

Client
Update

The Jiangsu-Israel R&D Funding Program - 8th
Round Ends on August 15, 2013

We would like to bring to your attention that the 8th call of the Jiangsu-Israel Program for industrial R&D (the "**Program**") has extended its deadline and will continue to receive applications until **August 15, 2013**.

The Program offers funding for Israeli and Jiangsu companies that are interested in performing a joint R&D project for the development of a highly innovative product with substantial commercialization potential in the global market. Israeli participants would repay the funding by way of royalties from sale of products developed under the program. Alternatively, Israeli companies could elect not to receive funding but to participate in the Program in order to receive the governmental acknowledgment that is often needed for doing business in China. Israeli participants will be subject to the Law for the Encouragement of Research and Development in Industry 5744-1984 and the regulations promulgated thereunder (the "**R&D Law**") even if they receive no funding. Nevertheless, know-how developed under the project by Israeli participants may be either jointly owned by the participants in the project or licensed to the participants on a non-exclusive basis.

In our experience, careful attention is required in defining the project – both in order to comply with the requirements of the Program, and in order to increase the chances of being chosen for the Program; as well as in order to mitigate the effect of the limitations and obligations under the R&D Law.

In addition, tax, IP, antitrust and commercial considerations, as well as the special characteristics of doing business in China, need to be carefully considered when filling the application and when negotiating the LOI/MOU and definitive agreement with the other parties. Herzog Fox & Neeman has extensive experience in advising on these issues, and we would be happy to assist you as required.

The Jiangsu-Israel Industrial R&D Program in a Nutshell

General. The Program is based on the bilateral agreement (2008) between the State of Israel and the Jiangsu province in China. It is administrated by the Science and Technology Department of the government of the Jiangsu province ("**JSTD**") and by the Office of the Chief Scientist of the Israeli Ministry of Economy (the "**OCS**").

Applications. Applications are submitted in two stages: (i) until August 15, 2013 - submission of joint project application to the OCS and the JSTD on a bilateral application form signed by all participants along with an MOU/LOI addressing the allocation of IP rights and the commercialization strategy; (ii) if the joint application is approved – each party has to submit a national funding application according to the national procedures (in Israel - according to the OCS rules).

Legal Framework. Each participant in the Program is subject to the Program's rules, the Project Agreement between the participating parties and to the domestic laws of the state of its incorporation. Israeli participants would be subject, *inter alia*, to the R&D Law.

Eligibility. The Program accepts applications for financial support for joint **Jiangsu-Israeli R&D projects in all technological fields** that meet, *inter alia*, the following eligibility criteria:

- The project involves R&D performing companies - at least one company incorporated and operating in the Jiangsu province of China, and at least one company incorporated and operating in Israel. Academic/Research entities may be eligible to join a project as sub-contractors only.
- The project is aimed at developing a highly innovative product/process with significant commercial potential in the global market.
- Each of the participating companies needs to contribute to the project on a balanced basis.
- The project has to be significant to all of the participating parties.
- The participants have to agree in advance on the allocation of IP rights and the commercialization strategy of the developed products/processes, and to present their agreement in an LOI/MOU to be submitted along with the application.
- None of the participants may finance the expenditures of any of the other participants.
- Participation of affiliated parties in the same project under the Program may be approved for special reasons only.

- Israeli R&D centers of MNCs are usually not eligible to participate in the program since the know-how they develop does not remain in Israel. However, we believe that in certain circumstances their participation in the Program may be possible.

Funding

- If a project is approved, each of the participating companies would be entitled to funding by their government. Israeli companies would be entitled to funding of up to 50% of their eligible R&D expenses with respect to the project.¹
- Israeli companies may participate in the Program without receiving OCS funding. Such may be the case for established companies that do not need funding but for whom participation in the Program could provide governmental acknowledgment that is often needed in order to do business in China. It should be noted that regardless of whether participants receive OCS funding, they will be subject to the R&D Law by virtue of their participation in the Program.

Royalties - Israeli participants will be liable to repay the OCS funding by way of royalty payments from the sale of products/services resulting from the Program. According to the R&D Law, the royalty payment will generally be up to the amount of the OCS funding and at the rate of 3%-3.5%. However, the repayment amount and the royalty rate will increase if the resulting products are manufactured abroad.

IP Rights. The know-how developed under the project could be either: (i) owned by the developing party or by the Israeli party only (if the JSTD does not object) while the other parties could receive a non-exclusive license in the know-how; (ii) jointly owned by all participants, with none of them authorized to sell, transfer or share with a third party the know-how developed by the Israeli participants, unless otherwise is approved by the OCS.

Limitations on Israeli Participants. Israeli participants will be subject to the R&D law. Therefore, the basic rule is that any know-how develop by an Israeli participant resulting, directly or indirectly, from the Program must be owned by the Israeli participant and be exploited (e.g. manufacturing, R&D activity) in Israel only, unless otherwise approved in accordance with the provisions of the R&D Law. Nevertheless, Israeli participants may grant joint ownership or a non-exclusive license in such know-how to the other participants in the project.

¹ Israeli participants would have to reapply to the OCS in order to receive funding for the second year. Since the Israeli funding for the Program is currently not earmarked, funding would be considered in accordance with the available budget of the OCS and on a competitive basis, considering also applications to other OCS programs.

Should you require any further information or clarification regarding the issues discussed in this Circular, please do not hesitate to contact us.

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