

Wix.com Ltd.  
Form S-8  
November 07, 2013

As filed with the Securities and Exchange Commission on November 7, 2013

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**Wix.com Ltd.**

**(Exact name of registrant as specified in charter)**

**State of Israel**  
**(State or other jurisdiction of**  
**incorporation or organization)**

**98-0685109**  
**(I.R.S. Employer**  
**Identification No.)**

**40 Namal Tel Aviv St.**

**Tel Aviv, Israel**  
**(Address of principal executive offices)**

**6350671**  
**(Zip Code)**

**Wixpress Ltd. 2007 Employee Share Option Plan**

**Wix.com Ltd. 2013 Incentive Compensation Plan**

**(Full Title of the Plan)**

**Wix.com, Inc.**

**2601 Mission Street**

**San Francisco, CA 94110**

**(415) 643-6479**

**(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)**

*Copies of communications to:*

**Colin J. Diamond, Esq.**

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**CALCULATION OF REGISTRATION FEE**

| <b>Title of Securities to be Registered</b> | <b>Amount to be Registered(1)</b> | <b>Proposed</b>                         | <b>Proposed</b>                         | <b>Amount of Registration Fee</b> |
|---|-----------------------------------|---|---|-----------------------------------|
|   |                                   | <b>Maximum Offering Price Per Share</b> | <b>Maximum Aggregate Offering Price</b> |                                   |
| Ordinary Shares, par value NIS 0.01         | 11,481,660                        | \$2.10(2)                               | 24,061,363                              | \$3,099.10                        |
| Ordinary Shares, par value NIS 0.01         | 1,747,050                         | \$17.55(3)                              | 30,651,993                              | \$3,947.98                        |

- (1) This Registration Statement on Form S-8 covers the following Ordinary Shares of Wix.com Ltd. (the Registrant):
- (i) 276,000 ordinary shares issuable upon the exercise of options granted prior to the date hereof under the Registrant's 2013 Incentive Compensation Plan (the 2013 Compensation Plan), (ii) 11,205,660 ordinary shares issuable upon the exercise of options granted prior to the date hereof under the Registrant's 2007 Employee Share Option Plan (the 2007 Compensation Plan) and, together with the 2013 Compensation Plan, the Compensation Plans), (iii) 1,747,050 ordinary shares that may be issued under the 2013 Compensation Plan, and (iv) pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), an indeterminate number of additional shares that may become issuable under the terms of the Compensation Plans by reason of any share split, share dividend, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant's ordinary shares.
  - (2) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) under the Securities Act on the basis of \$2.10 per share, the weighted average exercise price of the 11,481,660 ordinary shares issuable upon exercise of outstanding options under the Compensation Plans as of the date of this Registration Statement.
  - (3) Calculated solely for the purpose of determining the registration fee pursuant to Rule 457(h) and (c) on the basis of the average of the high and low prices (\$18.90 and \$16.19) of the Registrant's ordinary shares as quoted on the Nasdaq Global Market on November 6, 2013 with respect to ordinary shares reserved for issuance pursuant to options to be issued in the future.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information\***

**Item 2. Registrant Information and Employee Plan Annual Information\***

\* The documents containing the information specified in this Part I of Form S-8 (plan information and registration information and employee plan annual information) will be sent or given to employees as specified by the Securities and Exchange Commission (the Commission) pursuant to Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act). Such documents are not required to be and are not filed with the Commission either as part of this registration statement (this Registration Statement) or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this Registration Statement 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. The Registrant will provide a written statement to participants advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II hereof and including the statement in the preceding sentence. The written statement to all participants will indicate the availability without charge, upon written or oral request, of other documents required to be delivered pursuant to Rule 428(b), and will include the address and telephone number to which the request is to be directed.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference**

The following documents filed by Wix.com Ltd. (the Company) are incorporated herein by reference:

(i) the Company's final prospectus filed on November 7, 2013 pursuant to Rule 424(b)(4) under the Securities Act in connection with the Company's Registration Statement on Form F-1 (File No. 333-191508); and

(ii) the description of the Company's Ordinary Shares contained in Item 1 of the Registration Statement on Form 8-A (File No. 001-36158) filed with the Commission on October 29, 2013.

In addition to the foregoing, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment indicating that all securities offered hereby have been sold or deregistering 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 herein or in a document all or a portion of which is 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 which 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**

Under the Israeli Companies Law, a company may not exculpate an office holder from liability for a breach of the duty of loyalty. An Israeli company may exculpate an office holder in advance from liability to the company, in whole or in part, for damages caused to the company as a result of a breach of duty of care but only if a provision authorizing such exculpation is included in its articles of association. Our articles of association include such a provision. The company may not exculpate a director from liability arising out of a prohibited dividend or distribution to shareholders.

Under the Companies Law, a company may indemnify an office holder in respect of the following liabilities and expenses incurred for acts performed as an office holder, either in advance of an event or following an event, provided

a provision authorizing such indemnification is contained in its articles of association:

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a financial liability imposed on him or her in favor of another person pursuant to a judgment, including a settlement or arbitrator's award approved by a court. However, if an undertaking to indemnify an office holder with respect to such liability is provided in advance, then such an undertaking must be limited to events which, in the opinion of the board of directors, can be foreseen based on the company's activities when the undertaking to indemnify is given, and to an amount or according to criteria determined by the board of directors as reasonable under the circumstances, and such undertaking shall detail the abovementioned events and amount or criteria;

reasonable litigation expenses, including attorneys' fees, incurred by the office holder as a result of an investigation or proceeding instituted against him or her by an authority authorized to conduct such investigation or proceeding, provided that (i) no indictment was filed against such office holder as a result of such investigation or proceeding; and (ii) no financial liability, such as a criminal penalty, was imposed upon him or her as a substitute for the criminal proceeding 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; and

reasonable litigation expenses, including attorneys' fees, incurred by the office holder or imposed by a court in proceedings instituted against him or her by the company, on its behalf or by a third-party or in connection with criminal proceedings in which the office holder was acquitted or as a result of a conviction for an offense that does not require proof of criminal intent.

Under the Companies Law and the Israeli Securities Law, a company may insure an office holder against the following liabilities incurred for acts performed as an office holder if and to the extent provided in the company's articles of association:

a breach of the duty of loyalty to the company, to the extent that the office holder acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;

a breach of the duty of care to the company or to a third-party, including a breach arising out of the negligent conduct of the office holder;

a financial liability imposed on the office holder in favor of a third-party;

a financial liability imposed on the office holder in favor of a third-party harmed by a breach in an administrative proceeding; and

reasonable litigation expenses, including attorneys' fees, incurred by the office holder as a result of an administrative proceeding instituted against him or her.

Under the Companies Law, a company may not indemnify, exculpate or insure an office holder against any of the following:

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a breach of the duty of loyalty, except to the extent that the office holder acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;

a breach of the duty of care committed intentionally or recklessly, excluding a breach arising out of the negligent conduct of the office holder;

an act or omission committed with intent to derive illegal personal benefit; or

a fine or forfeit levied against the office holder.

Under the Companies Law, exculpation, indemnification and insurance of office holders must be approved by the audit committee and the board of directors and, with respect to directors, also by shareholders.

Our articles of association permit us to exculpate, indemnify and insure our office holders for any liability imposed on them as a consequence of an act (including any omission) which was performed by virtue of being an office holder. Our office holders are currently covered by a directors and officers liability insurance policy.

We have entered into agreements with each of our directors and executive officers exculpating them, to the fullest extent permitted by law, from liability to us for damages caused to us as a result of a breach of duty of care, and undertaking to indemnify them to the fullest extent permitted by law. This indemnification is limited to events determined as foreseeable by the board of directors based on our activities, and to an amount or according to criteria determined by the board of directors as reasonable under the circumstances.

The maximum indemnification amount set forth in such agreements is limited to an amount the higher of (x) 50% of our net assets based on our most recently published financial statements prior to the time that notice of indemnification is provided to us; or (y) \$30 million; provided, however, that in relation to indemnification claimed in connection with a public offering of our securities, the amount, if higher, shall be equal to the aggregate proceeds raised by us and/or selling shareholders. The maximum amount set forth in such agreements is in addition to any amount paid (if paid) under insurance and/or by a third-party pursuant to an indemnification arrangement.

In the opinion of the Securities and Exchange Commission, indemnification of directors and office holders for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, however, is against public policy and therefore unenforceable.

There is no pending litigation or proceeding against any of our office holders as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any office holder.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

The exhibits listed on the exhibit index at the end of this Registration Statement are included in this Registration Statement.

**Item 9. Undertakings**

The undersigned Registrant, Wix.com Ltd., hereby undertakes:

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(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 of 1933;

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(ii) to reflect in the prospectus any facts or events arising after the effective date of this 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 this Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement. provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 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 of 1933, 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; and

(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; and

The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Sections 13(a) or 15(d) of the Exchange Act that is incorporated by reference in this 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.

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 Commission 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.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, 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 Tel Aviv, State of Israel, on November 7, 2013.

WIX.COM LTD.

By: /s/ Lior Shemesh  
 Name: Lior Shemesh  
 Title: Chief Financial Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints Avishai Abrahami, Lior Shemesh or Nir Zohar, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power to act separately and full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or his or her or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons on November 7, 2013 in the capacities indicated:

|     | <b>Name</b>          | <b>Title</b>   |
|-----|----------------------|--|
| By: | /s/ Avishai Abrahami | Chief Executive Officer  |
|     | Avishai Abrahami     | (Principal Executive Officer)                                  |
| By: | /s/ Lior Shemesh     | Chief Financial Officer  |
|     | Lior Shemesh         | (Principal Financial Officer and Principal Accounting Officer) |
| By: | /s/ Adam Fisher      | Chairman of the Board  |
|     | Adam Fisher          |  |
| By: | /s/ Betsy Atkins     | Director   |
|     | Betsy Atkins         |  |
| By: | /s/ Ron Gutler       | Director   |

Ron Gutler

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|     | <b>Name</b>           | <b>Title</b> |
|-----|-----------------------|--------------|
| By: | /s/ Yuval Cohen       | Director     |
|     | Yuval Cohen           |              |
| By: | /s/ Michael Eisenberg | Director     |
|     | Michael Eisenberg     |              |
| By: | /s/ Jeff Horing       | Director     |
|     | Jeff Horing           |              |
| By: | /s/ Giora Kaplan      | Director     |
|     | Giora Kaplan          |              |
| By: | /s/ Roy Saar          | Director     |
|     | Roy Saar              |              |
| By: | /s/ Mark Tluszcz      | Director     |
|     | Mark Tluszcz          |              |

**WIX.COM, INC.**

Authorized Representative in the United States

By: /s/ Nir Zohar  
Name: Nir Zohar  
Title: Director

**EXHIBITS**

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 5.1                | Opinion of Israeli, Ben-Zvi, Attorneys at Law, Israeli counsel to the Registrant, as to the validity of the ordinary shares (including consent)                             |
| 23.1               | Consent of Kost Forer Gabbay & Kasierer, a member of Ernst & Young Global   |
| 23.2               | Consent of Israeli, Ben-Zvi, Attorneys at Law (included in Exhibit 5.1)   |
| 24.1               | Power of Attorney (included in the signature page to this Registration Statement)   |
| 99.1               | Wix.com Ltd. 2007 Employee Share Option Plan (incorporated by reference to Exhibit 10.3 of the Registration Statement on Form F-1 of the Registrant (File No. 333-191508))  |
| 99.2               | Wix.com Ltd. 2013 Incentive Compensation Plan (incorporated by reference to Exhibit 10.4 of the Registration Statement on Form F-1 of the Registrant (File No. 333-191508)) |