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COMMTOUCH SOFTWARE LTD  
Form S-8 POS  
July 27, 2004

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

COMMTOUCH SOFTWARE LTD.  
(Exact Name of Registrant as Specified in Its Charter)

Israel	Not Applicable
----- (State or Other Jurisdiction of Incorporation or Organization)	----- (I.R.S. Employer Identification No.)
1A Hazoran Street, Poleg Industrial Park, Netanya, 42504, Israel	N/A
----- (Address of Principal Executive Offices)	----- (Zip Code)

AMENDED AND RESTATED 1996 CSI STOCK OPTION PLAN  
AMENDED AND RESTATED 1999 ISRAELI SHARE OPTION PLAN  
[FKA 1999 SECTION 3(i) SHARE OPTION PLAN]  
AMENDED AND RESTATED COMMTOUCH SOFTWARE LTD.  
1999 NONEMPLOYEE DIRECTORS STOCK OPTION PLAN  
]  
(Full title of the Plan)

Devyani Patel  
Vice President Finance  
Commtouch Software Ltd.  
c/o Commtouch Inc.  
1300 Crittenden Lane, Suite 103  
Mountain View, California 94043

-----  
(Name and Address of Agent For Service)

(650) 864-2000  
(Telephone Number, Including Area Code, of Agent For Service)

Copies to:

-----  
Gary Davis  
General Counsel and Secretary  
Commtouch Inc.  
1300 Crittenden Lane, Suite 103  
Mountain View, CA 94043  
Tel: 650-864-2000  
Fax: 650-864-2006  
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Aaron M. Lampert  
Naschitz, Brandes & Co.  
5 Tuval Street  
Tel Aviv 67897 Israel  
Tel: 972-3-623-5000  
Fax: 972-3-623-5005  
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===== CALCULATION OF REGISTRATION FEE =====

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Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount Registered Fee
Ordinary Shares Issuable Under Amended and Restated 1996 CSI Stock Option Plan and Amended and Restated 1999 Israeli Share Option Plan	6,460,000	\$0.39	\$2,519,400	\$319
Ordinary Shares Issuable Under Commtouch Software Ltd. 1999 Nonemployee Directors Stock Option Plan, NIS 0.05 Nominal Value	202,500	\$0.46*	\$93,150	\$11
	600,000	\$0.28*	\$168,000	\$21
	100,000	\$0.12*	\$12,000	\$1.
	325,000	\$0.82*	\$266,500	\$33
	562,500	\$0.39	\$219,375	\$27
Totals	8,250,000	--	\$3,278,425	\$415

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.

Note: The document(s) containing the information specified by Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed or to be filed with the Commission by the Registrant are incorporated by reference in this registration statement:

- (a) Our Annual Report on Form 20-F for the fiscal year ended December 31, 2003;
- (b) Our report on Form 6-K filed on June 29, 2004, containing the Registrant's press release of May 17, 2004 covering financial results of the Registrant for first quarter 2004;

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- (c) Our report on Form 6-K filed on July 12, 2004, reporting the conditions the Registrant must meet in order to maintain the listing of its ordinary shares on The Nasdaq SmallCap Market;
- (d) The description of our ordinary shares contained in the registration statement under the Exchange Act on Form 8-A as filed with the Commission on June 25, 1999, and any subsequent amendment or report filed for the purpose of updating this description.

In addition, all subsequent annual reports filed on Form 20-F prior to the termination of this offering are incorporated by reference into this prospectus. Also, we may incorporate by reference our future reports on Form 6-K by stating in those Forms that they are being incorporated by reference into this prospectus.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, are deemed to be incorporated by reference into this registration statement and to be part hereof from the respective dates of filing of such documents. Any statement contained in this registration statement or in a document incorporated by reference shall be deemed modified or superseded to the extent that a statement contained in any subsequently filed document which also is or is deemed to be incorporated by reference herein or therein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed to constitute a part hereof, except as so modified or superseded.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel

The validity of the ordinary shares offered hereby is being passed upon for Commtouch by Naschitz, Brandes & Co., Tel-Aviv, Israel. The partners of Naschitz, Brandes & Co. and the firm itself, beneficially owns, in the aggregate, 15,000 outstanding shares of the Company, including upon exercise of options, warrants or other derivative securities.

#### Item 6. Indemnification of Directors and Officers

Israeli law permits a company to insure an Office Holder in respect of liabilities incurred by him or her as a result of the breach of his or her duty of care to the company or to another person, or as a result of the breach of his or her fiduciary duty to the company, to the extent that he or she acted in good faith and had reasonable cause to believe that the act would not prejudice the company. A company can also insure an Office Holder for monetary liabilities as a result of an act or omission that he or she committed in connection with his or her serving as an Office Holder. Moreover, a company can indemnify an Office Holder for any of the following obligations or expenses incurred as a result of an act or omission of such persons in their capacity as Office Holders: (a) monetary liability imposed upon him or her in favor of other persons pursuant to a court judgment, including a settlement or an arbitrator's decision confirmed by a court and (b) reasonable litigation expenses, including attorneys' fees, actually incurred by him or her or imposed upon him or her by a court, in an action, suit or proceeding brought against him or her by or on behalf of the

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company or other persons, in connection with a criminal action in which he or she was acquitted or in connection with a criminal action which does not require criminal intent in which he or she was convicted.

Our Articles of Association allow us to insure and indemnify Office Holders to the fullest extent permitted by law provided such insurance or indemnification is approved in accordance with Israel's Companies Law. The Company has acquired directors' and officers' liability insurance covering the officers and directors of the Company and its subsidiaries for certain claims. In addition, the Company has entered into an undertaking to indemnify the directors of the Company subject to certain limitations, as well as Indemnification and Exculpation Agreements, and these undertakings and agreements have been ratified by our shareholders.

Certain members of our management team are officers of our subsidiary, Commtouch Inc., a California Corporation, or reside in California. The Articles of Incorporation of Commtouch Inc. provide that the liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law and that the corporation is authorized to provide for the indemnification of agents of the corporation, as defined in Section 317 of the California General Corporation Law, in excess of that expressly permitted by Section 317 for breach of duty to the corporation and its shareholders to the fullest extent permissible under California law.

With respect to all proceedings other than shareholder derivative actions, Section 317 permits a California corporation to indemnify any of its directors, officers or other agents only if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. In the case of derivative actions, a California corporation may indemnify any of its directors, officers or agents only if such person acted in good faith and in a manner such person believed to be in the best interests of the corporation and its shareholders. Furthermore, in derivative actions, no indemnification is permitted (i) with respect to any matter with respect to which the person to be indemnified has been held liable to the corporation, unless such indemnification is approved by the court; (ii) of amounts paid in settling or otherwise disposing of a pending action without court approval; or (iii) of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval. To the extent that a director, officer or agent of a corporation has been successful on the merits in defense of any proceeding for which indemnification is permitted by Section 317, a corporation is obligated by Section 317 to indemnify such person against expenses actually and reasonably incurred in connection with the proceeding.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Index to Exhibits.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

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

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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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate

offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

- (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 paragraphs (1)(i) and (1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (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.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to 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 therein, 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



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----- Ofer Segev		
/s/ RICHARD SORKIN *	Director	June 24,
----- Richard Sorkin		
/s/ NAHUM SHARFMAN *	Director	June 24,
----- Nahum Sharfman		
/s/ LLOYD E. SHEFSKY *	Director	June 24,
----- Lloyd E. Shefsky		
/s/ DEVYANI PATEL	*Individually and as Attorney-in-fact and Authorized U.S. Representative	June 24,
----- Devyani Patel		

INDEX TO EXHIBITS

Exhibit Number -----	Exhibit -----
5.1	Opinion regarding legality of securities to be offered
10.3	Amended and Restated Commtouch Software Ltd. 1999 Nonemployee Directors Stock Option Plan
10.4	Amended and Restated 1996 CSI Stock Option Plan
10.5	Amended and Restated 1999 Israeli Share Option Plan
23.1	Consent of Independent Auditors
23.2	Consent of Naschitz, Brandes & Co. (See Exhibit 5.1)
24.1	Power of Attorney