INFORMATION NOTE

Innovation and technology industry and intellectual property system in Israel

1. Introduction

1.1 Israel is a world-recognized high-tech and innovation hub. As early as in 1974, the Israeli government established the Office of the Chief Scientist ("OCS") under the Ministry of Economy (formerly known as the Ministry of Industry, Trade and Labor) to foster the industrial research and development ("R&D") in the country. The introduction of the *Law for the Encouragement of Industrial Research and Development* in 1984 has further contributed to the industrial development in Israel. The purpose of the *Law* is to encourage Israeli companies to invest in R&D projects with the government to share the risk inherent in such projects. OCS is empowered under the *Law* to oversee all government-sponsored support of R&D in the Israeli industry.

1.2 Israel's innovation and technology ("I&T") industry underwent a breakthrough in 1987 when the country decided to cancel the project to develop Lavi, an Israeli-designed military jet, and use the money to buy the less-expensive American-made F-16 fighter. The decision resulted in the release of hundreds of engineers with experience at the cutting edge of aerodynamic, avionics, computers and electronics into the commercial market.

1.3 Israel's I&T industry continued to grow in the 1990s and expand briskly in the 2000s, thanks to the influx of science and engineering talents from the former Soviet Union, the successful transfer of technology from academia to industry, and the establishment of R&D centres by multinational companies to take advantage of the government's incentive measures. Also lending particular support was the development of venture capital industry during the period. In Israel, venture capital companies provide funding for a business that does not have sufficient security to borrow from a bank. In 2012, there were approximately 70 active venture capital funds in Israel and 14 of them were international funds.

1.4 In another effort to encourage the development of the I&T industry, Israel has adopted international standards in the intellectual property field in order to create a favourable investment environment. An effective system of intellectual property rights can stimulate innovation, by which innovators and other stakeholders are able to benefit from investment in successful R&D. Israel ranked 34th in terms of protection of intellectual property rights among the 148 economies covered in the Global Competitiveness Report 2013-2014.[1] The top three were Finland, Singapore and New Zealand, and Hong Kong ranked 10th.

1.5 After more than three decades of development, Israel has developed a competitive high-tech edge. In 2012, 135 people were working as engineers among every 10 000 employees in Israel, compared with 70 in the United States and 65 in Japan.[2] In addition, Israel's gross expenditure on R&D ("GERD") accounted for 4.38% of its Gross Domestic Product in 2011, more than doubled the European Union average of 2.03%. It also ranked 14th in the Global Innovation Index 2013[3], with the highest ranking in the sub-indicators of GERD and venture capital deals. Furthermore, Israel is second only to Silicon Valley of the United States in terms of the number of start-up companies. It is home to about 4 800 start-ups and many of them are high-tech companies.

1.6 This information note provides the Panel on Commerce and Industry with information on (a) the Israeli government's policies to encourage the I&T industry and (b) development of academia-to-industry technology transfer in Israel. It also highlights the intellectual property system with respect to patents, trade marks, and designs in Israel.

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1 The Global Competitiveness Report is published by the World Economic Forum, which is an independent international organization comprising about 1 000 top corporations and global enterprises. The Report assesses the competitiveness landscape of the worldwide economies to provide an indication on the drivers of their productivity and prosperity.

2 See IVC Research Centre (2012).

3 The Global Innovation Index is co-published by the Cornell University, INSEAD (a graduate business school with global presence specialized in executive education programmes) and the World Intellectual Property Organization. The index is a composite indicator that ranks 142 economies in terms of their enabling environment to innovation and their innovation outputs.

2. Government policy on innovation and technology industry

Specific government authorities for promotion of the industry

2.1 The Israeli government has established two ministries entrusted with promoting the development of the I&T industry in the country, namely the Ministry of Economy and the Ministry of Science, Technology and Space.

Ministry of Economy

2.2 The Ministry of Economy focuses on the promotion of economic growth in Israel. Specifically, it has established OCS to implement the government's policy on supporting and encouraging industrial R&D, as well as the Investment Promotion Centre to promote foreign and local investment in the I&T industry.

(i) Office of the Chief Scientist

2.3 OCS is charged with execution of government policy for the support of industrial R&D. It administers a broad range of programmes aiming to encourage technological entrepreneurship, enhance Israel's scientific resources, broaden the knowledge base of the industry, and promote R&D cooperation at both the national and international levels.

(ii) Investment Promotion Centre

2.4 The Investment Promotion Centre aims to encourage foreign investment in Israel and promote cooperation between Israeli and foreign corporations. In order to fulfil its objectives, the Centre serves as an information centre and a coordinating body. The former includes answering foreign and Israeli inquiries concerning government investment incentives and handling referrals to the appropriate authorities. The latter involves the establishment of direct relations between Israeli and large foreign corporations, which will hopefully lead to investments or cooperative relationships.

Ministry of Science, Technology and Space

2.5 The Ministry of Science, Technology and Space is tasked to identify and fund scientific and technological research areas that are of national priority. It also awards scholarships to postgraduate students, and initiates international scientific collaborations with other countries and international organizations.

Encouragement of private sector participation

2.6 The Israeli government encourages local and foreign investment in industrial projects by offering a wide range of incentives and benefits through the *Law for the Encouragement of Capital Investment*. Government grants of up to 24% of the approved investment are available to companies establishing their plants in the priority areas in Israel.[4] Favourable tax treatment is also given to foreign investors for up to 10 years. For large multinational companies with a minimum investment of US$130 million (HK$1.01 billion) and an annual turnover of at least US$3 billion (HK$23 billion), they can enjoy tax exemption for the initial period of 10 years.

2.7 As a result of the government's incentives, many major multinational companies have established their presence in Israel. For example, Microsoft, Cisco, Hewlett Packard and Time Warner have established R&D centres and acquired companies in Israel. In recent years, a number of financial institutions have also set up R&D centres in Israel to develop advanced technologies and applications to support their global financial business.

2.8 Israel's venture capital industry, which plays an important role in the booming high-tech sector, also benefits from the government's incentive measures. For example, foreign investors in eligible venture capital funds are entitled to receive tax exemption on the income generated from investment in the Israeli I&T industry. In 2012, there were about 70 active venture capital funds in Israel and 14 of them were international funds with offices in Israel. During 2003-2012, a total of US$6.77 billion (HK$53 billion) was raised by Israel's venture capital industry. Israeli venture capital funds typically invest in communications, computer software, information technology, semiconductors, medical devices and biotechnology.

[4] Priority areas are mainly the Galilee in the north, the Negev in the south, and Jerusalem.

Support programmes offered by the Office of the Chief Scientist

2.9 OCS manages various support programmes to encourage the development of the I&T industry in Israel. Major OCS programmes, as detailed in **Table 1**, are:

(a) the R&D Fund used by OCS as the main vehicle to support R&D projects of Israeli companies by offering conditional grants of up to 50% of the approved expenditures;

(b) the Technological Incubators Programme providing financial support to novice companies with innovative concepts but lack of financial means to develop their business[5];

(c) the TNUFA Programme designed to encourage and support an individual entrepreneur at very early (pre-seed) stage. Grants are up to 85% of the approved expenditures for a maximum of US$50,000 (HK$389,000) for each project; and

(d) the MAGNET Programme aiming to support the formation of consortia comprising individual firms and academic institutions to jointly develop generic, pre-competitive technologies by offering grants of up to 66% of the approved budget.[6] For research projects that are related to the technological areas of biotechnology, nanotechnology, medical devices and storage of water and energy, grants of up to 90% of the approved budget may be allowed.

[5] The Technological Incubators Programme, created in 1991, is applied in all parts of the country under the guidance and with the support of OCS. In 2013, there were 24 incubators operating in Israel, with each incubator carrying out eight to 10 projects.

[6] Through collaboration with academics under the MAGNET Programme, industrial companies are expected to strengthen their capacity in making use of research and technological pool, and enhance their capability in developing innovative, high value-added products with export potential.

Table 1 – Major programmes administered by the Office of the Chief Scientist

Programme	Programme objectives and targets	Government grant and royalty payment[1]
R&D Fund[2]	• Support all Israeli companies from the smallest start-ups to large and established companies wishing to engage in technological R&D. Projects eligible for funding must last for at least one year, with the expectation to result in the development of a new product or a significant improvement to an existing product or process.	• Grant: 20%-50% of the total approved expenditures. • Royalty payment: 3% of revenues generated from product sale during the first three years and 3.5% from the fourth year and onwards. • Total funding budget in 2012: US$300 million (HK$2.3 billion).
Technological Incubators Programme	• Through an incubator to support novice entrepreneurs with innovative concepts, enabling them to establish their own companies and translate their ideas into commercial products. The incubation term of a project is around two years.[3]	• Grant: up to 85% of the approved expenditures for projects of US$500,000-US$800,000 (HK$3.9 million - HK$6.2 million). • Royalty payment: 3%-5% of revenues from product sale. • Total funding budget in 2012: US$47 million (HK$366 million).
TNUFA Pre-seed Programme	• Support individual inventors and nascent start-up companies during the earliest stages of their projects to help them turn their ideas into a viable R&D plan. Assistance includes evaluation of the technological and commercial potential of a project/idea, patent proposal preparation, prototype construction, drafting business plan, establishing industry contracts and attracting investments.	• Grant: Up to 85% of the approved R&D expenditures, subject to a cap of US$50,000 (HK$389,000) for each project. • Royalty payment: 3%-5% of revenues from product sale. • Total funding budget in 2012: US$4 million (HK$31 million).
MAGNET Programme	• Foster collaboration between academic institutions and industrial companies.	• Grants: 66%-90% of the approved expenditures (subject to the type of sub-programmes). • Royalty payment: not required.

Notes: (1) Royalty is paid when the project results in a commercially successful product. The total royalty payments may not exceed the amount of the grant plus interest. Royalties received by the Israeli government are used to fund future grants to encourage and support further industrial R&D.

(2) While there is no specific requirement as to the scientific field of R&D, the Fund has in recent years been used to encourage innovation in a wide range of industries ranging from biotechnology and nanotechnology to water industries and traditional industries.

(3) According to the Ministry of Economy, more than 1 500 companies matured and detached from the incubators between 1991 and 2012. Of them, 60% had successfully attracted private investments.

2.10 If the project funded by OCS is commercially successful, the company will be under an obligation to repay the grant by royalty payments. In addition, the intellectual property developed under the OCS-funded programmes cannot be transferred abroad unless it is approved by OCS. Should the developed know-how be transferred, refund of the grant and payment of a transfer fee to the government is required.

Support to immigrant scientists

2.11 Israel is a large immigrant-absorbing country with many immigrants being science and engineering talents. Through the Centre for Absorption in Science under the Ministry of Immigrant Absorption, the Israeli government assists new immigrants with relevant qualifications and experience in finding employment in the academic and commercial sectors. The hiring employers are subsidized the cost of employing the immigrants in the initial period. During the last decade, over 14 000 new immigrants and returning residents with relevant qualifications have registered with the Centre. About 75% of them successfully obtained employment in the relevant R&D field with the help of the Centre.

3. Technology transfer from academia to industry

3.1 Many Israeli universities have established technology transfer companies which take the research output of academic researchers and make it available to companies for commercial applications. The Weizmann Institute of Science's commercial arm, Yeda Research & Development Company Limited, and the Hebrew University of Jerusalem's technology transfer arm, Yissum Limited[7], are among the highest earning technology transfer organizations in the world.[8] Technology transfer companies are responsible for marketing the inventions and commercializing the intellectual property for income generation to support further research and education.

3.2 In a technology transfer process, academic researchers report to the technology transfer company on any invention that is of commercial potential. The technology transfer company assesses the invention, and if it is of commercial value, applies for patent and commercializes the invention. Every year, about 150 new technologies are licensed by Israeli universities and research institutes. A commercial partner who is granted the patent licence will be given the permission to develop, use or sell the invention. The licensee is to pay a licensing fee and the money received is to be shared between the inventors and the research institute.

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[7] Since its establishment about 45 years ago, Yissum has registered over 8 300 patents covering 2 300 inventions, and granted more than 700 technology licences.

[8] Other renowned technology transfer companies in Israel include Ramot of the Tel Aviv University, Technion Research & Development Foundation Limited of the Technion-Israel Institute of Technology, and Bar–Ilan Research & Development Limited of the Bar-Ilan University.

4. Intellectual property system

4.1 Israel is a member of the World Intellectual Property Organization ("WIPO")[9], as well as a party to major international treaties on intellectual property such as the *Patent Cooperation Treaty* and the *Paris Convention for the Protection of Industrial Property*. According to the 2012 report of the Israel Patent Office, Israel was ranked 17th in the world in the number of international patent applications filed in 2011. It was ranked 20th for the period of 2000-2010 in the number of patent applications relative to Gross National Product, and ranked 26th in the number of patent applications relative to its population in 2011. Israel's academic institutions also lead in filing international patent applications through their technology transfer arm.

4.2 Intellectual property rights in Israel are protected through a system of statutory laws and common laws. Patents are regulated by the *Patents Law*. Trade marks are governed by the *Trade Marks Ordinance* and designs are protected by the design provisions in the *Patents and Design Ordinance*.[10] Common laws protecting intellectual property rights are the *Commercial Torts Law* and the *Consumer Protection Law*. The Israel Patent Office under the Ministry of Justice is responsible for registering industrial intellectual property rights in the fields of patents, designs, trade marks and appellations in accordance with the relevant laws.

Patents

4.3 A patent is a grant of a monopoly right to the inventor or proprietor, entitling him or her to the exclusive right to prevent others from exploiting the invention. Patentable invention is defined in section 3 of the *Patents Law,* which states that "[*a]n invention, whether a product or a process, in any field of technology, which is new and useful, industrially applicable and involves an inventive step, is a patentable invention*".

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[9] WIPO is an agency of the United Nations comprising 186 member states. It is the global forum for intellectual property services, policy, information and cooperation. It aims to lead the development of a balanced and effective international intellectual property system that enables innovation and creativity.

[10] The provisions concerning patents were no longer in force since the promulgation of the *Patents Law*. Other intellectual property laws include the *Copyright Act 2007*, *Performers' and Broadcasters' Rights Law* dealing with performers' rights, the *Appellations of Origin (Protection) Law* on geographical product indication, and the *Plant Breeders Rights Law* dealing with plant breeds.

4.4 For a patent to be granted, an invention must be both novel and inventive. The Israel Patent Office examines the invention in accordance with the relevant guidelines. The process or system of a patentable invention eligible for a patent should comprise a concrete technological character or a concrete technical result. Inventions concerning scientific theories, mathematical formulae, and business methods are ineligible for patenting, unless they are linked to a concrete technical aspect.[11]

4.5 Information on a patent application will be published by the Israel Patent Office after 18 months from the date of application. Any person may oppose the granting of a patent by writing to the Israel Patent Office for consideration within three months after the date of publication. The patent applicant will be entitled to demand royalties in the event of patent infringement during the period between publication of the patent application and approval of the patent application. There are about 100 examiners in the Israel Patent Office responsible for examining patent applications. During 2012, the Office granted patents to about 3 380 applications.

4.6 As designated by WIPO, the Israel Patent Office has served from 2012 as an International Searching and Preliminary Examination Authority to conduct prior art search and patentability analysis for international patent applications within the framework of the *Patent Cooperation Treaty*.[12] Before that, international patent applications filed by Israelis were examined only by the authorities in the United States and Europe.

Term of protection

4.7 The term of a granted patent is 20 years from the application date. Patents for pharmaceutical products, which require regulatory approval by the Ministry of Health as a condition for marketing to the public may be eligible for patent extension of up to five years to remedy the approval delay.

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[11] According to the *Patents Law*, no patent shall be granted for (a) a method of therapeutic treatment on the human body, and (b) new varieties of plants or animals, except microbiological organisms not derived from nature.

[12] Under the *Patent Cooperation Treaty*, applicants can seek patent protection internationally in 148 countries for their inventions by filing one international patent application. However, such an application does not automatically lead to global patent protection. The granting of patents remains under the control of the national or regional patent offices.

Compulsory Licences

4.8 Compulsory licences are available under the *Patents Law* in cases where a patent holder abuses his or her monopoly, which arises when he or she fails to meet the demand for the patented product in Israel on reasonable terms, or when the conditions attached by the patent holder for the permitted production or use are not fair and do not take account of public interest.[13] Granting of a compulsory licence will only be considered by the Israel Patent Office three years after the patent has been granted, or four years after the submission of the patent application, whichever is later. The licence so granted shall be non-exclusive and conditional.

4.9 Under the *Patents Law*, if it is satisfied that granting of the licence is not sufficient to prevent the abuse of the monopoly of the patent holder, the patent for which a licence was granted may be subject to cancellation.

Infringement and penalty

4.10 A patent holder or an exclusive licensee (i.e. a licence holder permitted to market the product) can bring action against unlawful use of the invention. The remedies provided in the *Patents Law* include injunction and financial compensation. In determining the level of compensation, the court will take into account (a) the direct damage caused, (b) the extent of the infringement, (c) the profits derived by the infringer, and (d) the reasonable royalties the infringer would have had to pay should he or she had been granted a licence to exploit the patent.

4.11 The *Patents Law* prescribes certain exceptions which are not constituted an exploitation of invention. For instance, the use of the patent is for private or non-commercial purpose, or it is an experimental use for improving the patented invention or for developing another invention. These exceptions are meant to create a balance between the interests of generic industries and the innovation industry.

[13] Under a compulsory licence, an individual or company seeking to use another's intellectual property can do so without seeking the rights holder's consent, and pays a prescribed fee set by the Israel Patent Office.

Trade marks

4.12 Trade marks are letters, words, images, symbols or a combination of which used by manufacturers or service providers to distinguish their goods and services from those of the others. Registration gives the owner an exclusive right to prevent others from using similar marks with regard to similar goods and services in Israel. The types of trade marks available for registration under the *Trade Marks Ordinance* are service marks[14], certification marks[15] and collective marks[16].

4.13 A trade mark must be registered in respect of particular goods or classes of goods. Upon receipt of an application by the Israel Patent Office, a search will be conducted by an examiner to determine whether the mark is identical to an earlier trade mark registered for the same goods or description of goods, or closely resembles such an earlier trade mark that may cause deception. In 2012, approximately 5 000 trade marks were registered. Since Israel's joining of the international trade mark system in 2010, namely Madrid Protocol, applicants in Israel may seek international protection of over 90 countries by submitting a single application to the Israel Patent Office.[17]

Term of protection

4.14 A trade mark registration in Israel is valid for 10 years from the date of application, and is renewed every 14 years thereafter.

Infringement and penalty

4.15 A proprietor whose trade mark right has been infringed shall be entitled to relief by way of injunction and compensation for damages, as well as any other relief which the court may grant. In addition to civil liability, trade mark violations, e.g. falsely applying a trade mark to goods, might be subject to criminal proceedings under the *Merchandise Marks Ordinance*.

[14] A service mark is a mark in connection with the services rendered.

[15] A certification mark is a form of trade mark used to identify goods and/or services that meet certain standards or specifications.

[16] A collective mark is a form of trade mark or service mark owned by a collective group, whose members use the collective mark to identify their goods and services and distinguish their goods and services from those of non-members.

[17] While one single application is filed, the registration is subject to the approval of the respective countries.

Designs

4.16 A design is the features of shape, configuration, pattern or ornament applied to an object or industrial product. Registered designs are protected under the *Patents and Designs Ordinance*. A registered design grants the design owner an exclusive right for the use of the design. To be eligible for registration, a design should be new and original, and has not previously been published in Israel.

4.17 The Israel Patent Office is responsible for examining applications. According to the *Design Rules*, the examination must be completed within 12 months from the filing date, extendable for three months at the request of the applicant if submission of additional information is required. If a similar or identical design is not found, the application will be approved and a certificate of registration will be issued. The proprietor will have an exclusive right to prevent all others in Israel from offering for sale of the products bearing the design that is within the scope of the registration. In 2012, the Israel Patent Office received 18 applications for design registration and 12 were approved.

Term of protection

4.18 A registered design is protected for a term of five years from the date of registration, subject to a first renewal for five years and a second renewal for another five years. In total, design protection is available for up to 15 years.

Infringement and penalty

4.19 Provisions relating to unlawful use of the design are given in section 37 of the *Patents and Designs Ordinance*. The proprietor whose registered design has been infringed shall be entitled to injunction against repetition and financial compensation as determined by courts.

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