



OPINION

ESMA assessment of Israeli laws and regulations on prospectuses

Legal basis

1. Article 20 of the Prospectus Directive¹ (“PD”) provides that the competent authority of the home Member State of issuers having their registered office in a third country may approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country.
2. This opinion on Israeli laws and regulations on prospectuses should be read in conjunction with ESMA’s opinion on the “Framework for the assessment of third country prospectuses under Article 20 of the Prospectus Directive”².
3. ESMA’s competence to deliver an opinion is based on Article 29(1)(a) of the ESMA Regulation³. In accordance with Article 44(1) of the ESMA Regulation, the Board of Supervisors has adopted this opinion.

Background

4. On 23 March 2011, following an assessment of the requirements of Israeli laws and regulations on prospectuses, and a comprehensive comparison between Israeli requirements and EU requirements set out in the Prospectus Regulation⁴ regarding minimum disclosure requirements for share prospectuses, ESMA published a statement setting out its view on prospectuses drawn up according to Israeli laws and regulations. In ESMA’s view, a prospectus drawn up according to Israeli laws and regulations, together with a wrap containing the information set out in the annex to the aforementioned statement, could constitute a valid prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State.
5. On 1 July 2012 the amended Prospectus Directive⁵ and Commission Delegated Regulation (EU) No 486/2012 entered into force. Following the entry into force of this legislation and the entry into

¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

² ESMA/2013/317

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

⁴ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

⁵ Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

force of Commission Delegated Regulation (EU) No 862/2012 on 22 September 2012, ESMA conducted a review of its existing framework for third country prospectuses and updated and revised it accordingly. The revised framework for the assessment of third country prospectuses under Article 20 of the Prospectus Directive was published on 20 March 2013.

6. This opinion is not a comment on the Israeli prospectus regime but recognises the differences between that regime and the PD. Based on a revised examination of the Israeli prospectus regime, the annexes to this opinion set out the additional information that ESMA considers will need to be included in a wrap to a prospectus drawn up according to Israeli laws and regulations to make it equivalent with the requirements under the PD. This opinion supersedes ESMA's previous public statement on Israeli laws and regulations on prospectuses⁶. In addition to ESMA's view on the requirements for Israeli share prospectuses, this opinion also includes the disclosure requirements for rights issue prospectuses and prospectuses for SMEs and companies with reduced market capitalisation drawn up in accordance with the proportionate disclosure regime.
7. In ESMA's view, a prospectus drawn up according to Israeli laws and regulations, together with a wrap containing the information set out in the annex A, B or C to this opinion (as applicable), could constitute a valid prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State.
8. ESMA will periodically review this opinion. Please be advised, however, that if changes are made to the prospectus regime in the EU after the adoption of this opinion, those changes can affect the material on which the opinion is based. Accordingly, no reliance should be placed on this opinion or ESMA's framework for third country prospectuses pending an update of such by ESMA. Similarly, ESMA will reconsider this opinion if significant changes are made to the Israeli prospectus regime.

⁶ ESMA/2011/37

ESMA statement on Israeli laws and regulations on prospectuses

ANNEX A

The information to be included in a wrap that accompanies an Israeli prospectus for shares in order that the two may together be approved by a competent authority of a home Member State as a prospectus under the Prospectus Directive is:

- a declaration by the persons responsible for the prospectus (Item 1, Annexes I & III to the Prospectus Regulation)⁷;
- a summary established in accordance with the requirements of article 5 paragraph 2 of the Prospectus Directive⁸ and Annex XXII to the Prospectus Regulation;
- balance sheets covering the latest 3 financial years and the audit report in respect of each year (Item 20.1, Annex I to the Prospectus Regulation);
- when applicable, pro forma information (Item 20.2, Annex I to the Prospectus Regulation);
- when profit forecasts or estimates are included in the prospectus, information required by Item 13, Annex I to the Prospectus Regulation;
- as regard members of administrative, management and supervisory bodies and senior management, for at least the previous five years, information on (Item 14.1, Annex I to the Prospectus Regulation):
 - convictions in relation to fraudulent offences;
 - details of any bankruptcies, receiverships or liquidations;
 - details of any official public incrimination and/or sanctions statutory or regulatory authorities;
 - or a negative statement;
- major shareholders: negative statements, if applicable, and a summary of the main relevant provisions of Companies Law will have to be provided (Item 18, Annex I to the Prospectus Regulation);
- legal and arbitration proceedings: negative statement, if applicable (Item 20.8, Annex I to the Prospectus Regulation);
- significant changes: negative statement, if applicable (Item 20.9, Annex I to the Prospectus Regulation);
- information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital; (Item 21.1.5, Annex I to the Prospectus Regulation);
- provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control (Item 21.2.6, Annex I to the Prospectus Regulation);
- where information has been sourced from a third party, a confirmation that this information has been accurately reproduced (Item 23.2, Annex I to the Prospectus Regulation);
- documents on display: an indication of where the documents on display may be inspected, by physical or electronic means (Item 24, Annex I to the Prospectus Regulation);

⁷ Annex I (Minimum Disclosure Requirements for the Share Registration Document) and III (Minimum Disclosure Requirements for the Share Securities Note) of Commission Regulation (EC) n°809/2004.

- risk factors that are material to the securities in order to assess the market risk associated with these securities (Item 2, Annex III to the Prospectus Regulation);
- statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed (Item 3.1, Annex III to the Prospectus Regulation);
- a statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness (Item 3.2, Annex III to the Prospectus Regulation);
- a description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest (Item 3.3, Annex III to the Prospectus Regulation);
- the ISIN (International Security Identification Number) of the shares or other such security identification code (Item 4.1, Annex III to the Prospectus Regulation);
- an indication of the existence of any mandatory takeover bids and/or squeeze-out and sell-out rules in relation to the securities (Item 4.9, Annex III to the Prospectus Regulation);
- an indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated (Item 4.10, Annex III to the Prospectus Regulation);
- if simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate (Item 6.3, Annex III to the Prospectus Regulation);
- when securities are offered to the public, information required by Items 5.1.1, 5.1.4, 5.1.5, 5.1.10, 5.2.3(e), 5.2.3(f), 5.2.3(g), 5.3.3, 5.4.2, 6.5, 7, 8 and 9 of Annex III to the Prospectus Regulation;
- additional information required by Item 10 of Annex III to the Prospectus Regulation;
- the additional information set out in Sections 1 and 2A of Annex XXX to the Prospectus Regulation where the consent is given to one or more specified financial intermediaries or the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.

ESMA statement on Israeli laws and regulations on prospectuses

ANNEX B

The information to be included in a wrap that accompanies an Israeli prospectus for rights issues⁹ in order that the two may together be approved by a competent authority of a home Member State as a prospectus under the Prospectus Directive is:

- a declaration by the persons responsible for the prospectus (Item 1, Annexes XXIII & XXIV to the Prospectus Regulation)¹⁰;
- a summary established in accordance with the requirements of article 5 paragraph 2 of the Prospectus Directive¹¹ and Annex XXII to the Prospectus Regulation;
- balance sheet covering the last financial year and the audit report (Item 15.1, Annex XXIII to the Prospectus Regulation);
- when applicable, pro forma information (Item 15.2, Annex XXIII to the Prospectus Regulation);
- when profit forecasts or estimates are included in the prospectus, information required by Item 8, Annex XXIII to the Prospectus Regulation;
- as regard members of administrative, management and supervisory bodies and senior management, for at least the previous five years, information on (Item 9.1, Annex XXIII to the Prospectus Regulation):
 - convictions in relation to fraudulent offences;
 - details of any bankruptcies, receiverships or liquidations;
 - details of any official public incrimination and/or sanctions statutory or regulatory authorities;
 - or a negative statement;
- major shareholders: negative statements, if applicable, and a summary of the main relevant provisions of Companies Law will have to be provided (Item 13, Annex XXIII to the Prospectus Regulation);
- legal and arbitration proceedings: negative statement, if applicable (Item 15.8, Annex XXIII to the Prospectus Regulation);
- significant changes: negative statement, if applicable (Item 15.9, Annex XXIII to the Prospectus Regulation);
- information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital (Item 16.1.4, Annex XXIII to the Prospectus Regulation);
- where information has been sourced from a third party, a confirmation that this information has been accurately reproduced (Item 18.2, Annex XXIII to the Prospectus Regulation);
- documents on display: an indication of where the documents on display may be inspected, by physical or electronic means (Item 19, Annex XXIII to the Prospectus Regulation);

⁹ As defined in Article 2(13) of Commission Regulation (EC) n°809/2004.

¹⁰ Annex XXIII (Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for Rights Issues) and XXIV (Proportionate Schedule for Minimum Disclosure Requirements for the Share Securities Note for Rights Issues) of Commission Regulation (EC) n°809/2004.

- risk factors that are material to the securities in order to assess the market risk associated with these securities (Item 2, Annex XXIV to the Prospectus Regulation);
- statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed (Item 3.1, Annex XXIV to the Prospectus Regulation);
- a statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness (Item 3.2, Annex XXIV to the Prospectus Regulation);
- a description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest (Item 3.3, Annex XXIV to the Prospectus Regulation);
- the ISIN (International Security Identification Number) of the shares or other such security identification code (Item 4.1, Annex XXIV to the Prospectus Regulation);
- if simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate (Item 6.3, Annex XXIV to the Prospectus Regulation);
- when securities are offered to the public, information required by items 5.1.1, 5.1.4, 5.1.5, 5.1.10, 5.3.3, 5.4.2, 7, 8 and 9 of Annex XXIV to the Prospectus Regulation;
- additional information required by Item 10 of Annex XXIV to the Prospectus Regulation;
- the additional information set out in Sections 1 and 2A of Annex XXX to the Prospectus Regulation where the consent is given to one or more specified financial intermediaries or the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.

ESMA statement on Israeli laws and regulations on prospectuses

ANNEX C

The information to be included in a wrap that accompanies an Israeli share prospectus for SMEs¹² and companies with reduced market capitalisation¹³ in order that the two may together be approved by a competent authority of a home Member State as a prospectus under the Prospectus Directive is:

- a declaration by the persons responsible for the prospectus (Item 1, Annexes XXV and III to the Prospectus Regulation)¹⁴;
- a summary established in accordance with the requirements of article 5 paragraph 2 of the Prospectus Directive and Annex XXII to the Prospectus Regulation;
- a statement that audited financial information covering the last two financial years (or such shorter period that the issuer has been in operation) have been prepared and where own and consolidated financial statements, as the case may be, can be obtained and the audit report in respect of each year (Item 20.1, Annex XXV to the Prospectus Regulation);
- when applicable, pro forma information (Item 20.2, Annex XXV to the Prospectus Regulation);
- when profit forecasts or estimates are included in the prospectus, information required by Item 13, Annex XXV to the Prospectus Regulation;
- as regard members of administrative, management and supervisory bodies and senior management, for at least the previous five years, information on (Item 14.1, Annex XXV to the Prospectus Regulation):
 - convictions in relation to fraudulent offences;
 - details of any bankruptcies, receiverships or liquidations;
 - details of any official public incrimination and/or sanctions statutory or regulatory authorities;
 - or a negative statement;
- major shareholders: negative statements, if applicable, and a summary of the main relevant provisions of Companies Law will have to be provided (Item 18, Annex XXV to the Prospectus Regulation);
- legal and arbitration proceedings: negative statement, if applicable (Item 20.7, Annex XXV to the Prospectus Regulation);
- significant changes: negative statement, if applicable (Item 20.8, Annex XXV to the Prospectus Regulation);
- information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital; (Item 21.1.5, Annex XXV to the Prospectus Regulation);
- provision of the issuer's articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control (Item 21.2.6, Annex XXV to the Prospectus Regulation);

¹² As defined in Article 2(1)(f) Directive 2003/71/EC

¹³ As defined in Article 2(1)(t) Directive 2003/71/EC

¹⁴ Annex XXV (Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation) and III (Minimum Disclosure Requirements for the Share Securities Note) of Commission Regulation (EC) n°809/2004.

- where information has been sourced from a third party, a confirmation that this information has been accurately reproduced (Item 23.2, Annex XXV to the Prospectus Regulation);
- documents on display: an indication of where the documents on display may be inspected, by physical or electronic means (Item 24, Annex XXV to the Prospectus Regulation);
- risk factors that are material to the securities in order to assess the market risk associated with these securities (Item 2, Annex III to the Prospectus Regulation);
- statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed (Item 3.1, Annex III to the Prospectus Regulation);
- a statement of capitalisation and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness (Item 3.2, Annex III to the Prospectus Regulation);
- a description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest (Item 3.3, Annex III to the Prospectus Regulation);
- the ISIN (International Security Identification Number) of the shares or other such security identification code (Item 4.1, Annex III to the Prospectus Regulation);
- an indication of the existence of any mandatory takeover bids and/or squeeze-out and sell-out rules in relation to the securities (Item 4.9, Annex III to the Prospectus Regulation);
- an indication of public takeover bids by third parties in respect of the issuer's equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated (Item 4.10, Annex III to the Prospectus Regulation);
- if simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate (Item 6.3, Annex III to the Prospectus Regulation);
- when securities are offered to the public, information required by items 5.1.1, 5.1.4, 5.1.5, 5.1.10, 5.2.3(e), 5.2.3(f), 5.2.3(g), 5.3.3, 5.4.2, 6.5, 7, 8 and 9 of Annex III to the Prospectus Regulation;
- additional information required by Item 10 of Annex III to the Prospectus Regulation;
- the additional information set out in Sections 1 and 2A of Annex XXX of the Prospectus Regulation where the consent is given to one or more specified financial intermediaries or the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.