

## FINANCIAL REGULATION

# Early achievements

Israel is soon to license online financial trading, and those applying early will enjoy substantial advantages



Dr Dotan Baruch is a partner at Barnea & Co

In 2010 the Israeli Parliament enacted the Securities Law (Amendment no.42), creating the framework for the licensing of online financial trading industry in Israel. The Act is the first attempt by the government to regulate online financial trading which, unregulated, allows rogue operators to cause damage to consumers and the reputation of respectable operators.

The Act, while creating the general regulatory framework, leaves the details of the regime to be provided in secondary legislation (the 'Regulations'), to be drafted by the Israeli Securities Authority (ISA).

The Regulations have been reviewed by the Israeli Parliament's Finance Committee, but have yet to be finalised and approved. As the approval of the Regulations is a precondition to the Act, the Act has not yet entered into force. So for now, the licensing regime is dormant and the industry remains unregulated.

### The Act

The Act applies to a financial operator offering its customers, through a computerised system, the opportunity to buy or sell financial products using the operator's account. The Act sets out the requirement of such operators to obtain a licence, and creates a criminal offence for operators that offer their products and services without one.

According to the Act, the licensee does not have to be an entity incorporated in Israel. This is a big advantage for foreign operators as it allows them to avoid the burdensome need to operate via an Israeli entity and may be beneficial from a tax perspective.

The Act does not limit the number of licensees, nor does it set a time period to apply for a licence. However, as noted below, there is a benefit in applying for a licence shortly after the Regulations (and the Act) enter into force.

The Act has certain mandatory requirements as to how the licensee should conduct itself:

- It may not conduct any other activity other than the licensed activity;
- It is prohibited from providing credit to customers;
- It is prohibited from providing misleading information in any publication provided by it or by third parties providing services on its behalf; and
- The licensee may not do anything that exploits the lack of knowledge or experience of a customer in order to contract in unreasonable conditions or to give or receive consideration which is unreasonably different from the common consideration.

As part of the licensing process, anyone in control of the licensee is required to receive a permit from the ISA. The Act provides the ISA with the authority to revoke such a permit and, in some instances, to limit

the controlling powers of the permit holder, to require the permit holder to sell the means of control held by it and even to revoke the licence associated with that permit holder.

### The Regulations

While the Act was enacted in 2010, the Regulations are still being debated in the Israeli Parliament's Finance Committee. The current draft Regulations deal with a multitude of issues including, inter alia, the licensing process, limitations on the leverage ratio, Know Your Client processes, requirements concerning marketing and advertising, prohibition on the provision of gifts and bonuses to customers, the manner in which customers' funds are to be handled, information to be provided to customers, reports to be filed with the ISA, record-keeping, requirements with regard to the licensee's equity, insurance and minimum liquid assets, as well as licensing and annual fees.

According to the draft Regulations anyone applying for a license within three months from the entry into force of the Regulations will be allowed to continue offering online financial trading products and services without being subject to the Act and Regulations until the earlier of i) a decision of the ISA re the application, or ii) a year from the application date (although this can be extended by the ISA). Such an applicant may continue offering its products and services in Israel without adhering to the Act and Regulations, save for certain regulations concerning marketing materials.

### Timeline

So, despite it being three years since the enactment of the Act, the Regulations have yet to be approved. There are several reasons for this, including ongoing debate as to the various arrangements to be included in the Regulations. Also, in the past few months the Israeli Parliament has practically adjourned due to the elections that were held in January, following which the main task of the Finance Committee was the approval of Israel's 2013/14 budget.

The approval of the Regulations will take more time yet, but I am hopeful that this will occur during 2013. Then we will see Israel change from the Wild West to a well-regulated environment.

**BARNEA & CO.**  
LAW OFFICES

Barnea & Co, Law Offices  
Life Plaza, 6 Hachoshlim St.  
Herzliya Pituach 46724, Israel  
Tel: (+972) 99 600 700  
Fax: (+972) 99 516 002  
Email: office@barlaw.co.il  
Web: www.barlaw.co.il