

Sophisticated Investor/Qualified Customer Exemption For Private Placement Of Securities In Israel



The basic position under the Israel Securities regulatory regime is that every offer of securities to the public requires, inter alia, the filing of a prospectus with the Israeli Securities Authority (the "ISA"). However, in order to assist businesses in accessing capital markets in Israel with minimal regulatory involvement, the Israeli Securities Law (the "Securities Law") and the Law for the Regulation of the Provision of Investment Advice, Marketing Investments and Portfolio Management (the "Investment Advisor Law") provide several exemptions from publishing a prospectus in private placement raise. One significant exemption covers offers made to those types of investors which are legally defined as "Sophisticated Investors" and "Qualified Customers", being investors in respect of whom there exists a presumption, due to their nature, that they are able to make educated investment decisions and therefore do not require the protection of the securities regulator.

Sophisticated Investors and Qualified Customers include institutional financial institutions, such as insurance companies, banks, venture capital funds and mutual funds. Also included are corporate entities whose qualification as a Sophisticated Investor and Qualified Customer is based on equity value alone, as well as individuals who qualify based on a combination of net worth, annual salary, market expertise and transactional experience¹.

In order to be treated as a Sophisticated Investor and Qualified Customer, an entity must not only fall within one of the categories listed in the appendixes to the Securities Law and the Investment Advisor Law, but must also have provided the issuer with a written statement confirming the investor's status as a Sophisticated Investor and Qualified Customer, and acknowledging its understanding of the consequences of being classified as such, including the fact that offers made to such investor would be exempt from the prospectus requirement of the Securities Law.

It should be noted that according to Israeli law, a prohibited "offer" of securities to the public consists of more than allowing a prospective investor to purchase securities. The provision of detailed financial

¹ A full list of entities which qualify as Sophisticated Investors can be found in Appendix I to the Securities Law. A full list of entities which qualify as Qualified Customers can be found in Appendix I to the Investment Advisor Law.

information regarding the securities offered, details about previous returns, previous investment amounts, and the price of the securities offered, are generally considered by the ISA to be an "offer" of the securities and thus prohibited to the public.

The ISA has concluded that issuers must take reasonable steps to ensure that investors purchasing its securities are indeed Sophisticated Investors and Qualified Customers. The ISA has published recommended guidelines as to what verification steps an issuer should take in respect of potential investors seeking Sophisticated Investor and Qualified Customer status. If a potential investor meets the requirements of the verification process, there is to be a presumption that it is a Sophisticated Investor and Qualified Customer, provided that the issuer has no reasonable grounds to believe otherwise.

Prior to closing an investment from an investor, the issuer must obtain, in addition to the investor self-certification, external verification that the investor qualifies as both a Sophisticated Investor and Qualified Customer, that it understands the significance of being so treated, and that it agrees to be so treated.

External verification will vary depending on which qualification status is claimed. For example, status as an Insurer or Bank may be independently verified through various public licensing bodies and is more straight forward to establish. However, verification of qualification status which depends on facts such as net equity, experience in capital markets or number of trades executed during a period requires the receipt of certification letters from an accountant, attorney or possibly, in certain circumstances, some other third party.

It should be noted that the guidelines do not have the force of law and are merely advisory. However, it seems highly likely that a regulatory body or a court would be guided by them in determining whether an issuer has met its statutory burden such that it should be entitled to rely on the exemption from the prospectus requirement.

Pursuant to the guidelines, the date for verification of the investor's status as a Sophisticated Investor and Qualified Customer is the date of the actual sale of the securities. At the time of making the offer to purchase the securities, it is sufficient for the issuer to receive the investor's statement about its compliance with the qualification requirements. In addition, if an offer is made to the same Sophisticated Investor/Qualified Customer during twelve month period, it will suffice to obtain a statement from the investor confirming that the investor still satisfies the qualification requirements.

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