

MAGICJACK VOCALTEC LTD

Form S-8

November 20, 2013

As filed with the Securities and Exchange Commission on November 20, 2013

Registration No. 333-

---

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

MAGICJACK VOCALTEC LTD.  
(Exact name of registrant as specified in its charter)

ISRAEL  
(State or other jurisdiction of  
incorporation or organization)

Not Applicable  
(I.R.S. Employer  
Identification No.)

12 BENNY GAON STREET, BUILDING 2B  
POLEG INDUSTRIAL AREA, NETANYA, ISRAEL  
(Address of Principal Executive Offices)

42504  
(Zip Code)

magicJack Vocaltec Ltd. 2013 Stock Incentive Plan

and

magicJack Vocaltec Ltd. 2013 Israeli Stock Incentive Plan  
(Full title of the plan)

Jose Gordo  
Chief Financial Officer  
magicJack VocalTec Ltd.  
12 Benny Gaon Street, Building 2B  
Poleg Industrial Area, Netanya, Israel 42504  
(Name and address of agent for service)

(561) 749-2255  
(Telephone number, including area code, of agent for service)

Copies to:

Richard E. Baltz, Esq.  
Arnold & Porter LLP  
555 Twelfth Street NW  
Washington, DC 20004

Perry Wildes, Adv.  
Gross, Kleinhendler, Hodak, Halevy,  
Greenberg & Co.  
One Azrieli Center



Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller Reporting Company

#### CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (2)
Ordinary Shares, no par value	2,250,000 shares	\$ 12.20	\$ 27,450,000	\$ 3,535.56

(1) In addition to the shares set forth in the table, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), the number of shares registered includes any additional shares that become issuable under the magicJack VocalTec Ltd. 2013 Stock Incentive Plan and the magicJack VocalTec Ltd. 2013 Israeli Stock Incentive Plan by reason of any stock splits, stock dividends, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares.

(2) Estimated pursuant to Rule 457(c) and (h) solely for the purposes of calculating the amount of the registration fee. The fee with respect to the shares registered herein was based on the average of the high and low price per share of the ordinary shares on November 18, 2013, as reported on the Nasdaq Global Market.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participating employees as specified by Rule 428(b)(1) of the Securities Act. These document(s) and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

---

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the "SEC") are hereby incorporated by reference in this Registration Statement:

- a) our Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as amended on April 30, 2013;
- b) our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2013, June 30, 2013 and September 30, 2013;
- c) our Definitive Proxy Statement on Schedule 14A, filed on June 3, 2013;
- d) our Current Reports on Form 8-K filed April 1, 2013, April 3, 2013, April 8, 2013, May 13, 2013, June 28, 2013, July 3, 2013, July 9, 2013, August 9, 2013 and November 12, 2013 (in each case, other than information that is furnished but that is deemed not to have been filed); and
- e) The description of our ordinary shares contained in our Registration Statement on Form 8-A, filed with the SEC under the Exchange Act on January 29, 1996, including any amendment or report filed for the purpose of updating such description.

In addition, all documents that we file pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment that either indicates that all securities offered hereby have been sold or deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Consistent with the provisions of the Israeli Companies Law, 1999, or the Companies Law, magicJack VocalTec Ltd. ("the Company") has included provisions in its Amended and Restated Articles of Association permitting it to procure insurance coverage for its office holders, exempt them from certain liabilities and indemnify them, to the

maximum extent permitted by law. Under the Companies Law, indemnification of, and procurement of insurance coverage for the Company's office holders must be approved by its audit committee and its board of directors and, with respect to directors, by its shareholders.

---

### Exemption

Under the Companies Law, an Israeli company may not exempt an office holder from liability with respect to a breach of his duty of loyalty, but may exempt in advance an office holder from his liability to the company, in whole or in part, with respect to a breach of his duty of care (other than with respect to a breach of duty of care with respect to the distribution of a dividend or redemption of the company's securities). Under the Companies Law, a company may not indemnify an office holder, nor enter into an insurance contract that would provide coverage for any monetary liability incurred as a result of any of the following:

- a breach by the office holder of his duty of loyalty, unless the office holder acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;
- a breach by the office holder of his duty of care, if such breach was done intentionally or in disregard of the circumstances of the breach or its consequences, other than a breach committed solely by negligence;
- any act or omission done with the intent to derive an illegal personal benefit; or
- any fine levied against the office holder as a result of a criminal offense.

### Office Holder Insurance

The Company's Amended and Restated Articles of Association provide that, subject to the provisions of the Companies Law, it may enter into a contract for the insurance of the liability of any of its office holders with respect to:

- a breach of his duty of care to the Company or to another person;
- a breach of his duty of loyalty to the Company, provided that the office holder acted in good faith and had reasonable cause to assume that his act would not prejudice the Company's interests;
- a financial liability imposed upon him in favor of another person concerning an act performed by him in his capacity as an office holder.

### Indemnification of Office Holders

The Company's Amended and Restated Articles of Association provide that it may indemnify an office holder against:

- a financial liability imposed on him in favor of another person by any judgment, including a settlement or an arbitrator's award approved by a court concerning an act performed in his capacity as an office holder;

- reasonable litigation expenses, including attorneys' fees, expended by the office holder or charged to him by a court, in proceedings the Company institutes against him or instituted on its behalf or by another person, or in a criminal charge from which he was acquitted, or in which he was convicted of an offense that does not require proof of criminal intent; or
- reasonable litigation expenses, including attorneys' fees, expended by the office holder as a result of an investigation or proceeding instituted against him by an authority authorized to conduct such investigation or proceeding, provided that (i) no indictment (as defined in the Companies Law) was filed against such office holder as a result of such investigation or proceeding, and (ii) no financial liability as a substitute for the criminal proceeding (as defined in the Companies Law) was imposed upon him as a result of such investigation or proceeding or if such financial liability was imposed, it was imposed with respect to an offense that does not require proof of criminal intent.

Under the Companies Law, the Company's Amended and Restated Articles of Association may also include a provision authorizing it to grant in advance an undertaking to indemnify an office holder, provided that the undertaking is limited to such events which the board of directors shall deem to be likely to occur in light of the Company's operations at the time that the undertaking to indemnify is made and for such amounts or criteria which the board of directors may, at the time of the giving of such undertaking to indemnify, deem to be reasonable under the circumstances. Such undertaking shall set forth such events which the board of directors shall deem to be likely to occur in light of the operations of the company at the time that the undertaking to indemnify is made, and the amounts and/or criteria which the board of directors may, at the time of the giving of such undertaking to indemnify, deem to be reasonable under the circumstances; and a provision authorizing the Company to retroactively indemnify an office holder.

As permitted under Israeli law and the Company's Amended and Restated Articles of Association, the Company has agreements whereby it indemnifies its officers and directors for certain acts or omissions that may have been made or will be made in the future by the officers and directors by virtue of their service as a director or officer of the Company and/or of any Company subsidiary and/or of a third party at the request of the Company. The maximum aggregate indemnification amount that the Company may pay to all of its directors and officers, in the aggregate, pursuant to all letters of indemnification issued by the Company and its subsidiaries is the greater of (i) \$20 million and (ii) an amount equal to 75% of the Company's assets minus its liabilities according to the most recent audited consolidated financial statements of the Company prior to the payment of the applicable indemnification amount.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits .

The exhibits to this Registration Statement are described in the Exhibit Index below.

Item 9. Undertakings.

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that information required to be included in a post-effective amendment by Paragraphs (a)(1)(i) and (a)(1)(ii) is not contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement; and

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of its annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

---

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of West Palm Beach, Florida, on November 20, 2013.

By: /s/ Jose Gordo  
 Name: Jose Gordo  
 Title: Chief Financial Officer

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE	TITLE:	DATE
/s/ Gerald Vento	Chief Executive Officer	November 20, 2013
Gerald Vento	(Principal Executive Officer)	
/s/ Jose Gordo	Chief Financial Officer	November 20, 2013
Jose Gordo	(Principal Financial and Accounting Officer)	
*	Director	November 20, 2013
Donald A. Burns		
*	Director	November 20, 2013
Dr. Yuen Wah Sing		
*	Director	November 20, 2013
Tal Yaron-Eldar		
*	Director	November 20, 2013
Yoseph Dauber		
*	Director	November 20, 2013
Richard Harris		

\*By: /s/ Jose Gordo  
 Jose Gordo  
 Attorney-in-Fact



INDEX TO EXHIBITS

- 4.1 Amended and Restated Articles of Association of magicJack VocalTec Ltd. (incorporated by reference to Exhibit 3.1 of our Annual Report on Form 10-K filed with the SEC on April 2, 2013)
  - 4.2 Form of Share Certificate of magicJack VocalTec Ltd., filed on January 12, 2011 (incorporated by reference to Exhibit 4.2 of our Amendment No. 1 to Registration Statement on Form F-3 (File No. 333-169659))
  - 5.1 Opinion of Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co., counsel to the registrant, as to the legality of the securities being offered under this Registration Statement
  - 23.1 Consent of independent registered public accounting firm
  - 23.2 Consent of Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co. (included in Exhibit 5.1)
  - 24.1 Power of Attorney
  - 99.1 magicJack VocalTec Ltd. 2013 Stock Incentive Plan (incorporated by reference to Appendix C of our definitive proxy statement filed with the SEC on June 3, 2013)
  - 99.2 magicJack VocalTec Ltd. 2013 Israeli Stock Incentive Plan (incorporated by reference to Appendix D of our definitive proxy statement filed with the SEC on June 3, 2013)
- 
-