Implications of the Invalidation of the Safe Harbor Arrangement for Transfer of Personal Data from Europe to the United States – Clarifications and Updates

January 4, 2016

1. Following up on the Israeli Law, Information and Technology Authority (ILITA) announcement of October 15, 2015, in connection with the Court of Justice of the European Union decision in the Schrems case (the “Decision”), we hereby issue several clarifications and updates on the current situation in Israel.

2. Section 2(8)(2) of the Privacy Protection Regulations (Transfer of Data to Databases Outside of Israel), 2001 (the “Regulations”) conditions the transfer of personal data from a database in Israel outside the borders of Israel on authorization under European law of a data export from Europe to the third party country. The Decision invalidated European recognition in the EU-U.S. Safe Harbor arrangement, which had the effect of blocking the legal basis to transfer personal data from Israel to the U.S. under Section 2(8)(2). **ILITA again clarifies that the Regulations provide additional grounds for transferring personal data outside the borders of Israel, including to the U.S.**

3. Representatives of the EU and U.S. are currently engaged in intensive negotiations to conclude an agreement to replace the Safe Harbor arrangement, in light of the resolution of European regulators to begin fully enforcing the Decision starting at the end of January 2016. Given the continuous discussions between the parties, and in recognition of the fact that a period of adjustment to the new legal regime under the Decision is required, **for the time being ILITA does not initiate enforcement actions in connection with data transfers under Section 2(8)(2) of the Regulations.** At the same time, ILITA will continue to handle specific complaints and referrals.

4. ILITA is following the negotiations and will once again update its instructions according to the developments.