DIGITAL BUSINESS

Israel



LEXOLOGY
Getting The Deal Through

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Digital Business

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Quick reference guide enabling side-by-side comparison of local insights into legal and regulatory framework; contracting on the internet; security, including security of payment; domain names; advertising; financial services; defamation; intellectual property; data protection; taxation; gambling; outsourcing; online publishing; dispute resolution; and recent trends.

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LEGAL AND REGULATORY FRAMEWORK

Government approach

How would you describe the government's attitude and approach to digital content and services, digital transformation and doing business online?

A 2013 government decision launched a digitalisation initiative, which resulted in a national ICT policy for the public sector. Among other things, the government is embracing cloud technologies, making data accessible, and enhancing digital services to citizens and companies. Changes to the e-signature legislation eased online commerce. Online content remains mostly unregulated, in stark contrast with broadcast media.

Law stated - 02 August 2023

Legislation

What legislation governs digital content and services, digital transformation and the conduct of business online?

Consumer Protection Law; Protection of Privacy Law ; Communications Law (Telecommunications and Broadcasts); Standard Contracts Law; Electronic Signature Law; and their respective regulations and guidelines.

Law stated - 02 August 2023

Regulatory bodies

Which regulatory bodies are responsible for the regulation of digital content and services, e-commerce, data protection, artificial intelligence, internet access and telecommunications?

The Ministry of Communications, the Privacy Protection Authority and the Consumer Protection and Fair-Trade Authority.

No specific regulator handles artificial intelligence issues yet. However, the Ministry of Innovation, Science, and Technology has drafted principles on this subject. Also, some sectoral regulators, like the Ministry of Health, have addressed the issue.

Law stated - 02 August 2023

Jurisdiction

What tests or rules are applied by the courts to determine the jurisdiction for online transactions or disputes in relation to digital businesses in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

Supreme Court case law has significantly limited prior jurisprudence that allowed foreign digital businesses to determine the law of the contract in standard terms contracts unless it was shown that the choice of law was depriving consumers' rights. A choice of foreign venue in standard terms contracts was already generally considered to be depriving consumers of their rights pursuant to the Standard Contracts Law 1982, as were provisions forcing arbitration, which were designed to prevent consumers from pursuing a class action.

Current Supreme Law case law guides that the greater the intention of the non-resident digital business to conduct

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business in Israel (for example, by advertising locally, accepting local currency, offering a Hebrew language website), the more likely it is that courts would apply local laws and insist local courts have jurisdiction, irrespective of any contractual terms to the contrary in a standard terms contract.

Where the contract is not a standard terms contract, the parties are free to determine the choice of law and venue, and agree on arbitration if they so wish.

Law stated - 02 August 2023

Establishing a business

What regulatory and procedural requirements govern the establishment of digital businesses and sale of digital content and services in your jurisdiction? To what extent do these requirements and procedures differ from those governing the establishment of brick-and-mortar businesses?

There are no special requirements regarding the establishment of a digital business and sale of digital content and services. The provision of certain telecommunications services requires registration or licensing at the Ministry of Communications, which requires foreign providers to register as a foreign company (or set up a local entity).

Law stated - 02 August 2023

CONTRACTING ON THE INTERNET

Contract formation

Is it possible to form and conclude legal contracts digitally? If so, how are digital contracts formed and are there any exceptions for certain types of contract?

Yes. Contracts may be formed and concluded digitally.

There are no special requirements for digital contracts. A contract is concluded when an offer is accepted, and acceptance can be by conduct.

Law stated - 02 August 2023

Applicable laws

Are there any particular laws that limit the choice of governing law, language of the contract or forum for disputes when entering into digital contracts? Do these distinguish between business-to-consumer and business-to-business contracts?

Yes, the Standard Contracts Law voids contract terms that are unduly disadvantageous. There is a rebuttable presumption that provisions in a standard terms contract that unilaterally impose a venue, choice of law and arbitration and its terms are unconscionable.

The Standard Contracts Law applies to business-to-consumer and business-to-business contracts, but the bargaining power of the parties is taken into account. Small businesses dealing with large online businesses are likely to be entitled to protection pursuant to the Standard Contracts Law.

Standard contract terms requiring disputes to be arbitrated designed to block consumers from pursuing class actions are void.

Law stated - 02 August 2023

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Electronic signatures

How does the law recognise or define digital or e-signatures? Must digital or e-signature providers be registered or licensed in your jurisdiction? What type of digital information can be signed and how does the signing take place?

The law recognises electronic signatures, which cannot be denied admissibility merely for being electronic.

The Electronic Signature Law defines several types of e-signatures, which have different legal force:

- simple electronic signature – defined as electronic data or an electronic sign that is attached to or associated with an electronic message;
- secure electronic signature – defined as an electronic signature that is:
  - unique to the owner of the signing device;
  - enables apparent identification of the owner of the signing device;
  - created using a signing device that is under the sole control of its owner and enables detection of any change to the electronic message subsequent to signing; and
- certified electronic signature – defined as a secure electronic signature for which a certification authority has issued an electronic certificate.

A party who sets up a system that accepts simple electronic signatures (for example, an online business) and wishes to rely on another party's simple electronic signature bears the burden of proof that the other party signed.

An electronic message signed with a secure electronic signature is admissible as such in any legal proceedings and constitutes prima facie evidence that the message was not changed after it was signed, and that it was signed with the secure device identified in the certificate, if any.

A message signed with a certified electronic signature is also prima facie evidence that it was signed by the owner of the device. While any type of digital information can be signed with a simple electronic signature, when the law requires a signature, the requirement is often interpreted as meaning a certified electronic signature.

Certification authorities are licensed and supervised.

Law stated - 02 August 2023

Breach

Are any special forums for dispute resolution or remedies available for the breach of digital contracts?

No.

Law stated - 02 August 2023

FINANCIAL SERVICES

Regulation

Is the advertising or selling of financial services products to consumers or to businesses digitally or via the internet regulated? If so, by whom and how?

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The Supervision of Financial Services (Regulated Financial Services) Law 2016 establishes a mandatory licensing requirement for financial service providers. Pursuant to the Regulation of Investment Advice, Investment Marketing and Investment Portfolio Management Law 1995, investment marketing, investment advice or portfolio management services require a licence.

Different regulators exist for various financial sectors, including the Capital Market, Insurance, and Savings Authority, the Supervisor of Banks, and the Israel Securities Authorities. Each regulator issues rules on advertising and selling financial services.

Law stated - 02 August 2023

Electronic money and digital assets

Are there any rules, restrictions or other relevant considerations regarding the issue of electronic money, digital assets or use of digital currencies?

The Supervision of Financial Services (Regulated Financial Services) Law 2016 prohibits the offering of regulated financial services without first holding a regulatory licence from the Israeli Capital Markets Authority. Section 11A of the said law defines 'financial asset' to include a cryptocurrency, and also any item upon which value can be stored (eg, a wallet). The definition of 'financial service' in section 11A includes the management or custody of a financial asset. In addition, based on certain criteria, a digital currency may be defined as a 'security' under the Securities Law 1968, and under this law, the offer and sale in Israel to the public of an instrument that qualifies as a security is subject to significant regulatory supervision, and in particular, the requirement to publish a prospectus, under the Securities Law.

There are no regulatory restrictions on the mere possession and use of digital currencies, but banks in Israel are reluctant to allow their clients to deposit to their bank accounts fiat money that originates from the sale of digital currencies. This is due to the zero-risk appetite policy applied by the banks in terms of AML compliance.

Law stated - 02 August 2023

Digital and crypto wallets

Are there any rules, restrictions or other relevant considerations regarding the provision or use of crypto wallets or other methods of digitally storing value?

The Supervision of Financial Services (Regulated Financial Services) Law 2016 prohibits the offering of regulated financial services without a licence from the Israeli Capital Markets Authority. Section 11A of the said law defines 'financial asset' to include a cryptocurrency, and also any item upon which value can be stored (eg, a wallet). The definition of 'financial service' in section 11A includes the management or custody of a financial asset. In addition, based on certain criteria, a digital currency may be defined as a 'security' under the Securities Law 1968, and under this law, the offer and sale in Israel to the public of an instrument that qualifies as a security is subject to significant regulatory supervision, and in particular, the requirement to publish a prospectus, under the Securities Law.

Law stated - 02 August 2023

Electronic payment systems

How are electronic payment systems regulated in your jurisdiction? Is there a specific law regulating third-party access to digital information in bank accounts?

The Payment Services Law 2019 regulates electronic payment systems. It aims to guarantee transparency of terms,

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certainty of execution time and similar protections for payment services users. This statute is largely based on the EU's Payment Services Directive.

Third-party access to digital information in bank accounts is regulated by the Financial Information Service Law 2021. This law governs the collection, transfer or use of financial information by various financial entities and the relationship between financial service providers (credit clearinghouses, investment portfolio managers, fintech companies, etc) and the sources of information, such as banks and credit card issuers.

Entities licensed by the Israel Securities Authority to provide financial information services may receive financial information about their clients (with their consent) from different information sources and supply additional information about the client to such sources.

Law stated - 02 August 2023

Online identity

Are there any rules, restrictions or other relevant considerations regarding the use of third parties to satisfy know-your-customer (KYC) or other anti-money laundering (AML) identification requirements?

No.

Law stated - 02 August 2023

DOMAIN NAMES AND URLS

Registration procedures

What procedures are in place to regulate the registration of domain names or use of URLs? Is it possible to register a country-specific domain name without being a resident or business in the country? Are there any restrictions around the use of URLs to direct users to particular websites, online resources or metaverses?

Registration of an Israeli country-specific domain (.il) is made by accredited registrars of the Israeli Internet Association. It is possible to register a country-specific domain name without being resident in the country.

Registering domain names designed to hinder access to a competitor's site can amount to an unfair business practice.

Law stated - 02 August 2023

IP ownership

Can domain names or URLs be the subject of trademark or copyright protection in your jurisdiction? Will ownership of a trademark or copyright assist in challenging a competitive use or registration of a similar domain name or URL?

Although domain names are not directly protected as trademarks, it is possible to register trademarks that consist of domain names. Ownership of a trademark or copyright can assist in challenging a competitive use or registration of a similar domain name or URL, as the use or registration of a similar domain can infringe a trademark and also give rise to claims of unfair trade practices such as passing off and hindering access to another business.

Law stated - 02 August 2023

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ADVERTISING

Regulation

What rules govern online advertising?

There are laws against unsolicited commercial emails. Although advertising tobacco and related products is permitted in the printed press (subject to many restrictions), it is prohibited online. Other restrictions on advertising (such as on gambling) apply equally on and offline.

Law stated - 02 August 2023

Targeted advertising and online behavioural advertising

What rules govern targeted advertising and online behavioural advertising? Are any particular notices or consents required?

The Protection of Privacy Law (sections 17C-17I); and 2/2017 Databases Registrar Guidelines .

Personal data may be used for targeted marketing if the data was lawfully collected by the advertiser, that is, the data subject gave his or her express or implied informed consent.

Transferring personal information for targeted advertising by third parties (eg, direct mail services) requires specific opt-in consent, and is generally seen as recommended if the linkage between the purpose for which the personal information was originally given and the advertising in question is weak.

Targeted advertising based on profiling must be identified as such and must identify the name of the advertiser. Data subjects have a right to have their information deleted from databases used for direct marketing. If a database is used for both operational and direct marketing purposes, then only the information not used for operational purposes needs to be deleted.

No law specifically addresses the use of cookies and similar technology as such, but to the extent the information is personal information, privacy laws apply.

Law stated - 02 August 2023

Misleading advertising

Are there rules against misleading online advertising?

There are no specific rules on online advertising. Section 2 of the Consumer Protection Law prohibits any act or omission likely to mislead consumers of any material aspect of a transaction, including the quality, nature, quantity and type of the service, maintenance service, conditions of warranty and more. This rule applies to advertising.

The Consumer Protection Regulations (advertising and marketing methods targeted at minors) list special provisions concerning advertising to minors, and also restrict using information collected from minors.

The rules of the Second Authority for Television and Radio, which apply to advertising on commercial broadcast TV and radio explicitly require substantiation for health-related advertising, although the rules make broadcasters liable for negligently allowing false or misleading advertising, so substation is often required.

Law stated - 02 August 2023

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Restrictions

Are there any digital products or services that may not be advertised online?

Advertising restrictions generally apply both offline and online, although the advertising of tobacco and smoking paraphernalia (including e-cigarettes) is completely prohibited online, but permitted with many restrictions in the printed press.

Law stated - 02 August 2023

Direct email marketing

What regulations and guidance apply to email, SMS and other direct marketing?

Unsolicited emails, SMS, faxes and automated calls require opt-in consent, which can be withdrawn at any time. Opt-out consent applies in the case of prior contact, provided that the addressee was informed of the use of his or her contact details for advertising, that he or she was given an opportunity to refuse and did not, and that the advertisement in question relates to a similar product or services. All such advertising must be clearly marked, and opting out or withdrawing consent should be simple. In October 2022, a do-not-call database was established, as part of an amendment to the Consumer Protection Law, which prohibits marketing calls to numbers registered in the registry. Distance marketing by any means is subject to the disclosure and cooling-off provisions of the Consumer Protection Law.

Some lower courts have found the prohibition on unsolicited SMS to apply to modern messaging networks such as WhatsApp.

Law stated - 02 August 2023

ONLINE PUBLISHING

Hosting liability

What is the liability of internet service providers, telecommunications providers and other parties that merely host and display the content written or published by third parties? How can these providers minimise their liability?

Theoretically, liability for contributory copyright infringement might arise against a party who merely hosts third-party infringing content if it has actual knowledge of the infringement and has materially contributed to it. Generally, however, right holders should seek a court order to remove infringing content or to block access to it pursuant to a 2019 amendment to the copyright law. Such an order can be given against ISPs and hosting providers.

Law stated - 02 August 2023

Content liability

When would a digital platform or online content provider be liable for mistakes in information that it publishes online? Can it avoid liability? Is it required or advised to post any notices in this regard?

The general tort law principles that govern negligent misrepresentations apply to online content, namely duty of care,

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violation of the duty and resulting damage, and courts take a cautious approach to imposing a duty of care on the providers of content. A disclaimer of liability is customary and advisable in any case.

Law stated - 02 August 2023

Shutdown and takedown

Can an internet service provider or telecommunications provider shut down a web page containing defamatory material provided by a third party without court authorisation?

An online content provider can shut down a website containing defamatory material without court authorisation if there is sufficient evidence for the defamatory nature of the material. This has not been laid down in statute but would seem to be a reasonable application of the general legal principles governing this question. ISPs, however, are committed to neutrality and would generally refrain from blocking access to a website without a court order.

Law stated - 02 August 2023

INTELLECTUAL PROPERTY

Data and databases

Are data and databases protected by IP rights?

Some databases are protected by IP rights (under 'literary work'). According to section 4(b)of the Israeli Copyright Act 2007 , 'originality' in the selection and arrangement of the items or data is required. Therefore, a database that collects data automatically may not be protected by IP rights. Data representing mere facts is not protected.

Law stated - 02 August 2023

Third-party links and content

Can a website, digital platform or other online content provider link to third-party websites or platforms without permission?

Yes.

Law stated - 02 August 2023

Can a website, digital platform or other online content provider use third-party content, obtained via automated scraping or otherwise, without permission from the third-party content provider?

Not if the content in question is protected by IP laws (specifically, copyright) or consists of personal information (and subject to purpose limitation), or the scraping circumvents technical measures (which may amount to an offence pursuant to the Computer Law). Liability under the Unjust Enrichment Law might also arise.

Law stated - 02 August 2023

Metaverse and online platforms

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Are there any particular difficulties with establishing or defending copyright, database rights and trademarks on a metaverse from your jurisdiction?

No.

Law stated - 02 August 2023

Exhaustion of rights and first-sale doctrine

Does your jurisdiction recognise the concept of exhaustion of rights or the first-sale doctrine? If so, how does it apply to digital products? Can rights be exhausted by placing the digital product on a metaverse or other platform in another territory?

The concept of exhaustion is recognised, and rights can be exhausted only upon the legal first sale within the territory where rights were granted (local exhaustion). In the case of digital products, the doctrine would apply to the physical copy. Restrictions on virtual goods or online-only services can, however, be enforced contractually, for example by requiring geo-fencing.

Law stated - 02 August 2023

Administrative enforcement

Do the authorities have the power to carry out dawn raids and issue freezing injunctions in connection with IP infringement?

Yes, in the case of IP infringements that are also criminal offences.

Law stated - 02 August 2023

Civil remedies

What civil remedies are available to IP owners? Do they include search orders and freezing injunctions?

The normal civil law remedies are available, which include injunctions, the appointment of receivers with the right to search and seize property, and disposition of infringing goods without compensation, recall from the channels of commerce, etc. Specifically for copyright infringements, remedies also include statutory damages.

A 2019 amendment to the Israeli Copyright Act, 2007 empowers courts to order third parties such as ISPs to provide the court with identifying details (such as an IP address) of alleged infringers who anonymously made available to the public infringing content. Such information can be used to sue anonymous infringers. The court may also appoint experts to assist in identifying the infringer.

The 2019 amendment also empowered courts to order ISPs and hosting providers to block access to infringing content or to sites with significant infringing content.

Law stated - 02 August 2023

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DATA PROTECTION AND PRIVACY

Definition of 'personal data'

How does the law in your jurisdiction define 'personal data'? Are any other categories of personal data defined in the law? If so, what additional rules apply to the processing of such categories of personal data?

'Personal data' ('information', as it is defined in the Protection of Privacy Law) means data on the personality, personal status, intimate affairs, state of health, economic position, vocational qualifications, opinions and beliefs of a person.

Although the statutory provisions specify only a limited number of attributes as personal data, the regulator and courts have expanded the definition significantly. The regulator's current approach, as reflected in the amendment to the Protection of Privacy Law, includes any data relating to an identified or an identifiable person, directly or indirectly, by reasonable means, including biometric identifier, ID number, telephone numbers, names of friends, email suffix and more.

'Sensitive information' is defined in the Protection of Privacy Law as: 'information on the personality, intimate affairs, state of health, economic position, opinions and beliefs of a person'.

The Privacy Protection Regulations (Privacy Protection Regulations (Instructions for Data that was transferred to Israel from the European Economic Area) 2023 add ethnic origin and trade union membership to the list of sensitive information. Databases that contain 'sensitive data' are subject to stricter registration requirements and a higher information security standard.

Law stated - 02 August 2023

Registration and appointment of data protection officer

Do parties involved in the processing of personal data have to register with any regulator to process personal data? Does the law prescribe the appointment of a data protection officer?

A database should be registered if it meets certain low registration thresholds, such as data on more than 10,000 data subjects or there is sensitive data, irrespective of the number of data subjects.

There is no legal obligation under Israeli law to appoint a data protection officer (DPO). However, controllers must appoint a database manager, who is responsible for ensuring that the database is used for the purposes for which it was established, for taking security measures, and generally for compliance with the law. Moreover, the Protection of Privacy Authority recommends appointing a DPO to take on responsibilities not with the database manager. The DPO may be the database manager or a different function.

Law stated - 02 August 2023

Extraterritorial issues

Can data protection laws and regulatory powers apply to organisations or individuals resident outside your jurisdiction? Is there a requirement for such an organisation or individual to appoint a representative in your jurisdiction?

The Protection of Privacy Law 1980 does not contain explicit extraterritorial provisions, although powers would extend to local branches and subsidiaries. However, in a pending court case it is alleged that foreign companies must register

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their databases in Israel, thereby making them subject to the Protection of Privacy Law.

There is no requirement to appoint a local representative unless the database is registered in Israel.

Law stated - 02 August 2023

Bases for processing

What are the commonly asserted reasons or bases for processing personal data and for exporting or transferring personal data to another jurisdiction?

Strictly speaking, Israeli law acknowledges two legal bases for data processing – consent, and legal empowerment.

However, consent in Israeli data protection law is quite a flexible concept. While it needs to be informed, it can be implied. Processing for direct mailing services (ie, profiled personal data used for marketing by third parties) requires opt-in consent. There is requirement that consent be 'freely given', unless forcing it is depriving consumers under the Standard Terms Contract Law or is excessive in the context of employment. Some statutes also require opt-in consent, for example for the sharing of financial information as part of open banking.

In addition to the legal bases, there are defences that may apply to such cases where personal data is used where there is a 'legal, moral, social or professional obligation', 'legitimate personal interest' or 'public interest' to do so.

The Privacy Protection (Transfer of Data to Databases Abroad) Regulations determine that personal data can be transferred outside of Israel either to adequate jurisdictions, or pursuant to several export routes. Generally, jurisdictions complying with the GDPR are considered as affording an adequate level of protection under Israeli law. There are other possible export routes such as with the data subject's (express or implied) consent, data transfer to a signatory country of Treaty 108 or when the data importer was bound by an agreement to apply the same requirements as required under the Israeli law to the personal data that is transferred. Exports to jurisdictions deemed adequate by the EU are also allowed, subject to the same terms.

Law stated - 02 August 2023

Data export and data sovereignty

Are there any rules, restrictions or other relevant considerations concerning the export or transfer of personal data to another jurisdiction? Are there any data sovereignty or national security rules that require data, data servers or databases to remain in your jurisdiction?

The Privacy Protection (Transfer of Data to Databases Abroad) Regulations determine that personal data can be transferred outside of Israel either to adequate jurisdictions, or pursuant to several export routes. Generally, jurisdictions complying with the GDPR are considered as affording an adequate level of protection under Israeli law. There are other possible export routes such as with the data subject's (express or implied) consent, data transfer to a signatory country of Treaty 108 or when the data importer was bound by an agreement to apply the same requirements as required under the Israeli law to the personal data that is transferred. Exports to jurisdictions deemed adequate by the EU are also allowed, subject to the same terms.

Data importers abroad must contractually undertake to implement adequate measures to ensure the privacy of the data subjects and to not transfer the data to third parties (commonly interpreted as without the data exporter authorisation).

The Privacy Protection Regulations (Instructions for Data Transferred to Israel from the European Economic Area) 2023 determine four obligations on Israeli database owners with regard to personal data that was transferred from the EEA

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(excluding data that a data subject provided directly about himself): deletion of data after the receipt of a written deletion request from the data subject; data minimisation; data accuracy; and disclosure obligation.

Government guidelines requires government agencies to maintain certain types of sensitive data and operations to be kept in-country, but there are exceptions.

Law stated - 02 August 2023

Sale of data to third parties

May a party sell or transfer personal data to third parties, such as personal data about users of an online service or digital platform?

Transferring personal data to third parties for their own purposes requires data subjects' consent. If the purpose of the transfer (sale) is direct marketing (eg, data brokerage), explicit opt-in consent is required. Transferring of personal data to third parties acting as processors (or that have an obvious need for the data, such as for fulfilment or payment) can generally be done with implied consent.

Law stated - 02 August 2023

Consumer redress

What rights and remedies do individuals have in relation to the processing of their personal data? Are these rights limited to citizens or do they extend to foreign individuals?

Data subjects have a right to access and rectify personal information concerning them. Data subjects have a to seek erasure of inaccurate data if the controller refuses to correct the data, and a right to have data used only for direct (profiled) marketing to be deleted. These rights are not limited to citizens, but also apply to foreign data subjects' personal data that is being collected or processed in Israel or by or for an Israeli controller.

With respect to data that was transferred to Israel from the EEA, individuals also have a right to request data erasure, if the data is processed unlawfully, or if it is no longer necessary for the original purposes. Exceptions such as anonymisation and justifications like fraud prevention, legal proceedings, debt collection, and scientific and statistical research apply.

Law stated - 02 August 2023

Non-personal data

Does the law in your jurisdiction regulate the use of non-personal data?

No.

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DOCUMENT DIGITISATION AND RETENTION

Digitisation

Do the rules in your jurisdiction require any particular document or record types to be kept in original paper form and not converted solely to a digital representation?

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Yes, original documents scanned electronically and used in income tax accounting should be kept for three years from the date on which any report based on them was submitted.

Law stated - 02 August 2023

Retention

Do the rules in your jurisdiction stipulate a minimum or maximum period for which documents or other record types should be kept?

Accounting records should generally be kept for seven years.

According to Bar Association Rules (Retention of Archival Material) it is required to keep legal documents for at least five years from the date of completion of the treatment of the matter.

There are banking and insurance sectorial requirements regarding a period for which documents or other record types should be kept.

Other laws also determine minimum (and sometimes, maximum) period governmental authorities should keep documents.

The Protection of Privacy Regulations (Information Security) contains two provisions on data retention: databases should not contain excess personal information (that it, personal information no longer needed for the purpose for which it was collected); and security logs should be kept for 24 months.

The Privacy Protection Regulations (Instructions for Data Transferred to Israel from the European Economic Area) 2023 impose enhanced data minimisation obligations to personal data that was transferred from the EEA, buy requiring the implementation of organisational, technological or other mechanisms to ensure that the database does not contain data that is no longer required for the purpose for which it was collected or held, or for another legal purpose. Data minimisation will not be required in cases where measures to prevent the reasonable identification of a data subject were taken.

Law stated - 02 August 2023

DATA BREACH AND CYBERSECURITY

Security measures

What measures must companies take to guarantee the cybersecurity of data, communications, online transactions and payment information? Does any regulation or guidance provide for a particular level of cybersecurity or specific procedures to avoid data breaches? Are there any commonly used cybersecurity standards?

The Protection of Privacy Regulations (Information Security) list the requirements for security of databases. Databases that contain sensitive data are subject to higher security measures. Sectoral requirements apply to regulated industries, including the financial sector, transportation, telecommunications, critical infrastructure, and other key industries.

The Protection of Privacy Regulations (Information Security) require organisations who process personal information to take specific security measures. Sectoral requirements apply to regulated industries, including the financial sector, transportation, telecommunications, critical infrastructure, and other key industries. Certain organisations are subject to specific, detailed, and confidential instructions by the Internal Security Service or the Israel National Cyber Directorate.

ISO 27001 and PCI-DSS certifications are common.

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Law stated - 02 August 2023

Data breach notification

Does your jurisdiction have data breach notification laws that apply to digital business? If so, which regulators should be notified and under what conditions should affected individuals be notified?

Yes. The Protection of Privacy Regulations (Information Security), require both controllers and processors to notify the Protection of Privacy Authority immediately of any 'serious security incident'. There is no automatic requirement to inform affected individuals (although it may well be advisable to do so for damage mitigation purposes), but the Registrar of Databases can, in consultation with the head of the National Cyber Defence Authority, require that data subjects be notified.

The above applies to databases that are subject to the high and medium security levels in the regulation.

In addition to the general law, there are specific obligations of sectoral regulators that require the supervised body to notify the incident (eg, the Bank of Israel, Capital Market Authority, Insurance and Savings Authority, and Israel Securities Authority).

Law stated - 02 August 2023

Government interception

Are the authorities permitted lawful access to data? If so, what types of company are required to provide data to the authorities and under what circumstances?

Licensed or registered telecommunications operators must give certain agencies access to communications data (not content) pursuant to the Criminal Procedures (Enforcement Powers – Data Communications) Law 2007. A court order is required, except in exigent circumstances in relation to serious crimes (punishable by more than three years imprisonment) or risk to life, in which case a subpoena by certain police officers suffices. Subscriber information is generally available without a court order.

Under the Criminal Procedures Ordinance (Arrest and Search) (New Version) 1969, which applies where crimes are investigated, courts may issue orders against anyone to produce documents and information, including stored content (but not live communications).

The General Security Service Law 2002 empowers the service to obtain communications data (not content) from licensed telecommunications operators.

The Communications Law (Telecommunications and Broadcasting) 1982 compels licensed or registered telecommunications operators to cooperate with certain enforcement and security agencies, who may then access information autonomously, within their legal mandates. This statute does not itself compel the disclosure of information, therefore, no warrant or subpoena is required.

Finally, courts can issue intercept orders in cases involving serious crimes, and ministers can permit short-term intercepts in cases involving national security.

Law stated - 02 August 2023

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GAMING

Legality and regulation

Is it permissible to operate an online betting or gaming business from your jurisdiction? Is any regulatory consent or age, credit or other verification required?

No. Betting in sports is regulated in a specific statute that grants a monopoly to a public council. Public offerings of prize-bearing games of chance (no matter how trivial the prize) require a licence from the Ministry of Finance, but only the national lottery has received such a licence. There are some allowances for marketing campaigns involving raffles, and some exemptions for charitable and similar activities.

Law stated - 02 August 2023

Cross-border gaming

Is it permissible to advertise, or provide access to, an online betting or gaming business located in another jurisdiction or in a metaverse?

No. Advertising or providing access to online betting or gaming that would be illegal had it taken place in Israel is prohibited, even if such activity takes place where it is legal.

To bolster the prohibition, the Powers for the Prevention of Crimes Committed Through an Internet Site Law 2017 empowers district courts to issue orders to ISPs to restrict access fully or partially to any internet site based on a determination that the restriction is necessary to prevent continued commission of certain offences, including prohibited games.

Law stated - 02 August 2023

OUTSOURCING

Key legal issues

What key legal issues arise when outsourcing services to a provider either inside or outside your jurisdiction?

Outsourcing of personal data processing is subject to the security and data protection measures required by Regulation 15 of the Protection of Privacy Regulations (Information Security), which include a prior assessment and the conclusion of a contract that must contain certain provisions designed to ensure security and privacy. Similar provisions apply in the financial and other sectors.

Certain types of outsourced work, especially for services such as cleaning, are subject to strict employee protection laws. Employees assigned by temp agencies (other than in the IT sector) to the same workplace for nine months have a right to become employed by the workplace to which they are assigned. This right does not apply to companies providing services (such as cleaning) rather than employee placement.

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Sector-specific issues

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Are there any particular digital business services that cannot be outsourced or that are subject to specific regulation?

Outsourcing in the financial sector is subject to specific rules, but other than functions such as duties of the board of directors and senior management, particularly in determining strategies and policies, determining risk appetite, and control and supervision of risk management processes, and decisions such as on the opening or closing customer accounts, outsourcing is allowed.

Outsourcing in regulated industries will generally require a risk assessment and written contracts covering key aspects of the outsourced service.

Law stated - 02 August 2023

Contractual terms

Does the law require any particular terms to be included in outsourcing contracts?

Yes. Regulation 15 of the Protection of Privacy Regulations (Information Security) details the provisions that must be included in a contract with a provider. Outsourcing contracts should regulate:

- the data the external service provider may process and the permitted purposes of its use;
- the systems that the external service provider may access;
- the type of processing or activities the external service provider may perform;
- the agreement duration, the manner of returning the data to its controller at the end of the agreement, its destruction at the disposal of the external service provider and of reporting accordingly to the database controller;
- the manner in which data security obligations that apply to the processor of the database according to the regulations are implemented, and additional data security instructions set by the database controller, if any;
- the obligation of the external service provider to have its authorised users undertake to protect the information confidentiality, use the data only according to the agreement and implement the data security measures prescribed in the agreement;
- where a database controller permits the external service provider to provide the service through another entity, the duty of the former to include in the agreement with the other entity all the matters detailed in the regulation; and
- the obligation of the external service provider to report at least annually the manner in which it abides by the obligations of the regulations and the agreement, and any security incidents.

Law stated - 02 August 2023

Employee rights

What are the rights of employees who previously carried out services that have been outsourced? Is there any right to consultation or compensation? Do the rules apply to all employees in your jurisdiction?

A hearing prior to dismissal must be offered to all employees, in addition to compensation for termination (subject to a minimum term of employment). Unionised employees may have additional protection agreed between the employer and the union. Employees that are offered to keep their position and the same (or better) employment terms with the

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outsource provider would generally not be entitled to severance pay. However, in most cases employees are entitled to a severance package even if they quit.

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ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING

Rules and restrictions

Are there any rules, restrictions or other relevant considerations when seeking to develop or use artificial intelligence, machine learning, automated decision making or profiling? Are any particular notices of such use required? Are impact assessments recommended or required?

The Protection of Privacy Authority guidance is that data subjects be informed of automatic decision making, especially based on artificial intelligence. The Ministry of Innovation, Science, and Technology has drafted principles on this subject, including a recommendation to promote transparency and provide relevant information to individuals who come into contact with artificial intelligence (AI) or are impacted by its use.

The Protection of Privacy Authority also recommends (although this is not a legal requirement as such) to conduct a data protection impact assessment prior to engaging in processing that involves AI, machine learning, automated decision making or profiling. The Ministry of Innovation, Science, and Technology has drafted principles containing a recommendation to document the design and development process of AI, among other measures, to effectively manage safety risks.

Sectoral regulators in the banking and insurance industries have started surveys into the uses of AI in the industries they supervise.

Law stated - 02 August 2023

IP rights

Are there any rules concerning intellectual property and artificial intelligence or machine learning? Can the training data sets and other data associated with artificial intelligence or machine learning be adequately protected by intellectual property rights? Are there particular laws, rules or guidance concerning the ownership of intellectual property created by artificial intelligence or machine learning systems?

There are no rules. However, in December 2022 the Ministry of Justice published an opinion in which the Ministry concluded that in most circumstances the use of copyrighted materials for machine learning is permitted under the fair use doctrine or under the doctrine that permits incidental use of copyrighted materials. Some uses might also be permitted as a transient use.

Law stated - 02 August 2023

Ethics

Are there any rules or guidance relating to the ethics of artificial intelligence and machine learning?

There are no rules, but according to principles published by the Ministry of Innovation, Science, and Technology, several ethics principles should be taken in consideration:

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- respect for basic rights and public interest;
- fairness (equality and non-discrimination);
- transparency and explainability;
- reliability, durability, security and safety; and
- accountability.

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TAXATION

Online sales

Is the sale of digital products or online services subject to taxation in your jurisdiction? If so, on what basis?

For tax purposes, a digital asset is considered as any other asset, and the gain from its sale is subject to ordinary income or capital gain tax, based on the person making the sale (for example, if the person making the sale is a day trader of the digital asset or a long-term investor). Online services are no different from offline services. In both cases income derived from the provision of services in connection with digital asset is taxable income under the general rules of taxation. However, the government approach, in the last few years, is to approve a complete reform in the matter, and to impose tax on such activities. Such reform, however, has yet to be approved.

Law stated - 02 August 2023

Server placement

What tax liabilities ensue from placing servers outside operators' home jurisdictions? Does the placing of servers, a platform or a metaverse within your jurisdiction by a company incorporated outside the jurisdiction expose that company to local taxes?

The placing of servers in Israel can constitute a permanent establishment, which would make income attributed to the permanent establishment taxable in Israel. However, the mere location of servers as such is not likely to be enough to create a permanent establishment, and the answer would depend on additional factors.

Law stated - 02 August 2023

Electronic invoicing

Do the rules in your jurisdiction regulate the format or use of e-invoicing, either generally or for a specific market segment? Is there a requirement to provide copies of e-invoices to a tax authority or other agency?

Israeli businesses are required to issue 'tax invoices', which are a specific type of invoice often issued when payment is received along with a receipt. Tax invoices can be digital. They must contain the same information as paper tax invoices but must be electronically signed with a secure or certified e-signature. There is no specific requirement to provide copies of e-invoices to tax authorities; rather, the same tax inspection rules apply to both paper and electronic tax invoices.

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DISPUTE RESOLUTION

Venues

Are there any specialist courts or other venues in your jurisdiction that deal with online/digital issues and disputes?

No.

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ADR

What alternative dispute resolution (ADR) methods are available for online/digital disputes? How common is ADR for online/digital disputes in your jurisdiction?

There are no formal ADR methods for online or digital disputes in Israel. ADR is common where the parties think specialist knowledge is needed and where discretion and speed are sought.

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UPDATE AND TRENDS

Key trends and developments

Are there any emerging trends or hot topics in the regulation of digital content and services, digital transformation and doing business online in your jurisdiction? Is there any pending legislation that is likely to have consequences for digital transformation and doing business online?

The government is aiming to modernise Israel's antiquated data protection rules, both by introducing significant changes to statutes and by issuing constant guidance.

Parliament is expected to resume hearings on Amendment 14 of the Privacy Protection Law. If adopted, the Amendment would, among other things, expand the enforcement powers of the Privacy Protection Authority, replace key definitions in the law in line with the EU General Data Protection Regulation, and scale back the obligation to register databases.

Israel is currently recognised as providing an adequate level of data protection, thereby allowing free data flows from the EU to Israel. As a part of the re-evaluation process carried out by the European Union Commission regarding the renewal of the adequacy status, the Minister of Justice has promulgated the Privacy Protection Regulations (Provisions Concerning Information Transferred to Israel from the European Economic Area) 2023. The Regulations impose four key obligations on Israeli controllers regarding personal data that was transferred from the EEA (other than data provided directly by the data subject): the right to request erasure; data minimisation; data accuracy; and enhanced transparency obligations.

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Jurisdictions

Belgium	Agio Legal
China	BUREN NV
Cyprus	Antoniou McCollum & Co LLC
France	UGGC Avocats
Germany	SKW Schwarz
Gibraltar	Hassans
Hungary	VJT & Partners
Iceland	BBA//Fjeldco
India	AZB & Partners
Indonesia	GHP Law Firm
Israel	AYR - Amar Reiter Jeanne Shochatovitch & Co
Italy	ICT Legal Consulting
Japan	Anderson Mōri & Tomotsune
Luxembourg	Brucher Thieltgen & Partners
Malaysia	Raja, Darryl & Loh
Portugal	Sérvulo & Associados
Taiwan	Lee and Li Attorneys at Law
Turkey	Boden Law

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