



**Data Protection in Israel –  
Overview & Recent Developments in Financial Sector**

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## **Bad luck...**



# Topics

1. Context: Recent Developments
2. EU: Israel “Adequately” Protects Personal Data
3. ILITA: Regulator
4. Legal Framework for Privacy Protection in Israel
5. Database Registration
6. Enforcement Actions in Financial Services Sector
7. Data Transfers Outside Israel
8. Hot Topics—Employee Email Privacy and Electronic Signatures

## Israel and the Adequacy Decision

- Israel has recently become the **7th** country to have its data protection laws approved by the European Union as “adequate”
- The approval means that companies can transfer personal data from the EU to Israel freely, without breaking EU law
- Israeli privacy law is interpreted consistent with EU Law—process of adequacy determination
- Twinning Program with Spanish Data Protection Authority

## **Israeli Law, Information and Technology Authority (ILITA)**

- Israel's data protection authority
- Established September 2006
- Powers include:
  - handling complaints
  - investigating criminal offences
  - imposing administrative fines
- Database Registrar functions
- Electronic Signatures

# Recent Developments

## ILITA takes the lead on Google Street View:

- Dynamic
- Adaptive
- Hands on approach
- Up to date



# Recent Developments

- Awareness of data protection and privacy issues is rapidly growing
- EU Annual Data Protection Commissioners Conference held in Jerusalem in October, 2010



# Recent Developments

Highly regulated industries and bodies are at the center of ILITA's enforcement activity



- **Privacy is a “Constitutional” Right**
  - Considered a basic human right by virtue of the *Basic law: Human Dignity and Liberty* of 1992.
  - Article 7(a) of the Basic Law states that "all persons have the right to privacy and to intimacy"
- **Protection of Privacy Law, 5741-1981 (PPA)**
  - Data Privacy
  - Databases

## **Main Principles of Data Privacy:**

- Notice
- Informed Consent
- Use for a particular purpose only
- Right to review
- Confidentiality and Security

## Need Notice in order to have valid consent

### ➤ Adequate Notice:

- Purpose of Collection; What Use?
- To whom may it be Transferred
- Is data subject required to provide the data?

# Privacy Law – Database Registration

## Database requires registration if:

- Personal Information (such as: name, contact information, I.D, age, profession, professional training), of more than 10,000 persons; or
- “Sensitive Information”, including information regarding health, economic status, opinions and faith (sex, money and religion)



## Privacy Law – Database Registration

### Database does not require registration if:

1. Database ONLY contains name and contact information

AND

2. No other databases are operated

## Privacy Law – Database Registration

- **Additional obligations of Israeli database owner or operator:**
  - Notify: notify a person before including him in the database
  - Purpose: only use for purpose for which the database was established (item on the registration form)
  - Access: allow any person included in a database to inspect information about himself/herself and amend such information
  - Transfer: limitations on cross-border transfer of information

## Methods of Enforcement

1. “Name and Shame”: Publicize Bad Acts
2. Meaningful Fine
3. Use an Enforcement Act to Set Sector-Wide Guidelines
4. Prohibit Use of Illegally Collected Information
5. Leverage the “Plaintiffs’ Lawyer Sector”: Set the Stage for Class Actions

January 2010: 177,000 NIS administrative fine imposed by ILITA on a company for use of the population registration database not for the purpose for which it was established and in breach of the Privacy Law



January 2010: ILITA imposes an administrative fine on **AIG** for not informing the data subjects of the purposes for which the data collected by AIG is used



February 2010: ILITA imposes an administrative fine on **Bank Hapoalim** for not replying in time to a data subject's request to view the materials retained about it in the database



April 2010: ILITA imposes an administrative fine on **Bank Leumi** for using a database not for the purpose for which it was originally registered

- Information was used for marketing a pension product



August 2010: ILITA declares **VISA CAL**'s direct marketing activity to be in breach of the Privacy Law - exposing VISA to customer claims (including class actions)

- *Important Point: ILITA believes in class actions as enforcement tool*



October 2010: ILITA declares **Migdal Pension Fund** to be collecting information about its clients for additional purposes and without informed consent in breach of Privacy Law

- The information was collected for use of **affiliates**
- The **consent process** (from individuals) was ambiguous and cumbersome



# Enforcement

November 2010: ILITA imposes an administrative fine on **IDI Insurance Company** for refusing to provide insurance services to a certain client based on information received from the Execution Office meant for a different purpose



## How is Financial Sector Different?

1. Large Amount of Information
2. Sensitive Information
3. Not just financial information
4. In this case: Use Lien Information only to locate debtor's assets, and not to decide whether to grant insurance

## Data Transfers from Israel

When does this issue arise?

- To affiliates, such as a database of employee information
- To third party processors (Israeli affiliate of European insurance company determining whether to insure individuals in the EU)
- Post-Merger (Foreign Purchaser wants to transfer database from Israeli Seller)

# Data Transfers from Israel

## Privacy Protection (Transfer of Data to Databases Abroad) Regulations - 2001

- Governs the transfer of information from a database in Israel to locations outside of Israel
  - Permitted:
    1. to the EU (or other countries with similar protection)
    2. To a subsidiary... but not to a parent
    3. by contract - if recipient maintains same level of protection as Israel

### 1. Landmark new case on email privacy (Isakov - February 2011) [writeup]

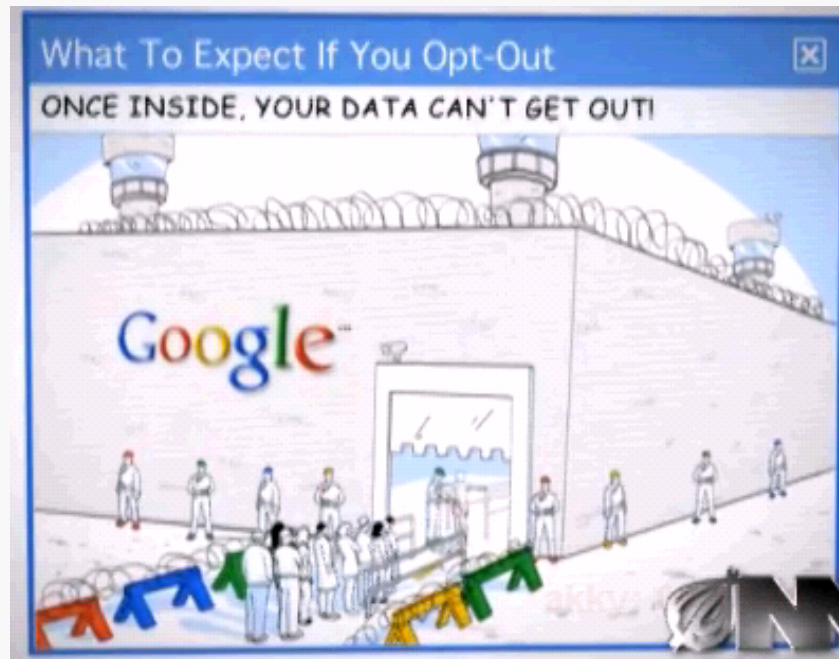
#### ➤ National Labor Court:

- No monitoring or viewing of emails or computer activity without informed consent of the employee, and generally in the employee's presence.
- No monitoring of private correspondence in Gmail/Hotmail/Yahoo!, etc. account without a court order
- Based on previous ILITA enforcement actions, this will be particularly strictly enforced against financial institutions

## 2. Electronic Signatures

- Recently represented Large US bank entering Israeli market for digital signatures
- Lessons learned:
  - Use of technology is just beginning
  - Regulations are open to interpretation
  - ILITA is the agency doing the interpretation
  - Therefore, focus on privacy protection as financial institutions roll out digital signature devices and software

# The Future?





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