

The New Instructions for Marketing or Selling Non-Jordanian Securities in Jordan

Faisal Raad - Special Consultant - Banking and Finance

f.raad@tamimi.com - Amman

Thamer Shomar

Th.Shomar@tamimi.com - Amman

Until recently it was practically possible for offshore entities to market and/or sell non-Jordanian securities in Jordan without any regulatory approvals or use of a locally licensed company, but this era now appears to be at a close. The rise of such activity over the last several years prompted the need to ensure that all sector participants are on an even playing field and that the interests of local investors are sufficiently protected. To this end and pursuant to the Securities Law No (18) of 2017 (the “**Securities Law**”), the Jordan Securities Commission (the “**Commission**”) has introduced the Instructions for Marketing or Selling Non-Jordanian Securities in Jordan of 2021 (the “**Marketing Instructions**”) the intention of which is provide for greater clarity on the roles, rights and obligations of all relevant parties with respect to any and all activities relating to marketing and/or sale of non-Jordanian securities in Jordan, including any ancillary activities relating to the promotion or advertisement of the same (the “**Marketing Services**”).

The Marketing Instructions clearly limit the provision of Marketing Services to locally licensed Financial Service Companies and prohibits any unauthorised party from conducting the same in Jordan. Under the Marketing Instructions, Financial Service Companies are defined as “a legal person engaged in the activities of a financial broker (agent or principal), an investment manager, a financial advisor or issuer, or any other activities arising pursuant to the Securities Law, any regulations, instructions or decrees issued thereto”. Consequentially, any and all foreign entities wishing to market or sell non-Jordanian securities in Jordan will have to do so by utilising a locally licensed Financial Services Company.

In order for a Financial Services Company to commence the provision of Marketing Services or any activity directly or indirectly relating to the same, they must first procure the approval of the Commission’s Board of Commissioners (the “**Board**”) and are required to enter into an agreement relating to the non-Jordanian securities with the relevant Issuer. For these purposes, an Issuer includes the issuer of non-Jordanian securities registered or licensed by a regulatory authority comparable to the Commission.

In order for the Financial Services Company to obtain the Board’s approval, they must first submit an application to the Board in an approved format along with the following information, among others (the “**Application**”):

1. a statement of the activities that the Financial Services Company wishes to conduct with regards to the Marketing Services it wishes to perform;
2. the form of the agreement to be executed between the Financial Services Company and the investor;
3. officially certified documents relating to the issuance of the non-Jordanian securities that the Financial Services Company wishes to sell, market, promote, or advertise within Jordan, including, any publication relating to the issuance and any documents relating to the same;
4. officially certified documents relating specifically to the Issuer, including, their memorandum and articles of association, and official certificates specifying its registration and the regulatory authority to which it is subject in the country of registration and issuance;
5. the signed agreements between Financial Services Company and the Issuer and/or issuance manager;
6. the agreements to be signed between the Financial Services Company and any other party for the purpose of engaging in and the provision of Marketing Services;
7. information and details relating to the non-Jordanian securities that the Financial Services Company

- wishes to market and a statement regarding their type and value;
8. the financial statements of the Issuer; and
 9. any other information or documents requested by the Board upon the submission or review of the application.

The Board shall review the Application and ancillary documents within thirty days from the date of submission.

To ensure that the Financial Service Companies perform their obligations under the Marketing Instructions, the Board is empowered to require the Financial Services Company to provide an unconditional bank guarantee or any other form of security in favour of and in a form acceptable to the Board. Additionally, the Financial Services Company is liable for any mistake or act of negligence arising from its Marketing Services and any acts involving fraud, misrepresentation, the provision of incorrect or misleading documents or information to the Board, the investor, or any other third party. Particularly, such liability shall also extend to the Chairman of the Board of Directors of the Financial Services Company, the Members of its Board of Directors, its executive committee or its general manager, as applicable, , shall be jointly and severally liable with the Financial Services Company for the perpetration of any such acts or the violation of any provision of the Marketing Instructions and for any harm suffered by the investor or third party arising therefrom.

In addition to the above-mentioned obligations, the Marketing Instructions require the Financial Services Company to perform the following, among others:

1. provide the investor with any and all information specified in the Application prior to its provision of the Marketing Services;
2. execute an agreement with the investor specifying the parties' rights and obligations relating to provision of the Marketing Services, wherein the agreement will include a confirmation that the investor has reviewed all documents relating to the non-Jordanian securities, that the investor is aware of and understands the risks, returns, and tax implications relating to the investment, and a clarifying statement relating to the risks associated with the investment;
3. notify the investor that the non-Jordanian securities are not registered with the Commission;
4. market and or sell the non-Jordanian securities within the period of time approved earlier by the Commission and in accordance with the medium of advertising approved by the Commission with respect the language used and the manner in which the advertising shall take place; and
5. pay any and all fees determined by the Commission in accordance with relevant regulations and instructions.

It is worth noting that as a precautionary measure, the Commission is entitled to classify the categories of investors that the Financial Services Company may direct their Marketing Services to, based on the Investors' requisite level of experience and professionalism, in addition to setting the minimum investment level for each category of Investor.

The Marketing Instructions also require the Financial Services Company to ensure that its agreement with the Issuer contains, at a minimum and among others, the following provisions:

1. a representation by the Issuer that it is duly licensed by and registered with the relevant authority comparable to the Commission in the country where the non-Jordanian securities are issued, and the Commission shall determine the required measures to confirm the same;
2. governing law and jurisdiction provisions relating to the resolution of any dispute between the Financial Service Company and the Issuer, dispute resolution measures, and termination options;
3. a provision specifying any and all costs and fees agreed to between the Financial Services Company and the Issuer;
4. a provision obligating the Issuer to immediately notify the Financial Services Company of any material event that adversely affects the Issuer's license or registration with the regulator in its country,

- including any determination by said regulator suspending or termination the Issuer's license or registration; and
5. a provision obligating the Issuer to immediately notify the Financial Services Company of any material change with respect to the information contained in the non-Jordanian securities issuance document and any material circumstance or information that directly or indirectly affects the sale and marketing of the non-Jordanian securities in Jordan and or in the investment in the same during the period of time relating to the marketing and or sale of the non-Jordanian securities.

In light of the above, the expectation is that the Marketing Instructions will add greater clarity to the legal framework underpinning the marketing and sale of non-Jordanian securities in Jordan and afford greater protection to the interests of the investor, while simultaneously providing an effective platform to enhance growth of this burgeoning sector in Jordan.

Given the new level of regulatory attention being placed on the marketing and sale of non-Jordanian securities in Jordan, it is recommended that all offshore Issuers and local Financial Services Companies pay greater attention and care to their offerings in Jordan.

Al Tamimi & Company's Banking and Finance team regularly advises on financial agreements and transactions. For further information please contact [Faisal Raad \(f.raad@tamimi.com\)](mailto:f.raad@tamimi.com) or [Thamer Shomar \(Th.shomar@tamimi.com\)](mailto:Th.shomar@tamimi.com).