



Tel Aviv, March 31, 2005

**MEMORANDUM**  
**THIRD AMENDMENT TO THE LAW FOR THE ENCOURAGEMENT OF RESEARCH**  
**AND DEVELOPMENT IN INDUSTRY**

**ISRAELI COMPANIES THAT RECEIVED IN THE PAST OR WILL RECEIVE IN THE FUTURE GOVERNMENTAL SUPPORT MAY NOW TRANSFER THEIR INTELLECTUAL PROPERTY OUTSIDE OF ISRAEL. FOR THE FIRST TIME SINCE THE LAW FOR THE ENCOURAGEMENT OF RESEARCH AND DEVELOPMENT IN INDUSTRY WAS ENACTED IN 1984 THE TRANSFER OUTSIDE OF ISRAEL OF INTELLECTUAL PROPERTY, WHICH WAS DEVELOPED WITH THE SUPPORT OF THE GOVERNMENT, IS PERMITTED, SUBJECT TO REIMBURSEMENT OF THE STATE.**

The third amendment to the Law for the Encouragement of Research and Development in Industry, 1984, allowing the transfer outside of Israel of intellectual property and know-how (IP) developed with the support of the Office of the Chief Scientist at the Ministry of Industry and Trade of Israel (OCS), was adopted in third reading, therefore finally approved, by the Israeli Parliament on March 30, 2005. This Third Amendment concludes a very long legislation process of more than 4 years. The Third Amendment shall enter into force upon its publication in the Official Gazette in the coming weeks.

This revolutionary evolvement improves Israeli companies' ability to deal with the trends in the global economy, as M&A transactions, joint ventures and other collaborations with foreign companies often involve transfer of IP. Prior to the adoption of the Third Amendment, transfer outside of Israel of IP that was developed with the support of the OCS was strictly forbidden and the OCS had no authority to approve such transfer.

Pursuant to the Third Amendment, the OCS Research Committee is authorized to permit, in special cases, transfer of IP, and any right in such IP, outside of Israel. In such cases the State is treated as an equity investor that is entitled to its pro-rata portion based on the total investments made in the IP or the company (as the case may be), subject to the following provisions:

1. In the event of sale of IP (as opposed to the sale of the company) the State is entitled to its pro-rata portion of the consideration for the IP, calculated by dividing the aggregate amount of OCS grants given to the company by the total investment in the respective R&D program.
2. Similarly, in the event of acquisition of the supported company, the State is entitled to its pro-rata portion of the proceeds, calculated by dividing the aggregate amount of OCS grants given to the company by the total investments in the company less its financial assets. However, if the acquisition price, or a part thereof, is in shares of the purchasing entity, the Research Committee may postpone payment of the balance after receiving all cash funds, subject to (i) regarding privately owned companies - attachment of collateral to the shares of the purchasing

entity and its warranty not to further transfer the IP or dispose the shares until transfer of full payment to the State; (ii) in publicly traded companies - registration of the shares of the purchasing entity for trade and attachment of collateral to shares which the value thereof is equal to the balance due to the State, provided that the balance is paid within 3 months from the date upon which the respective shares can be first traded.

3. The reimbursement shall not be less than the aggregate amount of OCS grants given in respect of an R&D program plus interest, except for transfer of IP in the course of liquidation due to insolvency or receivership of the supported company.
4. In addition, the Research Committee has the mandate to waive reimbursement if foreign IP is transferred in exchange for the IP of the supported company, or if the supported company and a foreign entity are sharing IP for the purpose of developing new IP, or if IP is sold but the supported company is granted an exclusive, irrevocable, worldwide and perpetual license to use the IP and all proprietary rights related thereto.
5. Reimbursement is depreciated over the years to a minimum of the aggregate amount of OCS grants deducted of royalties which were paid to the State. The depreciation period and rate shall be indicated in regulations to be published in the future, provided, however, that said period shall not commence before the lapse of two years from the consummation of the R&D program and shall not exceed twelve years from that date.

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<sup>1</sup> The information contained herein is based on the Bill that was laid before the Parliament. During the next few days we will further examine the Third Amendment and the implications thereof. Transfer of production rights outside of Israel and additional matters, dealt with in the Third Amendment, are not discussed herein.