



STATE OF ISRAEL
MINISTRY OF FINANCE
INTERNATIONAL AFFAIRS DEPARTMENT

Israel`s BIT model

As of July 2003 Israel is using a modified BIT model agreement, attached herewith. Some of the developments in the new model agreement are as follows:

- **Definition of an Investor which is a Legal Entity** - The definition was broadened so as to include legal entities that are controlled, directly or indirectly, by persons who are nationals or permanent residents of the Home Contracting Party, and fulfill one of the following conditions:
 - their registered office, center of management, or practical management is located in the territory of either Contracting Party;
 - a substantial part of their economic activity is located in the territory of either Contracting Party;
 - they were incorporated, constituted or otherwise duly organized under the legislation of the Host Contracting Party.

- **Transfer of Investments and Returns** – Since the Israeli Exchange Regulations were revoked, the model agreement was modified accordingly and the requirement that transfers of investments and returns be made in accordance with the Exchange Regulations was omitted.

In addition, a provision was added that relates to situations in which a Contracting Party is in serious balance of payments

difficulties or in serious difficulties for the operation of the exchange rate policy or monetary policy, or under threat thereof. This provision is in accordance with the conditions laid down within the framework of the GATT and with Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund.

- **National Security Exception** – A general exception was added, allowing either Contracting Party to take measures strictly necessary for the maintenance or protection of its essential security interests. Such measures shall be taken and implemented in good faith, in a non-discriminatory fashion and so as to minimize the deviation from the provisions of the Agreement.
- **Intellectual Property** – The provisions concerning intellectual property were subjected to international IP agreements.
- **Settlement of Investment Disputes Between a Contracting Party and an Investor** – The new model stipulates that when an investor chooses to settle a dispute in an ad hoc arbitration tribunal (one of a few options provided in the agreement) this tribunal shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). A time limit for rendering a decision by the tribunal was also added. These developments promote and ensure transparency and stability.
In addition, a provision was added clarifying that Each Contracting Party gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of the Article concerning settlement of investment disputes between a Contracting Party and an Investor. It is specified that this consent and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of: Chapter II of the ICSID Convention or the Additional Facility Rules of ICSID for written consent of the parties and Article II of the United Nations

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("The New York Convention"), for an agreement in writing.

- **Settlement of Investment Disputes Between the Contracting Parties** – In the framework of a possible settlement of dispute through diplomatic channels the option of conciliation was added. Also, the new model stipulates that when the Parties resort to the use of an arbitral tribunal this tribunal shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), unless otherwise agreed. A time limit for rendering a decision by the arbitral tribunal was also added. These developments promote and ensure transparency and stability.
- **Insurance and Guarantee** – A provision was added, according to which in any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.