

THE SPECIFICS OF LEGAL SANCTIONS ON THE STOCK MARKET IN THE REPUBLIC OF IRAQ

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Abstract. The paper focuses on the study of the specificity of civil sanctions in the stock market, where the broker (company, bank) play a fundamental role in the circulation of these stocks, after the completion of the brokerage contract. This responsibility is achieved through the broker's monopoly on trading securities restricted in the market. As well as sanctions imposed within the scope of the stock market. The problem of the research is in the flaws of the Iraqi legislation and comparative laws, and namely Egyptian and French legislation, through the questions, raised in connection with these laws. The answer to them is the main aim of the research. The existing questions focus on the specifics of the civil punishment, implied on broker. Are there any means on the stock market under a brokerage contract that guarantee the rights of the client?

Keywords: Client, Securities, Broker, Existing questions.

1 Introduction

The decision of the client-investor to invest his money in the stock market is accompanied by the necessity to deal with brokers, and, of course, choosing the broker, who has enough experience and knowledge. As far as, according to the law, the task of dealing with securities limited by stock markets is related to agency in trading by an authorized broker, since these markets are one of the main pillars allowing mediation between money supply and demand in order to achieve a balance between the interests of the broker and client-investor, which are parties to the brokerage agreement, and which, as stipulated by law, have corresponding obligations to each other, because of the important role the majority of clients-investors, who do not have experience in the art of negotiating and finding the price levels for the purchase and sale of its securities, play. The absence of questions to the broker can also lead to indifference in its actions in the market.

If the obligations of the broker are the main basis in security trading, its contractual responsibility towards the client is the second consequential basis, which the legislator intended to regulate during the organizations of these obligations, as the presence of the broker lowers the risk for the client-investor in the process of searching for the companies, the character of financial activity and plans for the future, especially in the light of the economic events, which influenced the prices of the securities and the accompanying technological revolution.

2 Methods

We will try to solve all these problems and answer the questions, connected with the subject of research, through analyzing all the available information and ideas on the issue we are interested in, following the analytical and comparative methods of the corresponding law aspects, through comparison with the legislation of Iraq, on the one side, and the legislation of Egypt and France, on the other side, with the aim to identify and point out the laws and ambiguities associated with this topic. And we conclude this study with a summary containing the most important conclusions and recommendations.

3 Results and Discussion

The broker at the stock market is a legal entity that has a license to sell and purchase securities and trade them in the interests of the client for a certain commission, according to the brokerage agreement, it assumes a number of obligations, as it carries out clearing and settlement procedures and gives appropriate advice and recommendations, and also agrees to keep professional secrets, and fulfill its obligations without compromising the interests of the client, who also agrees to provide securities, pay the price, commission and expenses (Al-Thanoun, 2006).

The violation of the broker's obligations under the broker agreement in the stock market represents the main basis for mistakes in contractual responsibility, the provisions of some forms of violation of these obligations are similar, as will be indicated in the text of this study, but the consequence of the mistake is damage to the client and this is the second basis. The damage to the client should be the result of the broker's mistake, so the casual connection between the broker's mistake and damage to the client is the third pillar of the responsibility, the casual connection here is subject to the same general rules contained in the Civil Code. In this regard, we will rely on these rules.

Having determined the basics of the broker's contractual responsibility, we will have to state the provisions regarding this responsibility, since the enormous practical progress observed in the stock market is in decline, which is a consequence for all aspects of securities trade. These peculiarities clearly affect the legal positions of both the broker and the client, the broker's responsibility conditions towards the client, determine the limits of its obligations so as not to exceed or not violate them, and to be away from civil sanctions imposed on it.

Besides, the constant interaction between the broker and the client through a brokerage agreement in the stock market reflects the development of the economic activity and the fact that the success of this activity depends on its correspondence with the existing results of the development, not to mention its influence on the rules regulating the stock market.

Civil sanctions are based on the idea of remedy or compensation of damage, this idea is due to the general supremacy of law, according to the rules of damage, which are also recognized by Islamic law.

Besides, the majority of legislative acts, including the considered legislation and the economy, include various sanctions in order to counter the harmful actions of the broker in the stock market that could compromise the interests of the client.

Compensation is one of the most important of the sanctions. Initial compensation is determined by the judge's assessment. The court shall evaluate in cash the compensation equal to the damage incurred by the client as a result of the mistake made by the broker in the stock market, in addition to the profit loss evaluated in cash. In-kind payments can also be used as compensation, since, first of all, it is necessary to restore the situation existing before the mistake was made by the intermediary-debtor (Al-Hadithi, 1987).

Article 95 of the Regulatory Instructions stipulates that the intermediary-violator, which caused damage to the client, shall compensate for the damage caused to the latter.

The article states: "The seller, the buyer and the intermediary-violator, causing the damage, bear responsibility for the damage, cause as a result of the transactions carried out in the market, not subject to registration, due to violation of the provisions of the Law "On the Companies", the Law "On the Market", applicable laws and legislative acts."

In addition, the Egyptian law "On the capital market" stipulates that the broker shall pay compensation to the affected client, as indicated in the executive provisions of article 96 of this law: "A brokerage company acting contrary to the instructions of the client or for securities not legally used or not reserved, must provide substitute papers within one week from the date of the claim, or pay compensation to the client without compromising his right to refer to the offender."

In this text the reference to two kinds of compensation is mentioned, and namely the compensation in the in-kind form through obligation of the broker to provide the client with the alternative securities and monetary compensation if there is no in-kind compensation.

As for French legislation, the laws, relating to securities do not provide for compensation, in case the broker violates its contractual obligations to the client in the stock market, this issue is left to the discretion of the general rules governed by civil law (Faidullah, 2006).

It should be noted that Section 21 of the United States "Security Exchange Act" of 1934 provides clients with the right to file a claim for compensation as a result of the broker's violation of its obligations to the client. Some clients are able to file class action lawsuits with competent civil courts if these clients claim false statements regarding material facts omitted by the broker related to the sale or purchase of securities.

However, these group cases initiated by these agents are connected with some difficulties, since the claim of false statements by the broker must be confirmed by all affected customers.

The United States "Security Exchange Act" states that the amount of compensation is restricted to the difference between the purchase price of a security paid by the applicant, or the sale price received by the applicant, and the market price within 90 days from the date of correction of the incorrect information or from the moment of publication of information lost on the market (Al-Okaili, 2007).

In connection with this a question arises: what is the amount of the intermediary's liabilities in the case of the need to compensate others for the actions of its representative?

The intermediary acts as a commercial company, which puts us before implementing the provisions of the Law "On Iraqi Companies" No. 21 of 1997, as amended, to adapt its rules to be applied to this issue, and in this area the Iraqi legislator has provided for the regulation of relations between managers and companies without references to the liability of companies to the third parties for the actions of its managers, as stated in Section 121 of this Law (Yamlaki, 2006; Boroomand et al, 2016).

1. Each company should have an authorized manager from among its members or other persons, who possesses the experience and competence in the sphere of the company's activity. The company appoints this person and determines the terms of its duties, powers, salary and remuneration from the board of directors of the joint-stock company and the general body in other companies (Mardani & Fallah, 2018).
2. "It is not allowed to combine the position of the chairman or vice-chairman of the board of directors of a joint stock company and the position of an authorized manager. A person cannot be an authorized manager for more than one joint stock company".

The responsibility of the company before the third parties is assigned to the representative of this company, in addition to the statement describing him as a representative of the company. Correspondingly, to determine the responsibility of the intermediary for the actions of its representative, the representative while carrying out the transactions shall inform the person dealing with him that he acts as a representative of the broker, and bears responsibility for his actions (Jabrkomani, 2006). A representative signing a contract in his personal name is responsible for the consequences of his actions if the third party does not prove the fact that they interacted with the representative on behalf of the broker and his account (al-Nahi, 1949), in which case the latter will be associated with the actions of his representative. The broker compensates for losses incurred by a third party, but then has the right to apply to the representative for compensation in order to avoid the enrichment of the latter at his own expense for no reason, on the grounds of Article 243 of the Civil Code of Iraq No. 40 of 1951, as amended, which states:

"Any person or non-privileged person who made illegal profit at the expense of another person shall pay compensation to the affected person for the damage caused by this profit within the limits of his profit, this obligation remains valid even in case of late receipt of profit."

The intermediary's contractual liability is preserved, however, if the representative receives from it a special benefit relating to any representative, provided that the latter has concluded a contract on behalf of the intermediary under conditions of good faith, the intermediary has the right to get rid of liability, proving that others are aware that the representative was dealing with an intermediary in their own interests, i.e. interests relating to any representative (Al-Essa, 2013).

This provision is confirmed by article 17 of the repealed Law "On Iraqi Companies" No. 31 of 1957, which states:

"The company bears responsibility for the actions of its managers before the third parties, if such actions are within their authority, and the behavior refers to the image of the commercial company, and also in the cases of using its signature in its personal interests, if these actions are unconscientious".

As for the Egyptian legislation, the legislator emphasized the responsibility of the broker for the actions of its representative, in the cases, when the representative acts within his powers and ultra vires, as can be seen in the text of Section 55 of the Egyptian Law "On Companies", No. 35 of 1981, as amended, stating that "Any action or act issued by the general meeting, board of directors, one of its committees or any of the members of its administration in the course of the administration's activities in the usual manner is obligatory for the company". And in cases of any action or publication of an act by exceeding the authority, it is not the company's responsibility to pay for the acts and any actions actually performed, since the company is not authorized to carry out such actions or activities."

The French legislation is clearly exceptional with respect to the responsibility of the company for the actions of its managers in interacting with others, since the provisions regarding their authority are obligatory for all the parties (Tawfik, 2012).

Based on the above, we conclude, that the broker is responsible for the actions of its representative carrying out the transactions in the stock market with respect to bona fide third parties. In the case that any representative exceeds his powers, granted to him for trading in the market, according to the rules, related to the company's responsibility or the actions of its representatives, taking part in the aims of the company, and exceeding their powers, the broker shall compensate the damage caused by his representative, but it is also entitled to apply to the representative, with the aim to avoid his enrichment for no reason.

As a general conclusion regarding the recovery of compensation, we note that any client who incurred material or moral damage as a result of the sale or purchase of securities by a broker in the interests of the latter is entitled to demand compensation, provided that the sale of such securities was a violation of the Law "On securities", regulations, instructions and decisions adopted in accordance with it, the fact of losses was proved, and the recommendations provided by the broker, its advices or reports did not contain essential information for the adoption of the relevant decision, on the sale or purchase of securities, the availability of evidence that all those affected the decision to sell or purchase and compromised the interests of the client investing in the stock market (Abdul, 2007).

4 Summary

The punishment for broker's breach of obligations, entailing contractual liability, is not limited to compensation, but may also lead to the cancellation of the transaction or its invalidity, as specified in article 97 of the regulatory instructions for securities trading in the Iraqi market of 2004: "The manager of the trading platform is entitled to cancel the offers recorded on the board, if they constitute a serious deviation in prices prevailing in the market for the period of this session, and shall immediately notify the Executive Director."

The Egyptian Law "On the capital market" No. 95 provides the penalty for the cancellation of some unlawful breaches on the part of a broker, as the article 8 of the law in force states: "Anyone

wishing to enter into a transaction in excess of 10% of the nominal share in the capital of one of the companies offering shares by open subscription shall notify the company at least two weeks before the transaction. Within one week from the date of notification, the company shall notify each shareholder owning at least 1% of the company's capital. Violation of the provisions of the first paragraph entails the cancellation of the transaction without affecting the person responsible for the violation, and applies to shares owned by a member of the board of directors of the company or one of its employees with a nominal share of 5% of the company's capital."

The article points out, that the cancellation of the transaction represents the termination of the agreement, in accordance with which it was concluded, the avoidance of consequences and the restoration of the initial situation, as it was before the consummation of the transaction, so that the shares or bonds remained in the ownership of the original owner without transfer to the ownership of the buyer. The invalidity of the transaction or unlawful acts are the basis for non-execution of orders by the broker, and the client's offer is that all legal aspects of the transaction in question be avoided.

As for French legislation, in the cases of some breaches on the behalf of the suppliers of the investment operations, being intermediaries, relating to the rules of the market management and the breach of the rules of the monopoly on securities, which requires them to be responsible for their actions, then such actions shall be absolutely invalid, since they relate to public order.

In connection with this the French legislator demanded that the financial instruments were sold and transferred to the regulated markets through the suppliers of the investment services, otherwise the action would be void.

5 Conclusion

Having finished the comparative research on the specifics of civil sanctions in the stock market, we came to a number of conclusions and recommendations and summarized them:

The broker is a legally authorized entity, acting as a company or a bank, carrying out the sell and purchase of the securities, and acting at the expense of the investing client for the commission, paid by the latter to the broker.

The Iraqi legislator imposes a number of obligations on the broker under the brokerage agreement in the stock market, the breach of which leads to the execution of the broker's contractual liability, with the exception of the obligation to disclose the client, since the Iraqi legislator has not provided a text exempting the broker from contractual liability in case of violation of this obligation.

The client-investor is not entitled to the complete compensation of the damage, incurred because of the broker's mistake, if he took part with the broker in causing damage if the broker does not accept the mistake made by the client, and, consequently, the contractual liability is divided between them in the amount of the damage caused by each of them.

The compensation the client is entitled to shall be in the cash equal to the damage incurred by the client, without losses., but it is not the only way to remedy the consequences of the damage, because it can also be paid in-kind, obliging the intermediary to restore the initial situation .

The right of the client to the compensation is not absolute, because first he needs to prove that he incurred the financial damage as a result of sell and purchase of the securities by the broker in the violation of the legislation, norms and instructions on the securities.

The research shows that compensation is not the only penalty imposed on the broker, as comparative legislation provides the cancellation or the invalidity of the transaction consummated by the broker, if it represents a deviation in the price level or in the case of any illegal violations by the broker.

We recommend activating civil sanctions, imposed on broker in the stock market, and namely the compensation, cancellation or invalidity of the transactions, with the necessity to conduct some judicial procedures until a decision is made on the cancellation or invalidity of a transaction with warning the broker by a competent court, and also take some precautions to ensure adequate protection for the client.

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