifications for the Israeli industry in the long run.

As more of the money behind Israeli projects comes from the United States, some fear that the country’s high-tech industry will lose its unique traits and become “Americanized.”81 The primary concern, however, is that as Israeli companies are bought up by the likes of Intel and Motorola, Israel loses out on having an Intel or Motorola of its own.82 Instead, the Israeli company becomes an R&D subsidiary of a larger company, technology ownership is diffused, and profits and IP flow out of Israel and directly into the United States.83 Moreover, by selling at an early stage, Israelis have no means with which to learn the management, sales, and marketing skills needed to sustain a fully-developed industry.

These arguments against the wave of “sell-outs” are hotly contended. Critics argue that the examples of successful “sell-outs” fueled the start-up craze in the first place.84 Further, opponents maintain that foreign venture capital is critical to the continued growth of existing companies, and necessary to the ability of new start-ups to “hit the ground running.”85 Critics also argue that as long as American buyers keep the Israeli operations going and

79 See id.
80 See Gershberg, supra note 70.
81 Levine, supra note 7.
82 See Silicon Wadi for Sale, supra note 57, at 42.
83 See Levine, supra note 7; Silicon Wadi For Sale, supra note 57, at 42. See also supra note 57 for examples of companies acquired by American companies.
84 See Levine, supra note 7.
85 See id.
build them up, then Israelis only benefit from having such technology giants in their backyard.\footnote{86} Finally, commentators note that young entrepreneurs who sell their companies for millions do not usually stay on as employees of the new owner or retire. Instead, they go back out into the market and start a new company even better than the first.\footnote{87}

3.3. Problems with Israel’s Geographic Location

Israel has several problems associated with its geographic location. The first problem is with the lack of available markets. Israel is a small country with an inadequate domestic market to sustain its burgeoning high-tech industry, and few markets available in the surrounding countries due to small economies, political hostilities, or a combination of both.\footnote{88} Israel must consistently look at and deal with major markets that are thousands of miles away.

Israel’s relations with its neighbors have always been a drawback for potential investors, but the recent eruption of violence between Israel and Palestinians clearly impacted the economy for the fourth quarter of 2000 and all of 2001. Israel’s economy is vulnerable to nervous investors, since it exports almost all of its software, chips, and electronics and relies extensively on the United States and Europe for its capital.\footnote{89} Despite assurances that the situation is not nearly as bad as it is portrayed on television, and that few companies are located near problem areas, investors have decided to stay in a holding pattern as they wait and see how events turn out.\footnote{90} Foreign investors have cancelled or postponed trips to the region, and numerous technological conferences have also been cancelled.\footnote{91} These cancellations could seriously hurt Israeli companies, since high-tech investors often insist on meeting the managers of the companies in which they are considering investing in order to gauge ability and form a close working relationship.\footnote{92} Newer companies will be most hurt by delayed invest-

\footnote{86}{See id.}
\footnote{87}{See Silicon Wadi for Sale, supra note 57, at 42.}
\footnote{88}{See Kaplow, Brainpower, supra note 39, at 3F.}
\footnote{89}{See David Rosenberg, Palestinian Unrest Takes Toll on Israeli High Tech, Dow Jones Int’l News, Nov. 1, 2000, 11/1/00 WL DJINS 03:35:00.}
\footnote{90}{See id.}
\footnote{91}{See id.}
\footnote{92}{See id.}
ments, since they are less likely to have the capital to make it through dry periods.93

Particularly problematic for Israel’s economy is the susceptibility of chip fabrication (“fab”) plants to sabotage. Intel, a U.S. company with two such fab plants in Israel, could be a target in the event of a protracted war against terrorism by the United States, given its U.S. origins and its location in Israel.94 Fab plants are especially vulnerable to attack, because all it takes to ruin the entire chip-making process is opening a dust-filled bag in a clean room.

3.4. Problems with Israeli Laws

Although Israeli laws are problematic in several areas, predominantly in IP, tax, and corporation law, almost all issues stem from the same source. Israeli law has simply not adapted rapidly enough to the needs of its advancing high-tech industry.

3.4.1. IP Law

A running joke in Israel is that whenever the United States markets a software program, all of Israel buys just one copy.95 The matter is not so funny to software developers in the United States, because it represents a larger problem with Israeli IP law. It is estimated that illegal copies make up seventy percent of the software used in Israel.96 The problem is not just one that upsets American software companies; it upsets Israeli ones as well, since copyright infringement is estimated to cost legitimate Israeli software companies at least $57 million per year. As a reaction to the problem, software giant Microsoft maintains a very limited presence in Israel, and Bill Gates has stated that he will not step foot in the country until the country takes better measures to protect IP rights.97

This is not to say that Israel does not have laws that protect copyrights and patents. In 1988, the Knesset amended the copy-

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93 See id.
94 Matthew Yi, Expensive Assets, S.F. CHRON., Sept 22, 2001, at C1. Still, it is highly unlikely that Intel will relocate its two Israeli fab plants, due to the difficulty of moving a fab plant as well as the depressed chip market, which would make selling the plant harder. Id.
96 See id.
97 See id.
right law to treat software the same as it treats literary works.\textsuperscript{98} Similar to U.S. law, remedies for infringement include injunctive relief and damages. Israeli laws even go a step further, allowing ex parte orders which permit the plaintiff’s attorney or court appointed representative to enter the defendant’s property and seize the illegal software and the computers used to make it.\textsuperscript{99} Israel’s patent law also protects software. Following the decision in the U.S. case \textit{Diamond v. Diehr},\textsuperscript{100} Israeli law allows software programmers to apply for patent protection.\textsuperscript{101} The Knesset also approved the Patent Cooperation Law in 1996, which allows a patent applicant to file in eighty signatory countries simultaneously.\textsuperscript{102}

Thus, the problem is not just in the law itself, but also in its lax enforcement and application. Despite the fact that Israel has one of the highest per capita lawyer populations, few lawyers litigate IP cases.\textsuperscript{103} Moreover, Israel’s Supreme Court has not been protective of IP rights. In one example, the Court held in \textit{Saggi v. Estate of Abraham Ninio}\textsuperscript{104} that illegal reproduction of a copyrighted work by the same individual, counts as only one copyright infringement, regardless of how many times it has been reproduced.

\subsection*{3.4.2. Incorporation Elsewhere}

Israel’s problems with IP protection are commonly viewed as being associated with IP’s coming of age; many believe that the law will adapt quickly enough to prevent any permanent damage.\textsuperscript{105} However, Israeli tax and corporation laws have led to potentially irreparable damage, as more than ninety percent of its high-tech start-ups have chosen to incorporate not in Israel, but in Delaware.\textsuperscript{106}

\begin{itemize}
\item \textsuperscript{98} See id. The Knesset is Israel’s legislature—a 120-seat unicameral body whose members are elected by proportional representation for no more than four years.
\item \textsuperscript{99} See id.
\item \textsuperscript{101} See Siskind, supra note 95.
\item \textsuperscript{102} See id.
\item \textsuperscript{103} See id.
\item \textsuperscript{104} See id. (citing case about copyright right infringement).
\item \textsuperscript{105} See id.
\item \textsuperscript{106} See Ackerman, \textit{Low Tide}, supra note 71, at 18; Hiltzik, \textit{High Gear}, supra note 7.
\end{itemize}
What causes ninety percent of Israeli start-ups to incorporate outside of Israel? The advice of their venture capital funds. These funds know that when it comes to taxes and merger and acquisition ("M&A") laws, incorporating in Israel is not an option. First, Israel has a capital gains tax of fifty percent. By comparison, the United States taxes capital gains at twenty percent. Second, the capital gains tax is partnered with Israel's corporate tax rate of thirty-six percent. When countries like Singapore tax similar entities at a zero to ten percent rate, and Ireland taxes such businesses at a 12.5% rate, Israel cannot compete. Skewed Israeli M&A laws impose taxes even when a merger involves only a transfer of shares, and new corporate regulations impose shareholder responsibility on CEOs. Finally, the Israeli government intentionally fails to grant e-commerce start-ups "approved enterprise" status, which would qualify them for tax breaks.

Such laws not only force businesses to incorporate elsewhere; the laws drive them to do business elsewhere as well.

3.5. Venture Capital Dry-Up

In 2000, investors placed a record-breaking $3.1 billion into Israeli high-tech start-ups; during 2001, investors put only $1.5 million into such businesses. While investments in existing companies remained steady during the first two quarters of 2001, seed investments, or first investments, declined fifty percent be-

107 See Ackerman, Low Tide, supra note 71, at 19.
108 See id.
109 See id.
110 See id. Ireland's current tax rate is twenty-four percent, dropping to 12.5% in 2003. Id.
111 See Ackerman, Low Tide, supra note 71, at 19.
112 See id.
113 See id.
114 See id.
 tween the first and second quarters.\textsuperscript{117} The hardest hit within the high-tech sector was the Internet sector, where investment in the second quarter declined eighty-nine percent from first-quarter levels.\textsuperscript{118}

The third quarter of 2001 was even bleaker for Israeli companies with regard to venture capital. Local and foreign venture capital firms raised $330 million for Israeli start-ups, a twenty-one percent decline from the second quarter and a sixty-eight percent drop from the third quarter of 2000.\textsuperscript{119} Seed investment also declined fifty-two percent from the second quarter.\textsuperscript{120} Companies raising capital declined from 137 in the second quarter to 117 in the third quarter and the average financing per round fell from $3.7 million to $3.2 million.\textsuperscript{121}

This decrease in venture capital funding is extremely harmful to the Israeli economy, which depends much more on venture capital than does the U.S. economy. While the United States receives more venture capital in total amounts, venture capital investment makes up three percent of Israel's gross domestic product ("GDP") and only one percent of U.S. GDP.\textsuperscript{122}

4. INCORPORATION IN THE UNITED STATES

A brief history of the recent background of the economic relationship begins with the U.S.-Israeli Free Trade Agreement ("FTA"), which became effective July 1, 1985.\textsuperscript{123} The FTA was an agreement to eliminate substantially all tariffs between the United

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\textsuperscript{118} See Gordon, supra note 116.

\textsuperscript{119} See PricewaterhouseCoopers, supra note 116. See also Neil Sandler, Israeli Venture Deals Drop, Life Sciences Up, DAILY DEAL, Nov. 5, 2001, available at 2001 WL 25884179 (noting the declining funds by Israeli high-tech companies for the fourth consecutive quarter).

\textsuperscript{120} PricewaterhouseCoopers, supra note 116.


\textsuperscript{122} Yasmine Chinwala, Israel Turns to Europe for Capital, FIN. NEWS, Sept. 3, 2001, 2001 WL 12507573.

The FTA also restricts several non-tariff barriers such as import licenses, percentages for exports, and buy-local requirements. The FTA also provides safeguard provisions. An example of such a provision is the rules of origin clause, which limits the benefit of the agreement by mandating that only goods produced or substantially changed in the exporting country to be covered. The FTA also calls for the implementation of temporary trade measures if there is a balance of payments problem in either country.

More recently, the United States and Israel have forged an even closer, though unofficial, economic relationship through Israel's high-tech sector. Intel provides an illustrative example of this closer tie between the two nations. Intel's link to Israel began with Dov Frohman, an American-educated Israeli who created the EPROM semiconductors for Intel. When Frohman wanted to return to Israel, Intel reportedly appeased him by sending him to open the company's first design center overseas in Haifa. In 1994, the Israeli government, under the late Yitzhak Rabin, made a deal with Intel for a manufacturing plant in Kiryat Gat, a town with little industry and a high unemployment rate. The plant, which opened in 1999, complements the Haifa R&D center and the Jerusalem fabrication plant and received a $600 million government construction incentive. From January through August of 2000, Intel exported $1.2 billion of high-tech products from its Israeli operations. Furthermore, Intel has committed itself to being a positive social influence in Israel. It has a local employment policy and actively encourages its employees to live near their respective plants. Intel has also partnered with local communities to

124 FTA, supra note 123, art. 10.
125 Id. art. 12 § 1, 13.
126 Id. annex 3.
127 Id. art. 11 § 1.
129 See id.
130 See id.
131 See id.
133 See id.
offer nine-month courses that bring local residents up to the skill level required to work in the plants.\footnote{134 See Kaplow, Intel's Roots, supra note 128.}

Although most companies do not have such a large investment in Israel, many invest in small Israeli start-ups in order to get faster access to new technologies.\footnote{135 See Levine, supra note 7.} These relationships with large U.S. companies also give such start-ups coveted access to the U.S. telecommunications market.\footnote{136 See New Report Highlights World's Top Technology Markets, EDP Wkly's IT Monitor, Mar. 20, 2000, 2000 WL 10367611.} Additionally, Israel now ranks tenth in fastest growing U.S. high-tech markets, growing ninety-five percent from 1998 to 1999.\footnote{137 See Cyril Moscow, Michigan or Delaware Incorporation, 42 Wayne L. Rev. 1897, 1900 (1996).}

Now this relationship is being taken one step further, with the United States serving as the preferred incorporation destination of Israeli start-ups.

4.1. Incorporation in Delaware

Delaware has been the choice state of incorporation for companies reporting under the Securities Exchange Act of 1934 ("1934 Act"). Approximately half of all the companies that come under the 1934 Act are incorporated in Delaware, as are a majority of Fortune 500 companies.\footnote{138 See Marlon Millner, D.C., VA. Less Business-Friendly, Wash. Bus. J., Feb. 26, 1999, 1999 WL 7856121.} In general, Delaware is an attractive state for incorporation for several reasons. Delaware's Chancery Court is well known and respected for its stability, predictability, and speed.\footnote{139 See Delaware Continues to Attract Corporations on Paper, If Not in Person, Assoc. Press, Dec. 26, 1997, available at 1997 WL 4898349 [hereinafter Delaware Continues].} Incorporating in Delaware is viewed as a method of reducing legal risk due to the comprehensive body of case law under the Chancery Court, one of the only state courts completely dedicated to hearing corporate cases.\footnote{140 See id.} Whether or not the court's rulings are favorable to the corporation, the Court usually interprets the law clearly.\footnote{141 See id.} This feature of the Delaware court system was given even greater influence in corporate decision-making after the Private Securities Litigation Reform Act ("PSLRA") was
passed in 1995. Intended to reduce the number of lawsuits filed against companies, instead the PSLRA simply shifted such suits from federal court to state court. Given the aforementioned features of the Delaware Chancery Court, many view Delaware as the best place in which to have corporate cases heard. Additionally, since the Court hears only business cases, it is not backlogged with torts and criminal cases like other courts. This has given rise to a system which can handle corporate issues more efficiently than can other jurisdictions.

Delaware's popularity, however, goes beyond reverence for its Chancery Court. Delaware's legislature and judiciary continuously revise the corporate law to respond to the changing needs of business, making transactions simpler to accomplish. For example, Delaware was one of the first states to recognize the legal insignificance of which corporation actually survives a merger and to permit mergers to be transacted through various forms of consideration.

Delaware also has a set of jurisdictional rules that allow for personal jurisdiction over important defendants, making the state a center for corporate litigation.

Businesses favor incorporation in Delaware for other reasons as well. Many consider Delaware to have moderate and consistent tax policies, a corporation law that allows management to conduct business without the usual red tape, and an efficient system for handling corporate filings with the Division of Corporations directed by the Secretary of State. Finally, and quite importantly for new companies, Delaware incorporation impresses and reassures Wall Street investors.

Although the above features of Delaware law hold true for any company, there are specific features of Delaware law which, when compared to Israeli law, make it a much more suitable place of in-

143 See Delaware Continues, supra note 140.
144 See id.
145 See Moscow, supra note 138, at 1903.
146 See id.
148 See Moscow, supra note 138, at 1903.
149 See id. at 1905-06.
150 See Millner, supra note 139.
corporation for Israeli companies. The major sources of discontent with Israeli law are its tax and M&A laws, which are considered “antiquated for the high-tech era,” especially in comparison with Delaware law. Delaware taxes capital gains at twenty percent; further, the state taxes stock exchanged during the course of a merger only when such stock is sold. By contrast, Israel taxes capital gains at rates up to fifty percent, and taxes merging companies even when only shares are exchanged. Since high-tech companies that locate their management and control outside of Israel are not subject to Israeli taxation, there exists quite an incentive to incorporate in Delaware and to locate company headquarters in, for example, California.

Another feature of Delaware law absent from Israeli law is the existence of the limited liability company (“LLC”). An LLC is similar to a corporation in legal status (i.e., members have limited liability) but it does not have the double taxation structure of a corporation. Instead, income is passed directly through to its owners, much like a partnership. Israeli law views the LLC as a normal foreign company. Thus, if the LLC is established in Delaware and controlled outside Israel, it avoids Israeli taxes as well.

At first, the danger of this structure is unclear, since a company’s incorporation in Delaware does not usually lead to a significant presence in that state. However, the fees and taxes asso-

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151 The American legal system differs from the Israeli legal system in that it is founded upon the idea of federalism. Whereas the United States often has comprehensive regulation on the same subject at both the federal and state levels, Israel adopts laws covering anything other than strictly local interests on a national level. Aaron M. Lampert & Alan G. Straus, U.S., Israeli Practices Often, But Not Always, Similar, 222 N.Y. L.J., Sept 20, 1999, at S6.

152 See Hiltzik, High Gear, supra note 7, at A8.


154 See Rafi Ton & Eli D. Clark, Where to Incorporate Your Start-up, JERUSALEM POST, Oct 8, 2000, at 9.

155 DEL. CODE ANN. tit. 6, § 18 (1999).

156 Id. § 18-303.

157 Id. § 18-1107(a).

158 ISRAELI BUSINESS LAW, supra note 153, at 389.

159 See generally Delaware Continues, supra note 140 (explaining that corporations do not relocate to Delaware, but rather reincorporate in that state in order to take advantage of a stable body of corporate law).
associated with incorporation bring Delaware more than $300 million in revenue per year.\textsuperscript{160} Furthermore, to avoid Israeli taxes, a company must not only be incorporated elsewhere but also have managerial control outside of Israel. If a company does so, Israel loses not only the incorporation of a high-tech company, but also its headquarters. Therefore, the only potential aspects of the former start-up left in Israel are an R&D facility\textsuperscript{161} and, even less likely, a manufacturing plant. Given the above discussion regarding the major markets for the high-tech industry being thousands of miles away from Israel,\textsuperscript{162} there is an imminent danger that these companies could just leave Israel altogether.

4.2. Incorporation and Location in Other States

Israel has more to worry about than just the state of Delaware. Delaware is not the only U.S. state trying to lure Israeli high-tech businesses away from Israel for incorporation or location purposes.\textsuperscript{163} States such as Florida, Georgia, and Virginia have joined the hunt for Israeli businesses as well.

South Florida has taken advantage of Israel's lack of a domestic market. In the past few years more than a dozen Israeli companies have started operations in South Florida.\textsuperscript{164} South Florida has found that it attracts Israeli high-tech businesses due to its simultaneous similarities and differences from Israel, and it has taken advantage of both aspects to entice these companies. South Florida already has in place a strong Israeli-Jewish network. Thirty thousand Israelis already live there, and Miami has the second-largest Jewish population in the United States.\textsuperscript{165} Nevertheless, Florida has two major distinctions from Israel—a proximity to major markets and friendlier tax laws.\textsuperscript{166} Not only does a Florida location

\textsuperscript{160} Id.

\textsuperscript{161} See Ton & Clark, supra note 154, at 9.

\textsuperscript{162} See supra Section 3.3.


\textsuperscript{164} See Bandell, supra note 163.

\textsuperscript{165} See id.

\textsuperscript{166} Id.
give an Israeli company access to the U.S. market, which makes up from one-fourth to one-third of the world’s high-tech market, it also affords a much closer relationship to Latin America.\textsuperscript{167} Thus, organizations such as Enterprise Florida, a group which encourages business growth in the state, are able to use the existing cultural relationship as well as their superior market location and a more attractive tax system to attract the Israeli high-tech industry.\textsuperscript{168} Even a month after the terrorist attacks on the United States on September 11, Florida hosted Israel’s Communications Minister to strengthen and secure ties between the area and Israeli companies.\textsuperscript{169}

If Florida is getting into the game with Israeli high-tech companies, then Georgia is playing hardball. During the summer of 2000, the governor of Georgia led a business delegation to Israel that resulted in six Israeli companies moving their bases of operation to Georgia.\textsuperscript{170} Recognizing that high-tech means high growth, Georgia is actively seeking to enlarge the number of Israeli companies doing business there.\textsuperscript{171} In travelling to Israel, the delegation made sure that Israeli companies know the positive aspects of locating in Georgia. First, and foremost, Georgia offers a “launching pad” to the U.S. market.\textsuperscript{172} Since location anywhere in the continental United States would accomplish the same thing, Georgia has also worked hard to make itself an ideal receptacle for the high-tech industry. The delegation emphasized that Georgia can provide what Israel cannot. Georgia has an availability of high-tech workers. It supplies trained workers through the fourth-largest university system in the country, which includes Georgia Tech, the third largest research institution in the United States, and programs like QuickStart and the Intellectual Capital Partnership.

\textsuperscript{167} Id. Latin America is an important growing market for the high-tech industry but is weak in services and facilities to accommodate a physical presence. For example, TTI Telecom International, Ltd., a software company which recently began operations in Florida, maintains that twenty percent of its revenues come from Latin America. Id.

\textsuperscript{168} Id.


\textsuperscript{170} See Buzzy Gordon, Georgia New U.S. Hub for Israeli Hi-Tech Companies, JERUSALEM POST, July 2, 2000, at 8.

\textsuperscript{171} Id. As of July 2000, the number of Israeli companies doing business in Georgia was forty. Id.

\textsuperscript{172} Id.
Program ("ICAPP"). QuickStart provides employee training at no cost to Georgia companies, and ICAPP allows companies to use the state’s public colleges and universities to train its workers. Georgia also offers economic incentives for the Israeli companies which locate there, including headhunters at the state’s expense, tax credits for every new job created, and other tax incentives, including a sales-tax reduction on the purchase of computer hardware and clean-room equipment. Along with other features such as a research alliance between the state, academia, and business; quality of life; and cost of living, Georgia is working hard to offer an alluring alternative to incorporation elsewhere for Israeli businesses.

Even the recent violence in the United States has not stopped Israeli firms from relocating to Fairfax County, Virginia, located just outside of Washington, D.C. The number of Israeli-owned high-tech companies has doubled in the past year, due in part to pitches by Fairfax County through the U.S.-Israel Business Exchange. Banking on the fact that the commercialization of Israeli defense technologies has become increasingly lucrative, especially when located close to Washington, Fairfax County advertises itself to Israeli companies by highlighting its location and its large supply of technical workers.

5. CAN THE ISRAELI HIGH-TECH INDUSTRY SURVIVE?

The Israeli high-tech industry has been hailed as second only to Silicon Valley’s. By one estimate, Israel is home to more than 3000 high-tech companies and 150 new start-ups every quarter. However, Israel has some potential problems that could have a devastating impact on the new industry. The issues that Israel faces with respect to its high-tech industry are three-fold. First, Israel’s geographic location positions it far away from major high-tech markets and leaves it susceptible to nervous foreign investors. Second, Israel’s corporation and tax laws are outdated and unfriendly to the high-tech industry. Third, other areas, particularly in the United

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173 Id.
174 Id.
175 Id.
176 Id.
177 Dina El Boghdady, Israeli Firms find Home in D.C. Area: Groups’ Recruiting Efforts Paying Off, WASH. POST, Nov. 6, 2001, at E5.
178 Id.
States, seem to be working much harder than Israel to attract and retain Israeli companies. Finally, the worldwide economic slowdown, with its emphasis on technology companies, could cripple the once buoyant high-tech sector. For the first time in twenty years, Israel’s high-tech trade balance narrowed in 2001, with high-tech exports dropping twelve percent. Estimates reveal that twenty percent of Israeli start-ups, between five to six hundred companies, have closed their doors. Moreover, salaries for those in the high-tech industry have fallen dramatically over the past year: wages fell 27.4% in the R&D sector, 21.7% in the electronic communications equipment sector, and 20% in the computer services sector.

5.1. Steps in Progress

Israel has already taken steps to slow growing corporate flight by creating better market conditions for high-tech businesses. A proposed M&A law would impose taxes on an exchange of shares only after a two-year waiting period. The Corporate Companies Law is currently being amended to qualify the fiduciary responsibilities of the CEO. The government is also amending the R&D laws to ease restrictions on companies that receive funds from the OCS, such as requirements regarding local production and technology exporting. A 1995 amendment to Israel’s insolvency law encourages a company to reorganize if it is in bankruptcy, instead of liquidating at a creditor’s demand. The government has also increased its support for start-ups by cutting tax rates from their usual thirty-six percent to zero in the first year of business, with an increase of two and four percent in subsequent years. An Israeli high-tech company may also seek “approved enterprise” status, which benefits from a reduced tax rate as well. Perhaps the most

181 Ackerman, Low Tide, supra note 71.
182 Id.
183 Id.
185 Ton & Clark, supra note 154, at 9.
encouraging step so far occurred in September 2001, when Israel's finance minister, Silvan Shalom, exempted foreign investors in Israeli venture capital funds from paying taxes through January 1, 2004. Following this break, Israeli Prime Minister Sharon announced in early 2001 that he wants to lower capital gains taxes on investments in start-ups, an action designed to keep Israeli companies from moving their headquarters out of Israel. Incorporating in Israel also has practical benefits. Creating an Israeli company is probably the easiest and cheapest option. Israel's incorporation process is relatively simple and offers the convenience and clarity lacking in foreign incorporation.

Further, the heightened interest in security since the terrorist attacks on the United States on September 11, 2001 has attracted a renewed focus on Israeli companies that develop technologies adaptable to security functions. For example, one Israeli company has used advances in high-speed photography to record license plates on moving vehicles. Building owners now use this technology to keep track of cars that enter and leave parking garages. Oz Vision is an Israeli company that created technology permitting users to transmit high-quality video surveillance over standard telephone or cellular phone lines. A year ago, Oz Vision pitched its idea of transmitting video surveillance from airplanes using a plane's existing satellite phone to the U.S. airline industry, but not one carrier showed interest. Now, not only have the Federal Aviation Administration and commercial air carriers shown interest, Oz Vision is having difficulty keeping up with inquiries from companies throughout the transportation industry as well as school systems. Other Israeli companies garnering attention are


188 See Ton & Clark, supra note 154, at 9.

189 Id.


191 Id.

192 Id.


194 Id.
those that have developed methods to protect water reservoirs from biological weapon attacks, and affordable machines that can check mail for anthrax. In addition, security firms composed of former members of the Israeli secret service are in high demand by the U.S. market, due to their experience in fighting terrorist attacks for the past fifty years.

5.2. Future Steps

To retain incorporators, Israel needs to create corporation and tax laws that are as favorable to boards and management, if not more so, as those of Delaware. Perhaps Israel could use Pennsylvania's corporation law, considered to be equal to Delaware law in most topics and even better in certain areas, as a guideline. Israeli corporate law could not only allow boards of directors and managers to consider the interests of constituencies other than shareholders when making decisions, but also permit the board of directors not to consider shareholder interests dominant over these other constituencies. Israeli law could provide that there is no duty to auction the company in order to obtain the highest price in the case of a merger. Other possibilities for Israeli law include eliminating the duty of candor for directors, insulating directors against personal liability for breaches of the duty of loyalty, and permitting the indemnification of directors for expenses and judgment as long as there is no finding of willful misconduct or negligence. Yet another option for Israeli labor law is to permit no-shop/lock-up provisions.

Since a high-tech industry is critically dependent upon constant innovation, Israel should further amend its R&D laws to ease re-

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195 Id.
196 See Dan Ephron, The Bin Laden Dividend, NEWSWEEK, Nov. 26, 2001, at 58; Marketplace, supra note 193. In November 2001, a partnership between El Al, the Israeli state-owned air carrier, and Boeing, the American plane manufacturer, was formed to provide air security consulting services. See Lou Marano, Israel: A Security Partnership with Boeing, UPI, Nov. 9, 2001, LEXIS, UPI File.
197 Frederick D. Lipman, Alternatives to Incorporating in Delaware, N.Y. L.J., Nov. 6, 1997, at 5.
199 See Lipman, supra note 197, at 5 (noting that the Pennsylvania corporate law has no duty to auction, and so is attractive to corporations).
200 15 PA. CONST. STAT. § 1713.
201 See Lipman, supra note 197.
strictions on creativity. Problematic issues in this area include a prohibition on technology transfer (which carries a penalty of up to three years in jail), an insistence on local production, and the grant allocation process.\textsuperscript{202} Although it is understandable that the Israeli government does not want to fund technologies that benefit other countries, the current state of the law does not mesh with the current process of globalization. A potential solution is to require companies that transfer overseas to pay back any governmental grants.\textsuperscript{203} Local production restrictions should also be eased, given that there are few production jobs created by the high-tech industry.\textsuperscript{204} Finally, the grant-allocation process would be much more efficient if the government imposed an application deadline, and then allotted eighty percent of OCS grants by the end of the first quarter.\textsuperscript{205}

These proposed solutions may not be the right ones for Israel for a variety of reasons, but they represent a starting point for change. Mere rejection must not be the lone response. Instead, several questions must follow. Why not? And if not, what then?

6. CONCLUSION

Israel is on the verge of leading the high technology industry, not only in innovation and development, but in its sustained and mature business presence. However, the industry is hampered by a severe lack of support professionals, corporation and IP laws that discourage high-tech companies from locating in Israel, and the diminishing global pool of venture capital funding.

However, Israel is capable of surmounting these obstacles. The presence of larger established companies in Israel and the passage of nothing more than time should give the Israeli high-tech industry the necessary personnel to manage the burgeoning infrastructure necessary to a successful business. Corporation and IP laws will develop to keep abreast of changes in the economy. The Knesset, in response to the demands of the people and business, will have to alter its laws or risk the loss of an industry it worked so hard to build. Finally, venture capital funding will inevitably

\textsuperscript{202} See Ackerman, Chief Scientist, supra note 153, at 14.
\textsuperscript{203} Id.
\textsuperscript{204} Id.
\textsuperscript{205} Id.
return, because Israeli entrepreneurs will continue to cultivate new ideas and technologies, any of which could be worth millions.