

Regulation of securities offerings in Israel – a brief introduction

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Governing laws

The Israeli laws of main relevance in this area are the Securities Law 1968 (“the Securities Law”), which regulates the offer of securities to the public in Israel, and the Investment Counselling and Portfolio Management Law 1995 (“the Investment Counselling Law”), which regulates the provision of investment counselling and investment portfolio management services. A third law, the Joint Investment Trust Law 1994, deals with the offer of units or shares in a fund to the public in Israel. These laws are administered by the Israel Securities Authority (“the ISA”). Note that there is no specific legislation governing the activities of trading, dealing or brokerage in securities *per se* (except for the Rules of the Tel-Aviv Stock Exchange, which regulate trading on that stock exchange and the activities of the members of that exchange).

Territoriality

Though Israeli laws are of territorial application, unless otherwise provided, and the above laws do not contain provisions extending their application to activities carried out outside Israel or cross-border into Israel, the Israeli Securities Authority takes the view that the territorial element is supplied if an offer of securities is made to Israeli residents or investment counselling or portfolio management services are provided to Israeli residents, regardless of the location of the offeror or provider. Having said that, it is clear also that if the offeror or provider has no presence in Israel, enforcement of the said laws against them is problematic, to say the least.

Is a prospectus required for the offer of securities?

The Securities Law provides that “A person shall not offer securities to the public other than under a prospectus, the publication of which has been permitted by the [Securities] Authority.” While the law does not specifically define a public offering, it does provide guidance as to what does not constitute a public offering, from which the necessary deduction can be made.

There are two main principles, both of which relate to categories of offerees. Firstly, an offer which is made to no more than thirty five investors will not be classed as a public offering, provided that the number of investors to whom the offeror sells the offered securities, combined with the number of investors to whom it sold securities during the twelve months preceding the said offer, does not exceed thirty five.

Secondly, the law excludes from the count of the thirty five investors certain types of companies, including foreign companies that, in the opinion of the ISA, are capable of obtaining the information required in order to make a decision to invest in the securities, and companies listed in the relevant appendix to the Securities Law (“sophisticated investors”). Such appendix lists, *inter alia*, such entities as banks, insurance companies, provident and mutual funds, venture capital funds, and investment advisors and underwriters investing for their own account.

A recent addition to the list is of a corporate entity (other than one formed for the purpose of purchasing a particular security) the value of whose equity capital exceeds NIS 250 million. This represents a departure from the previous approach which focussed on investment expertise rather

than net worth; note, though, that high net worth individuals (as opposed to corporate entities) still do not appear on the list.

The practical effect of the distinction between public and private offerings is that a private offeror is exempt from the requirement to offer securities only by way of a prospectus.

Marketing

There are two issues connected with marketing by way of such methods as "road shows" or seminars to potential investors. The first is that since the language of the Securities Law is couched not in terms of sales, but of offers, any such seminar, to avoid constituting an offer to the public, would need to be directed to no more than thirty five individuals plus any number of the types of sophisticated investors referred to above.

The second is that the Investment Counselling Law provides that no person may engage in giving investment advice (though there is an exception for advice given to less than five individuals) unless he is the holder of an investment adviser licence or a portfolio manager licence granted under that law. Investment advice includes "giving advice to others regarding the advisability of an investment, holding, purchase or sale of securities and financial assets."

Note further, though, that the Investment Counselling Law excludes from its definition of "securities" "securities that are not listed for trading on a Stock Exchange". Consequently, to the extent that any marketing or seminars only related to such instruments, they would not be covered by the Investment Counselling Law, and would not therefore fall foul of its restrictions.

Prospectus requirements

A prospectus must contain every detail of importance to a reasonable investor considering the acquisition of securities offered therein and may not contain any misleading particular. The regulations may also require the inclusion of such matters as a notice that all necessary approvals and licences for the offering of the securities has been obtained, a notice that a stock exchange has agreed to register the offered securities for trading, details regarding the offer including number and class of shares and rights attached thereto, details regarding the issuer and any subsidiaries and associated companies and financial reports.

The ISA may exempt the offeror from disclosing any item in the prospectus on such grounds as protection of a trade secret or national security:

Sanctions

A person who offers or sells securities to the public other than by an approved prospectus is liable to imprisonment for a term of three years or to a fine.

A person who induces or attempts to induce a person to acquire or sell securities by way of a statement, promise or forecast which he knows or ought to have known to be false or misleading, or by concealing material facts, is liable to imprisonment for a term of five years or to a fine.

Where any such offence specified is committed by a corporation, the directors and the general manager of the corporation shall likewise be criminally liable, unless they can prove one of the following: (a) that they did not know nor were they under any obligation to know of the offence or that they had no way of knowing of the same; or (b) that they took all reasonable measures to prevent the offence.