

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## Israel

2006

**IMPORTANT NOTE:** This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

### 1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

<b>A. Notification provisions</b>	Restrictive Trade Practices Law, 5748-1988 ("The Law"), Art. 1, 17-20. Restrictive Trade Practices Regulations (Registration, Publication and Notification of Transactions), 5754-2004. The regulations, including the notification forms are available at: <a href="http://www.antitrust.gov.il/NR/rdonlyres/21DBA90E-A9F7-4304-AA6A-C7BA4BFDD513/0/AntitrustRegulationsAndForms2004_FINAL.doc">http://www.antitrust.gov.il/NR/rdonlyres/21DBA90E-A9F7-4304-AA6A-C7BA4BFDD513/0/AntitrustRegulationsAndForms2004_FINAL.doc</a>
<b>B. Notification forms or information requirements</b>	The notification of a merger shall be made on the form that is in the addendum to the Restrictive Business Practices Regulations (Registration, Publication and Notification of Transactions), 5754-2004, ("Form 2").
<b>C. Substantive merger review provisions</b>	Art. 21 (a) of the Law.
<b>D. Implementing regulations</b>	Restrictive Business Practices Regulations (Registration, Publication and Notification of Transactions), 5754-2004 ("Form 2").
<b>E. Interpretive guidelines and notices</b>	

## 2. Authority or authorities responsible for merger enforcement.

<p><b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b></p>	<p>Israel Antitrust Authority</p>
<p><b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b></p>	<p>Address: 22 Kanfey Nesharim St., P.O. Box 34281 Jerusalem 91341, Israel          Telephone: +972-2-6556111          Fax: +972-2-6515329          e-mail: jerusalem@antitrust.gov.il          Website: www.antitrust.gov.il          Languages: Hebrew; English; Arabic.</p>
<p><b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b></p>	<p>Mr. Shai Bakal, Adv.          Address: 22 Kanfey Nesharim st., P.O.Box 34281 Jerusalem 91341, Israel          Direct telephone number: +972-2-6556110          Fax number: +972-2-6515329          e-mail: shaib@aa.gov.il</p>

## 3. Covered transactions

<p><b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b></p>	<p>The Law defines a “merger” as including one or more of the following:</p> <ul style="list-style-type: none"> <li>a) the acquisition of the essential assets of a company by another company or-</li> <li>b) the acquisition of shares in a company by another company that confers on the purchasing company more than one quarter of the nominal value of the share capital issued at that time, or of the voting rights or -</li> <li>c) the right to appoint more than one quarter of the board of Directors or -</li> <li>d) the right to participate in more than one quarter of the profits of the company;</li> </ul> <p>Whether the acquisition is direct or indirect or by means of contractual rights and including transactions with similar results.</p> <p>The IAA interprets the definition broadly as to include all transactions that are likely to establish an affinity or to significantly reinforce an affinity between the mechanisms for making business decisions of two or more bodies.</p>
--	--

<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>The Law refers to a lower holding than “control” as a merger. Art. 1 defines a merger as: Including the acquisition of most of the assets of a company by another company or the acquisition of shares in a company by another company by which the acquiring company is accorded more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of such company; the acquisition may be direct or indirect or by way of rights accorded by contract;</p>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Yes. See 3A above.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>According to the above mentioned benchmarks</p>

#### 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>Merging parties should submit a merger notification if one of the following exists: 1) As a result of the merger, the shares of the merging companies in the overall manufacture, sales, marketing or acquisition of a particular asset and a similar asset or provision of a particular service or a similar service, is in excess of half or at a lower rate if so determined by the Minister, as regards a monopoly; 2) The joint sales volume of the merging companies according to their balance sheets for the year preceding the merger, is in excess of 150 million new Shekels;<sup>1</sup> the Minister may, with the approval of the Economic Committee of the Parliament, change the said amount; [to this end, according to Art. 9 of the Restrictive Trade Practices Regulations (Registration, Publication and Notification of a Merger), 5754-2004, the sales volume of at least two of the merging companies is in excess of 10 million new Shekels each and the combined sales volume of all the merging parties is in excess of 150 million new Shekels.] 3) One of the companies is a monopoly. (Art. 17(a))</p> <p>The amount mentioned in (2) shall be updated annually on</p>
--	---

<sup>1</sup> See Regulation 9 of the Restrictive Business Practices Regulations (Registration, Publication and Notification of a Merger), 5754-2004.

	January 1, according to the rate of the increase in the Index compared to the Base Index, provided that the aforesaid rate of increase of the Index exceeds 10 percent. (Art. 17(b)(1))
<b>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</b>	The Law refers to the merging parties and all entities that are in control links with them. In the practical sense, this encompasses all the firms that are controlled by the ultimate controlling owner of the person filing the notice. To this end, "Controlling Interest" is defined in Art. 1 of the Law as: Possession of more than half of one of the following means of control: (1) The right to vote at the general meeting of a company or the parallel body of another corporation; (2) The right to appoint the directors of a corporation;
<b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b>	See 4A above.
<b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b>	Most recent calendar year.
<b>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</b>	The turnover of each of the merging parties includes the value of its sales according to its audited financial statement, but does not include purchase tax or VAT. If a merging party has holding companies or subsidiary companies, its turnover will be determined by their consolidated financial statement.
<b>F. Describe methodology for</b>	

<p><b>calculating exchange rates.</b></p>	
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>The thresholds apply to the sales in Israel only.(Art. 18)</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>In principle – no. But, in rare cases, the IAA will be willing to start the examination process based on the filing of one of the parties (for example, in case of a purchase offer in the stock exchange). In this case, it should be noted, that the time set by Law for reaching a decision is not measured until both notification forms are filed.</p>
<p><b>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine,” please describe how this is applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</b></p>	<p>As a general rule, the Law applies to companies which have a business presence in Israel (including subsidiaries, agents, offices, etc.) or are listed as a foreign company.</p>
<p><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b></p>	
<p><b>K. If market share tests are used, are there guidelines for calculating market shares?</b></p>	<p>No. The IAA published draft guidelines which are not binding yet.</p>
<p><b>L. Are there special threshold calculations for particular sectors</b></p>	<p>No. But in the financial sector, the calculation is not of the total sales turnover but of the income turnover from daily operations (commission fees, management fees, premiums), since insurance companies, investment companies and holding companies do not</p>

<b>(e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	engage in sales.
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No.
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	In case of a merger with a company conducting business both in Israel and overseas, the provisions of the law concerning mergers shall apply solely with respect to the sales turnover of the company within Israel and with respect to the company's market share in Israel in the production, sale, purchase and marketing of an asset or the provision or receipt of a service. (Art. 18)
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	The Merger chapter of the Law does not apply to transactions that fall below thresholds.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	Yes. Merging without prior approval of the General Director is illegal.
<b>B. Is notification mandatory post-merger?</b>	No.
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	No.

<p><b>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</b></p>	<p>Generally, parties should notify the IAA of a merger after a definitive agreement is signed. In practice: a) the IAA is willing to start the investigation before a signed agreement is delivered, if it is convinced that there is high probability that the transaction will be carried out and a memorandum or a draft exists (the time set for reaching a decision by the Law is not measured until a definitive signed agreement is delivered). or- b) in case of a purchase offer in the stock exchange, the IAA is willing to start investigating, on the basis of the purchaser notification alone. This procedure is considered only a pre-ruling and the time set by the Law for reaching a decision is not measured until a definitive signed agreement is delivered.</p>
<p><b>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?</b></p>	<p>No.</p>
<p><b>F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b></p>	

## 6. Simplified procedures

<p><b>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced</b></p>	<p>The new regulations (2004) constitute two new notification forms: 1.) A <b>long form</b> which expands upon the information submitted to the IAA at the initial notification of the transaction. But, in order to minimize the burden on parties, they are requested to classify the merger according to type (horizontal, vertical or conglomerate) and according to the classification to fill in only certain chapters 2.) A <b>short form</b> to be used by parties to transactions that meet certain terms that are specified in the regulations.</p>
--	---





















