

## Bits & Briefs

Israeli Labor and Employment Law | Special Series | November 2019

In our "Bits & Briefs" Special Series dedicated to **Israeli Labor and Employment Law**, we provide periodic bite-sized updates introducing key provisions of Israeli labor law and their practical implications, particularly from the perspective of businesses looking to operate in, or expand to, Israel. In this update we will cover the Israeli Labor Law perspective on engagement of consultants.

### Engagement of Consultants

Potential exposure arises from companies' engagements of consultants in view of the possibility that following termination of the consultancy, the consultant may claim employee status and associated social benefits.

Israeli labor courts have established criteria for determining whether a consultant should be considered an employee, including: (i) the degree of the consultant's integration into the company and its activities, thereby limiting the consultant's ability to provide services to other companies; (ii) the degree of the consultant's personal involvement in the provision of services to the company; and (iii) the degree of independence the consultant enjoys in his engagement with the company.

If an Israeli labor court rules that a consultant is deemed an employee, it may also rule that the consultant must return to the company any compensation received as consultancy fees in excess of the compensation he would have received as an employee.

However, to obtain such reimbursement the company must provide evidence that: (i) the consultant was engaged in such a capacity through his own volition; (ii) the consulting fees exceeded the salary the consultant would have received had he been hired as an employee from the beginning of the engagement; and (iii) the consulting agreement includes a "*Gidron Clause*" stipulating the terms of employment should the consultant be deemed an employee and setting out the employee's obligation to indemnify the employer according to the difference between the consulting fees and the salary the consultant would have received had he been hired as an employee from the beginning of the engagement .

In the absence of such evidence, the consultant could retain his entire compensation even if he were deemed an employee and would then be eligible to receive social benefits from the company as an employee, at additional cost to the company.

**We are happy to assist you in providing legal advice in relation to each of these issues, their ramifications for the workplace and the practical steps that may be taken as a result.**

Sincerely,  
Fischer Behar Chen Well Orion & Co.

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