The new instructions for regulating financial services companies dealing with foreign exchanges for the year 2020

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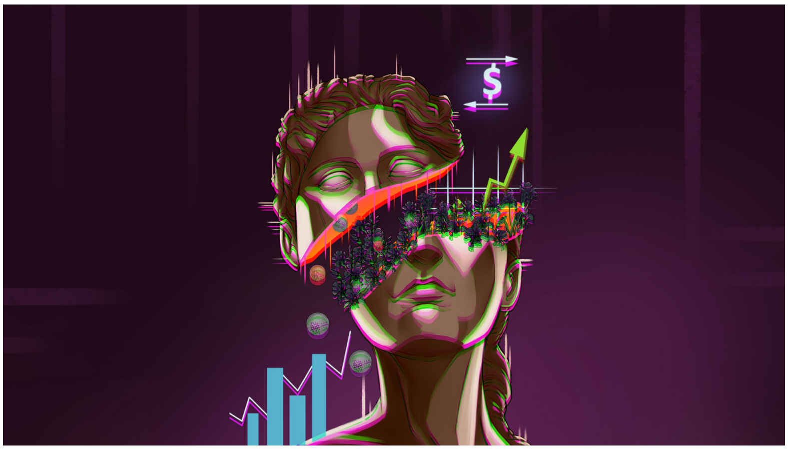

In recognition of the investment appetite for developing markets and CFD offerings Jordan has been opening up for its financial service providers to not only deal in local stocks, but to also have the opportunity to trade in offshore foreign markets. In this respect, the Jordanian Securities Commission ('JSC') has introduced legislation to regulate the influx of new licensees seeking to deal with those markets.

In Jordan, stocks and financial instruments are regulated by the JSC. Such dealings are split into two categories: either dealing in local markets; or dealing in foreign markets. This article focuses on the regulation of financial services companies dealing with foreign markets ('FX Licence') and the recent instructions introduced for this purpose and we highlight the main amendments and additions included as opposed to the previous instructions (which were released in 2017).

Interestingly, the instructions for Regulating Financial Services Companies Dealing with Foreign Exchanges for the year 2020 (the 'New FX Instructions) were introduced following a period of suspension of granting any new FX Licenses by the JSC. Realising the risk relating to granting multitude of licenses in high risk financial areas would be detrimental and the difficulties in regulating the same would be increased, the JSC was determined to improve the safeguards and create a more robust legal environment prior to continuing to allow the grant of additional FX Licenses.

The New FX Instructions entered into force on the 2, January 2020, and replaced the Instructions for Regulating Financial Services Companies Dealing with Foreign Exchanges for the year 2017 ('Old FX Instructions'). The New FX Instructions introduced several prominent changes and amendments in relation to dealing with foreign markets. The main updates are outlined below.

The main amendments the New FX Instructions

The New FX Instructions introduced a new definition for Foreign Intermediary as any foreign intermediary who deals with any person licensed by the JSC ('FX Licensee'), whereby the foreign intermediary must be licensed and regulated by the authorised certifying regulator in the home country of the Foreign Intermediary. The New FX Instructions stipulate that, in the event that a FX Licensee deals with a Foreign Intermediary, the said intermediary must be certified and included in the JSC's list of authorised Foreign Intermediaries in order for the FX Licensee to be able to enter into agreements and/or agency contracts with the said licensed Foreign Intermediary.

Furthermore, any agreements between the FX Licensee and the Foreign Intermediary must include the following:

1. the certification of the Foreign Intermediary from the relevant authorised party;
2. outline of the mechanism for receiving and giving instructions;
3. specifics regarding the governing law and jurisdiction of the agreement;
4. details regarding the commissions and fees;
5. disclosure of all material aspects of transactions;
6. all KYC information relating to the clients; and
7. details of financial agreement between the FX Licensee and the Foreign Intermediary.

It is a prerequisite for a company to obtain a financial services licence ('Licence') prior to becoming an FX Licensee. Both licenses must have a minimum threshold covering the share capital of the FX Licensee, in addition to granting the JSC an unrestricted and irrevocable guarantee for a specific amount. The New FX Instructions impose additional share capital adequacy requirements, which include, but are not limited to: increasing the minimum share capital for Financial Intermediary for Third Parties to 3,000,000 JOD (approximately US$4.2 million) from 1,000,000 JOD (approximately US$1.4 million); increasing the minimum amount of the guarantee from 350,000 (approximately US$500,000) JOD to 500,000 JOD (approximately US$705,000); increasing the minimum share capital for Investment Management to become 3,000,000 JOD instead of 1,000,000 JOD; and increasing the minimum amount of the guarantee from 250,000 JOD (approximately US$350,000) to 500,000 JOD.

Additionally, the New FX Instructions increased the list of FX Licensee prohibited actions to include the following:

1. opening account for minors;
2. opening mutual accounts which serve more than one beneficiary;
3. opening more than five sub-accounts for the same beneficiary in order to deal with foreign markets;
4. payments to beneficiaries in cash; and
5. dealing with virtual currencies or any other items prohibited by the JSC or by the Central Bank of Jordan.

In light of the current international shift towards safe investment and risk awareness, the New FX Instructions include a prohibition on the FX Licensee which stipulates that the said licensee is not permitted to mislead a customer into believing that the investment is guaranteed nor will it ensure a quick, high return of profit.

Additionally, it is stipulated that if a FX Licensee wishes to market the services or products in any way, it must include precautionary phrases clearly outlining the high risks involved in dealing with foreign stock markets in all advertisements, and such precautionary phrases must also be included in the FX Licensees' website and social media accounts.

The New FX Instructions grant the JSC the right to appoint an external auditor, other than the one appointed by the FX Licensee, if the JSC deems it necessary. The said audit shall be performed at the expense of the FX Licensee.

Finally, the New FX Instructions state that the FX Licensee must reconciliate its position pursuant to the New FX Instruction within six months from date of its entry into force. Additionally, the FX Licensee must reconciliate its position in relation to the minimum share capital requirements within three years as of the date of entry into force of the New FX Instructions.

Summary of general requirements for obtaining FX Licence

The outline of the requirements to qualifying as a FX Licensee are as follows:

1. the applicant must be a Financial Services Provider licensed by the Commission;
2. the minimum share capital for the licensee must be between JOD 30,000 (approximately US$420,000) and JOD 3,000,000 depending on the nature of the service to be conducted by the licensee;
3. the application must be submitted in the required form, accompanies by, amongst others, the following:
    1. the memorandum and articles of association;
    2. an organisation chart of the company including a specialised unit for dealing with foreign stocks and markets;
    3. the working procedures for all dealings and proposed business to be conducted with foreign stocks and markets;
    4. corporate governance procedures;
    5. risk management and risk appetite procedures;
    6. AML and CTF procedures and audits, in addition to KYC requirements;
    7. proof that the money used for conducting the services is from a legitimate source and that the applicant is the true beneficiary of the company and the share capital;
    8. an undertaking stating the validity and accuracy of the provided documentation and information; and
    9. any other information that the Commission deems necessary.

In light of the above developments, it is hoped that increased regulation of foreign market, will enhance the safety as well as the integrity of foreign dealings, while providing a platform in Jordan for licensed entities to deal in markets on a broader scale. Additionally, our dialogue with the JSC has evidenced that financial service providers have been applying for the FX Licence pursuant to the New FX Instructions, however no new licenses have been granted as of yet.

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