



Comparison of Impact Investing Laws in the United States and Israel

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The impact investing ecosystem is tied into the laws surrounding the operations of charitable entities and charitable fundraising as well as those relating to fundraising for small businesses, including pooling capital for the purpose of investment, and even the regulation of the purpose of entities engaged in business activities (who are the stakeholders and to whom do we owe legal duties?). An overlay to a comparison of the laws is the current practice and cultural norms. The following chart provides an overview comparison of the laws in the US versus Israel. This chart is for educational and illustrative purposes only and not intended as legal advice.

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Do the securities laws cover issuance of debt?

UNITED STATES

Yes. (Issuing convertible notes — as opposed to a straight loan — are also deemed securities.)

ISRAEL

Yes. Issuance of securities, including bonds, is covered by the Companies Law and the Securities Law

CONCLUSION

Laws seem to be similar.

Is there an exception from the securities laws for “securities” (debt) issued by a charitable entity or its subsidiary?

UNITED STATES

On the federal level, but some states (e.g., California) do not.

ISRAEL

Charitable entities in Israel do not issue securities, as the law does not permit them to do so. Public benefit companies issue shares, which do not entitle shareholders to dividends or rights in assets upon liquidation. For-profit subsidiaries of charitable entities could do so, but there are no exceptions from securities laws for them. Israeli charities (Amutot) are entitled to take in loans, as long as appropriate agreements are signed with the lender and follow-up on usage of the loan is possible.

CONCLUSION

It appears that in Israel, charities taking on debt does not fall under the securities laws. However, lenders and loan transactions are regulated. See governmental guidelines for Amutot conduct.

Peer to peer lending is gaining in popularity in Israel and became regulated in 2018.¹

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What do the laws require by way of qualifications of investors?

UNITED STATES

Reg D: All Accredited Investor² or up to 35 non-accredited (with safeguards); May be private or generally solicited.

Reg A+: Open to all investors; May raise \$20 million in 12 months; Must meet Blue Sky investing regulations in each investor's state;

OR: May raise \$50 million in 12 months; Open to all investors; Preempts the Blue Sky Laws but requires audited financials and postoffering reporting

Title III Equity Crowdfunding: Open to all investors; May raise up to \$1,070,000 in 12 months; Availability of intra-state offerings and direct public offerings in state

ISRAEL

The Securities Regulations (Public Offerings)-2007 refer to the First Addendum to the Securities Law, which lists institutional investors and classified investors. These include investors with a minimum net worth in liquid assets of approximately NIS 8.1 million or annual income in each year of a two-year period of NIS 1.2 million for individuals and NIS 1.8 million for a family unit, similar to accredited investors in the US.

CONCLUSION

Accredited investor laws are similar. Neither country distinguishes social businesses from other securities issuers (except for those states in the US that adopt the model of exemption from the securities and investment company law for charities issuing debt for charitable purposes).

Are there exemptions that would permit non-wealthy community members to invest? If so, are there restrictions?

UNITED STATES

In addition to the above:

- **Reg D** needs no pre-approval
- **Reg A+** takes 90-120 days for SEC approval
- **Title III (Reg CF)** requires filing Form C with SEC; disclosure of financial information; ongoing public reporting. Must offer through registered portal. Non-US issuers and some others ineligible. Restrictions on amount individuals can invest (roughly, 10% of net worth).
- Intra-state offerings vary based on state law.

ISRAEL

Israel introduced crowdfunding legislation in 2017 following the JOBS act of 2012 in the US. The Securities Law permits offerings through crowdfunding, without a prospectus, if led by a coordinating company. Shares offered are in private Israeli companies. These companies must apply for registration in a "coordinators' registry". Coordinating companies must report annually on the offerings in which they participated. Securities Regulations from 2017 provide further guidance on "crowd investing." There are limits on annual fundraising of between 4 and 6 million NIS in a 12-month period by any company. The crowdfunding regulations do not differentiate between social businesses and regular for-profit businesses.

CONCLUSION

US law provides for a variety of exemptions for equity crowd funding while Israel's are based upon raising limited amounts of capital, through a registry. The requirement for pre-approval of prospectuses seems to make this most valuable in a "friends and family" round where investment is mainly based upon relationship.

Neither country's laws provides different standards for social businesses.

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What is the regulation of investment funds? Must they all be registered with the government?

UNITED STATES

- Federal exemption if fewer than 100 investors or all investors are qualified purchasers (Individuals with \$5M invested; corporations with \$25M).
- State laws may require state registration

ISRAEL

Investment funds are regulated. There is an exception for private funds with fewer than 50 investors and which are not directed to the general public. These small funds are exempt from regulations including approval of fund trustees, approval of prospectuses etc. Fund agreements must be registered with the Israel Securities Authority. The filing of agreements is informational and amendments must be submitted as well. Any prospectus must be pre-approved by the Securities Authority. Foreign funds may operate in Israel if they appoint a local representative, under limited conditions.

CONCLUSION

Again, pre-approval of prospectuses in an otherwise exempt fund seems to make this more valuable in a “friends and family” round where no prospectus is used.

May issuers pay someone to help raise capital? Does that person have to be licensed?

UNITED STATES

Only inside promoters may help raise capital (no commission permitted) unless registered broker dealer.

ISRAEL

Underwriters and distributors must be registered, however finders for private companies do not have to be licensed. At present, an issuer may pay anyone to help raise money with no regulation, unless US parties are involved and then US regulations pertaining to broker dealers may apply. We also note that last year the Israeli Justice Ministry and Competition Authority released a draft law regulating broker dealers however since the current government is a caretaker government, it will take some time until any progress is made.

CONCLUSION

The current ability in Israel to pay anyone to help raise investment with money is helpful to young social enterprises. However, it also leaves open the possibility of unregulated “finders” taking advantage of both issuers and investors.

Must those raising investment funds have particular licensure or background?

UNITED STATES

- No external fundraisers permitted unless they are registered broker dealers.
- Financial advisors paid to advise clients as to investment must also be registered.

ISRAEL

Financial advisors must be registered (except for those with fewer than 5 clients per year). If it is a private fund (fewer than 50 investors), the fund sponsor does not currently have to be licensed as a financial advisor, however the Israel Securities Authority is looking at new regulation in this area.

CONCLUSION

This dovetails with the question above. The laws are similar, unless the fund has more than 50 investors (in which case the fund sponsor must be licensed as a financial advisor in Israel).

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What are the tax incentives for charitable giving, both individual and corporate?

UNITED STATES

Individuals: up to 60% of adjusted gross income.
5 year carryforward

Corporations: up to 10% net income.
5 year carryforward.

ISRAEL

Tax incentives apply to gifts made to Amutot and public benefit companies which have received tax-exempt status from the Israel Tax Authority.

Individuals: a tax credit of 35% of the value of donations, up to a maximum of the lower of NIS 9,000,000 or 30% of the individual's taxable income. There is a three-year carryforward, not to exceed the above limits.

Corporations: tax credit of 23% (the Income Tax Ordinance states that the credit is set at the Israeli corporate tax rate, so the percentage is subject to change) of the value of donations up to a maximum of the lower of NIS 9,000,000 or 23% of the corporation's taxable income. There is a three-year carryforward, not to exceed the above limits.

CONCLUSION

The carryforward in the US for contributions is 2 years greater in the US. However, according to JFN, only 4500 amutah/pbc have received 46a status in Israel in order that contributions to them may entitle the donor to tax exemption.

Do those incentives apply to gifts to a charitable entity controlled by the individual/corporate donor?

UNITED STATES

Yes, although contributions to private foundations (charitable organizations that are not 1/3 publicly supported) are limited to 30% adjusted gross income deduction for individuals. No difference for corporations.

ISRAEL

Israel does not recognize such entities. In order to obtain tax-exempt status under the Income Tax Ordinance, an Amutah or public benefit company must have seven members, the majority of whom may not be related to one another.

CONCLUSION

The bent in Israel toward charitable deduction only when there is a widely representative board leads one to believe that a DAF-type concept may be more beneficial than trying to encourage more private foundations.

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What are the vehicles for charitable contributions? Is it beneficial to give in estate plans?

UNITED STATES

- Independent Charities
- Community foundations (current tax deduction but funds are distributed over years or in perpetuity).
- DAFs (sponsored by community foundations or sponsoring organizations – Schwab, Fidelity, Vanguard)
- Private family foundations (charitable entity controlled by 1 family)
- Corporate foundations (charitable entity controlled by 1 corporation)
- \$39.71 billion giving through estates in 2018 (federal law increased non-taxable estates)

ISRAEL

- Amutot (not for profit entities distinct from companies)
- Public benefit companies
- There is currently no estate tax in Israel, so it makes no difference whether a gift is made in the donor's lifetime or from the estate.
- In 2013, Israel authorized entities similar to US foundations, with requirements to distribute a certain % of funds each year. However, GuideStar Israel shows only 1 in use that is a family foundation and registered as a pbc. There are 15 others that list their purpose as "volunteering and philanthropic foundation." They must gain tax-exempt status and only make grants to others with tax-exempt status (those 4500 organizations noted above).

CONCLUSION

Public benefit companies, if they comply with regulations to be a public benefit corporation, may achieve tax-exempt contributions, unlike L3Cs in the US (taxed like typical LLCs).

The raising of the US federal exemption for taxation of estates has led to a decrease in planned giving which is expected to continue.

Is there an opportunity in Israel to encourage private foundation-like giving with PRI-like rules for impact investing.

What are the restrictions on charitable entities producing revenues?

UNITED STATES

- Charities may have related (charitable) income, so long as they can pass the public support test; approximately 20-30% unrelated income from operation of business.
- Charities may own interests in operating businesses without threatening their exempt status.
- Private foundations are restricted in their % of holdings in business unrelated to charitable purpose, except for the more recently enacted "Newman's Own" exception.

ISRAEL

Amutot and public benefit companies may participate in business activities by conducting such activities as part of the organization's operation or by holding shares in a for-profit corporation. The business activities may be taxed unless they are a central or integral part of the organization's fulfillment of its public purposes, and are not a substantial part of its activities or income [Income Tax Ordinance Article 9]. A charity's status as a "public institution" qualifying for a tax exemption may be affected if business activities predominate.

Charitable entities can also establish for-profit subsidiaries related to their charitable purpose (such as a museum establishing a company to operate its gift shop). The income of a for-profit entity is fully taxable but if it donates profits to its non-profit parent, it will be eligible for the corporate tax credits on charitable contributions.

Dividends from for-profit corporations are taxable at a rate of 25%.

CONCLUSION

The laws seem similar. However, unlike in the US, for-profit subsidiaries may take a charitable deduction for contributions to the parent charity. Unlike tax-free dividends in the US, however, corporate dividends to charities are taxed at 25%.

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Do the corporate laws permit social purposes, or must it be maximization of shareholder value?

UNITED STATES

Still a question in the US for regular business entities (Dodge v. Ford); likely not exclusively so, but issue is Revlon duties in context of buyout offer (maximizing shareholder value). Some states have “constituency statutes” permitting consideration of stakeholders.

Proliferation of hybrid entities (varies by state) mandating social purposes or requiring that corporations consider the effect of their actions on a larger stakeholder group. L3C, Benefit corporation, public benefit corporation, etc.

B-corp certification is not a legal mechanism but rather an outward commitment to social issues

ISRAEL

Public benefit companies are structured nearly identically to limited liability companies, but with a charitable purpose.

Regular business entities do not have any type of mandated corporate social responsibility, even though the concept is gaining in prominence.

According to the social responsibility group Maala, in 2017, Israel’s 417 publicly traded companies donated an aggregate amount of NIS 432 million.

CONCLUSION

No mandatory CSR in the US, although banks have CRA requirements (stemming from past discrimination in lending in lower-income communities).

Amount of available dollars for charitable contributions, in foundations and DAFs

UNITED STATES

- \$110.01 B held in DAFs in 2017.
- \$1 trillion held in private foundations
- \$427.71 billion donated to charity in 2018 (\$50.29 billion to private foundations) [yet effects of 2017 tax laws may still loom]
- \$20.05 billion in corporate gifts

ISRAEL

The Israeli Central Bureau of Statistics estimated charitable contributions in Israel at NIS 11.3 billion in 2018. This is in addition to approximately NIS 12.8 billion in contributions received from outside of Israel in 2018.

CONCLUSION

According to JFN, there are only about 4500 organizations in Israel entitled to tax-deductible contributions.

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Other differences between US and Israeli charitable laws

No Israeli limit on lobbying or prohibition on political campaign intervention. There is no express provision governing the extent to which an Israeli for-impact entity may participate in the political process. The Law of Associations does not prohibit amutot from lobbying or any other political activity, so long as these activities are not aimed at achieving representation of the entity in the Israeli parliament (the Knesset). A for-impact organization may work to influence the legislative process as well as the outcome of political elections. It may publicly support a political candidate or party and call on the public to vote for a particular candidate or party. However, the law prohibits a minister or a member of parliament being a member of a for-impact organization.

New privacy and anti-money laundering laws in Israel. Israeli for-impact organizations are subject to newly enacted regulations regarding privacy and data security, money laundering and related risks, and restrictions on payments and donations in cash—capped at 11,000 NIS (approximately \$3,000) [Reduction of Cash Use Law (2019), Provision of Interest-free Deposit and Credit Services by Charitable Organizations (Gamach) (2019), and Privacy Protection (Information Security) Regulations (2017)]

Other items of note. The securities issuance process is regulated by the Securities Law and involves public offerings, in which securities are offered to the public at large, including through institutional investors, or private placements by registered underwriters and distributors, in most cases to accredited investors.

It also appears that Israel provides the ability for citizens to leave funds to Israel in their estate plans, and the Public Committee for the designation of Estate Funds will distribute the funds in Israel exclusively for charitable purposes designated by the donor. This may provide a path toward the creation of a government-led impact investment fund to help social businesses.

As stated above, in Israel, the discussion of corporate social responsibility is becoming more prominent, as is the idea of impact investing by investment funds and individuals. Many impact investments to-date have been in companies that happened to meet the criteria for impact investment (such as in the health or agri-tech sectors), without

the investor specifically intending to pursue impact investment.

According to local counsel, E. Landau, at this point Israel lacks much of the legal and regulatory infrastructure necessary to support impact investment that exists in other countries (for example, no tax benefits for impact investing and no mandated corporate social responsibility).

Summary Conclusions

The laws applicable to impact investing – namely, securities laws and tax-exempt organization laws – in the US and Israel are somewhat similar. Neither country's securities laws differentiates between purely for-profit and social businesses, except for the narrow exception in the US that permits program-related investments to count toward a private foundation's mandatory distribution requirements and the federal exemption (that does not exist in all states) providing for an exemption from the securities laws for certain debt issuances by public charities. Both countries limit the amount of revenue generating business activity in tax-exempt charitable entities. Clearly, the practices in each country differ, with the US having a much longer history of accumulating wealth in private foundations (both corporate and family), as well as the invention in the US of the donor advised fund, which does not exist in Israel. This begs the question of whether the encouragement of private foundations and invention of DAFs in Israel, where there is an immediate tax deduction but the ability of the donor to designate distribution of the funds for charitable purposes on a going forward basis, would encourage more charitable giving and impact investing. It is noted, however, that critics of these forms in the US claim that they become warehouses of wealth that should instead be distributed to charities that are always in need of more funds to conduct their charitable missions.

It is clear that the impact investing ecosystems in both countries are in need of further development. However, in the US there are a plethora of very large private foundations and other organizations who are leading the charge in, and funding, this work. It is also noted that in most cases, it is easier to effect culture change in younger and smaller countries, and there are fewer champions of impact investing in Israel.

Notes

1. The new amendment imposes a licensing obligation on operators of P2P lending platforms and subjects the platforms to the supervision by the Supervisor of Regulated Financial Services. Similarly to the licensing regime prescribed in the law with respect to other financial services, the P2P lending segment will also be divided into two licensing categories: a basic license, for a limited volume of activity (accumulated credit of up to NIS 25 million), and an expanded license, for a material volume of activity (accumulated credit exceeding NIS 25 million).
2. The term “accredited investor” is defined in Rule 501 of Regulation D of the U.S. Securities and Exchange Commission (SEC) as:
 - A bank, insurance company, registered investment company, business development company, or small business investment company;
 - An employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
 - A charitable organization, corporation, or partnership with assets exceeding \$5 million;
 - A director, executive officer, or general partner of the company selling the securities;
 - A business in which all the equity owners are accredited investors;
 - A natural person who has individual net worth, or joint net worth with the person’s spouse, that exceeds \$1 million at the time of the purchase, or has assets under management of \$1 million or above, excluding the value of the individual’s primary residence;
 - A natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or
 - A trust with assets in excess of \$5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.
3. Title III Crowdfunding financial information required: Raising \$107,000 or less: financial statements and tax returns (unless audited/reviewed financials are given)
 - Raising \$535,000 or less: financial statements reviewed by an accountant (unless audited/reviewed financials are given).
 - Raising \$535,000 or more: for first time offerers, financial statements reviewed by an accountant (unless audited/reviewed financials are given). For non-first time offerers, financial statements audited by a public accountant that is independent of the issuer.
4. The Companies Law provides for three types of PBFs [Companies Law Article 345(34-42)]:
 - Family Foundation: The foundation’s capital consists of donations from a maximum of twenty donors. It is subject to a low level of regulation and financial demands.
 - Privately Controlled Foundation: The foundation’s capital consists of donations from a maximum of twenty donors in each fiscal year, and every donation must be at least 20,000 NIS (approximately \$5,250). This foundation is subject to a medium degree of regulation and financial design demands.
 - Publicly Controlled Foundation: The foundation does not have any limits on the structure of its capital; its main feature is the absence of private control. This foundation is subject to the most rigorous regulation and financial demands.
5. At the time of recognition as such, the would-be PBF must have at least 5 million NIS in liquid assets. Every year, the PBF must give away a sum of the higher of the following: (a) of 5 percent of its assets in the preceding year; (b) an amount that is the aggregate of (i) twice the PBC’s administrative costs plus (ii) any costs incurred in supervising grantmaking or (c) for a family foundation-NIS 400,000.
6. NP Trust <https://www.nptrust.org/reports/daf-report/>
7. Chronicle of Philanthropy <https://www.philanthropy.com/article/Foundation-Assets-Top-1/246975>
8. Giving USA <https://givingusa.org/giving-usa-2019-americans-gave-427-71-billion-to-charity-in-2018-amid-complex-year-for-charitable-giving/>