

# The Specificity of the Error Element in Civil Liability for Companies Dealing in Foreign Stock Exchanges

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**ABSTRACT:** *Jordanian companies deal in the foreign stock exchanges and taking into account the interests of customers require special attention from the legislator, as it is one of the most important transactions that are characterized by modernity, which need specialized legal studies due to the difficulty and complexity of these transactions and the very high risks they face due to their nature, these companies may violate the laws and regulations and the obligations they dictate and cause serious harm to investors in the absence of technical parity between the parties to the contract and in the absence of model contracts. It protects the parties alike, and also the nature of serious risks in trading imposes the question of error as a pillar in the civil responsibility of companies dealing in foreign stock exchanges because of its privacy stemming from the regulatory nature of the obligations of companies dealing in foreign exchanges, taking into consideration that these companies are professional for this work and have a technical privilege, as well as have control that enables them to intervene in trading operations in the event of a breach of their obligations, and a conflict of interest may occur at times. Especially if the ownership of the local and foreign intermediary is for the same legal person. From this point of view and as a result of the danger of trading in foreign stock exchanges and because of its impact on economic and social security in the Kingdom, it was necessary to search for the corner of error and a statement of its privacy.*

**KEYWORDS:** foreign stock exchanges, local intermediary, foreign intermediary.

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## INTRODUCTION

Despite the issuance of the Law No. (1) of 2017 regulating deal in foreign stock exchanges, which emphasized the oversight, supervisory and regulatory role of the Securities Commission, towards

these companies that deal in foreign stock exchanges and the Central Bank of Jordan towards banks dealing in foreign stock exchanges, it is devoid of special rules for civil liability, and it is known that the contractual bond is the basis of the relationship between the client and the company, and the legislator has stressed the need for specific items in the agreement, as required that the terms of the agreement be compatible with the law regulating dealing in foreign stock exchanges and the law of the Securities Commission and the regulations, instructions and decisions issued pursuant thereto, and in the light of a model and unified contract for companies dealing in foreign stock exchanges, necessity arose to indicate the privacy of the error corner for companies dealing in foreign stock exchanges, and this requires a statement of the commitment of companies dealing in foreign stock exchanges whether to exert care or achieve a result, this study may be the start of building the nucleus of the most important pillar in the civil liability of companies dealing in foreign stock exchanges and highlighting the privacy of the error and protecting those harmed by the result. The problem of searching in the privacy statement lies in error as a pillar of civil liability for companies dealing in foreign stock exchanges.

#### **Definition of some search terms:**

Article (2) of the Law regulating dealing in foreign stock exchanges defines No. (1) of (2017) some terms as follows:

**Foreign Stock Exchange:** It is defined as any financial market outside the Kingdom, whether regulated or unregulated, in which securities of all kinds, foreign currencies, precious metals or any other commodities or financial instruments are transacted.

**Financial Services Companies:** A licensed legal person who carries out one or more of the financial broker's business, the broker for his account, the investment trustee, the investment manager, the financial advisor, the issuance manager or any other activity determined by the Securities Commission in accordance with the Securities Law and the regulations, instructions and decisions issued pursuant thereto.

**Local Broker:** Every legal person approved by the Jordan Securities Commission at the ASE to carry out various activities related to securities for his own account, or on behalf of investors within the ASE.

**Foreign Broker:** It is a globally accredited company that allows it to practice trading operations in the global stock exchange and represents a link between the global stock exchange markets and the trader.

#### **Research Objectives:**

The current research seeks to achieve the following objectives:

- Disclosure of the error in the civil liability of companies which deals in foreign stock exchanges in Jordanian law.
- A statement of the nature of the obligation of companies dealing in foreign exchanges.
- Standing on the legal texts that the legislator is obligated to take into consideration in the contract and contained in the law regulating dealings in Foreign Exchanges for the year

(2017) and in the Jordanian Securities Law or the regulations, instructions and decisions issued pursuant thereto.

### **Research importance:**

The importance of the current research is due to the following:

- Standing on the legislative developments in the statement of error in the civil liability of companies dealing in foreign stock exchanges in accordance with Jordanian law and the use of foreign jurisprudence as much as possible due to the scarcity of decisions at the Jordanian Court of Cassation.
- Explain the importance of having special rules for civil responsibility to protect dealers with companies dealing in foreign stock exchange.
- Disclosure of the obligations and conditions to be met in the contract concluded between companies dealing in the foreign stock exchange and between customers and indicate the extent of their legitimacy.

### **RESEARCH METHODOLOGY**

In order to achieve the desired purpose of the research, we took the descriptive and analytical methodologies by studying the relevant legal texts and foreign jurisprudence, references and legal literature on the subject of the research and then reviewing and analyzing them in order to reach correct results and clear answers as much as possible to answer the questions posed.

**Search limits:** The limits of the current research are as follows:

**Objective limits:** The error that gives rise to the civil liability of companies dealing in the foreign stock exchange in Jordanian law and the error that entails the civil liability of banks for their dealings in the foreign stock exchange is outside its limits of the study.

**Spatial boundaries:** In the Hashemite Kingdom of Jordan, the Law No. (1) of (2017) regulating dealing in the foreign stock exchange and the law of the Securities Commission and the regulations, instructions and decisions issued thereunder.

**Time limits:** until the end of this study.

### **General Framework for Companies Dealing in Foreign Stock Exchanges**

The question arises in contractual obligations in some professional dealings or organized by the legislator independently about considering the error or breach of contract in all cases because it is linked in the contract, and there is no dispute that the error is the main pillar of civil liability, whether contractual or tort, the error in tort liability is the duty of proof as in the laws of Egypt and France, where it is based on the elements of perception and **enumeration or infringement**, while the tort error in Jordanian law is represented in the act leading to the damage so the liability of third parties distinguished when there is damage and causal relationship between them based on Article (256) of the Jordanian Civil Code, the error in contractual liability in various takes the forms of non-implementation or delay in implementation or implementation defectively, but the contractual error related to a special legal organization as in the error of companies dealing in

foreign stock exchanges represents a situation that requires study and therefore we will divide this section into two requirements show in the first what the stock markets, we show in the second requirement is the most famous international markets dealing in stock foreign exchanges.

**The first requirement:** What the stock markets?

**Definition of securities:** Article (3) of the Jordanian Securities Law stipulates that such securities mean - 1- securities means any ownership rights or any indications or data recognized as securities, whether local or foreign, which the board agrees to consider as such. See Article (1/3) of the Jordanian Securities Law of (2002).

#### **Definition of Securities Markets:**

The issue of stock markets has become of great interest in developed and developing countries alike, due to the important role these markets play in mobilizing national savings and directing them into investment channels that support the national economy and increase the welfare rates of its members (Isam,2010) The stock market is defined as a system under which sellers and buyers of a certain type of securities or a specific financial asset are combined, where investors can buy and sell a number of stocks and bonds within the market either through brokers or companies operating in this field, but with the growth of networks and means of communication, this has led to reducing the importance of being present at the headquarters of the central stock market and thus allowed dealing from outside the market through brokerage firms spread in different countries.

The stock market is defined as the market in which securities are dealt with by buying and selling in a way that constitutes one of the main channels in which money flows between individuals, institutions and various sectors in society, which helps in mobilizing and developing savings and preparing them for the investment areas needed by the national economy (Islam,2010).

#### **The historical development of stock markets**

The origins of the markets to the Romans are the first to know the financial markets, by establishing what is known as (Collegin marcaterum) in the fifth century BC, as well as the Greeks established a barter shop in (Athens) was called (Emporium) as well as there were markets for Arabs in ancient times, and commercial trips they make, whether to Yemen in the winter, or to the Levant in the summer, and this is what was decided by the Holy Qur'an in Surat Quraysh, where God Almighty said: (winter and summer journey, second verse),(Mohammed,2016). It was There is a neighborhood of merchants in major, cities called a bazaar where merchants display their belongings and agree on prices. As for the stock exchanges, at the end of the thirteenth century AD, Italian trade and exchange houses began to migrate to the country (Flanders) famous for the country (Flemish) and established colonies there in one of the most famous cities and global commercial centers at that time, a city of Bruges, Belgium, and this place became desirable by the Italians and became the landing ground for merchants and businessmen, until 1300, when the Bruges Stock Exchange was established, and this exchange has retained the leading position in

finance and trade until(1485),the persians exchange was established in the Finnish city of (Antorp), which was expanded in (1531) until the neighbor from everywhere absorbed.

It is worth noting that the stock exchange with its form, system and management that exists on it today did not arise suddenly, but there are stages in the emergence of these markets that the researcher can divide into **four stages:**

**First stage is the stage of establishing commodity exchanges:**

It can be said that the development and transition from the agricultural stage to the industrial stage, accompanied by the migration of labor to cities, led to congestion of the population in them, and then became the supply of these cities organized supply of food and grains that they need from difficult problems, which led to the existence of a global market for trade agricultural crops, which appeared with a new team on the surface of commercial transactions called speculators, who bear the risk of price fluctuations, and wholesalers established stores to bear the risk of trafficking, and the Banks helped these traders, the exchanges was established in multiple places to trade in these crops, and were called the Commodity Exchange.

It established the first commodity exchange in France in Paris (1304 AD) and, then established a commodity exchange in Amsterdam (1608 AD).

**Second stage:** is the stage of dealing with commercial papers:

This stage began in France in the thirteenth century, and the circulation of bills of exchange and promissory notes, King Philip, as we said, created the profession of exchange brokerage to regulate this circulation. Dealing in England was in credit bonds in 1688, and the shares of East India companies established in 1599 appeared, where they were dealing in the same place.

**Third Stage:** Dealing in securities on cafes and on the roadside:

We showed before that dealing in securities was done in the commodity exchange, and as a result of the economic development of societies, and the increase in savings for individuals, and with the growth of the economy and the increase in national income, dealers in commercial papers came out of the goods exchange looking for independence, they found only the side of the road in the nearest place to the goods exchange, and cafes that protect them from the rain at this time, in London, for example, after the exit of from the Royal Goods Exchange, they were meeting in the corridor of the goods exchange, and on rainy days they were heading to cafes, such as Jonathan's coffee, and in America in (1790) during the war of Independence, the federal government issued unified debt instruments, and dealing in these instruments was done in cafes and roads, where brokers at that time met under a tree on (Wall Street) and then moved to the café (Tontin), and in France, before the opening of the Paris Stock Exchange, the deal was done between brokers on (Cannaboy Street).

**Fourth Stage:** Independence of Stock Exchanges with their Buildings and Regulations:

With the industrial development that led to the emergence of huge projects that the individual investor alone could not carry out their financial burdens, and institutions appeared trying to

benefit from the savings of individuals in productive areas, and with the increase of these investment institutions, financial markets arose, through which financial transactions are conducted and shareholders are enabled to sell or increase their shares. Also, with the development and growth of the commercial movement, the need for banks and insurance companies increased, and political developments prompted governments to search for new financial resources for them, and with commercial growth in addition to the lack of capital, which led to the issuance of securities, from governments, banks, insurance companies, and some companies of persons and shareholding, especially large ones, and with the existence of markets for trading bills of exchange, and commercial bonds, the matter developed easily with the availability of auxiliary political conditions, all led to the emergence of financial markets that Stocks and bonds are traded.

In the United States of America, the stock trading markets began trading in equipment issued by the federal government after independence, and the first market of this kind was established in Philadelphia in (1791), the capital and the center of foreign and internal trade at that time, and in the following year (1792) decided (24) traders and brokers to charge a commission for the transactions they make for the account of others, and agreed to give preference to each other for trading deals, and most of the deals were for trading government securities, and later Shares of banks and insurance companies have been added to current assets. The expansion of the Government's role in the construction of roads and navigation channels forced it to issue bonds, which increased the volume of assets in circulation.

In (1817), New York brokers decided to organize their business within the New York Board of Stock Trading, and this market has grown with the growth of trade and the development of industry in the United States, and in 1863 the current name was adopted, which is the New York Stock Exchange, and other markets have been established during the Civil War, the last of which is the market, which later became the American Stock Trading Market, which is the second market in the size of the United States of America and is located in (Broad Street) in New York.

**The second requirement:** the most famous markets dealing in international stock exchanges:

### **1) New York Stock Exchange**

It is referred to by the abbreviation (NYSE), and it is known as the Wall Street Exchange located in New York City Wall Street in the Manhattan neighborhood on the East River, where the area has become a neighborhood for finance and business bearing the name of this street, and embraces the headquarters of huge financial companies and the street was named by this name in the seventeenth century when New York was a Dutch settlement, and when it was occupied by the British, the Dutch built a high wall to repel the attack, but after the British succeeded in capturing New York, they destroyed the wall in (1699), and the place was known As "Wall Street" (Wall Street) The commercial trading floor of the stock exchange consists of 21 rooms, and its headquarters was chosen in (1978) to become a historical national landmark in America and the stock exchange was founded on (March 8,1817), and represents a large percentage of the American

economy through trading the shares of the most important companies, whether American or foreign, and among the most important indicators that reflect its strength and financial activity, the "Nasdaq" index, which reflects the activity of the largest technological and investment companies, and the "Dow Jones" index, which represents the strength of the thirty largest industrial companies in it (Mitwalli, Ahmad,2015).

It is the most famous and strongest stock exchange in the world; and the largest stock exchange market in the United States of America in terms of its transactions in dollars and the second largest stock exchange in terms of the number of listed companies, where the Nasdaq market passed it in (1990), but the market value of listed companies, or what is known as market capitalization, is five times larger than the companies listed on the Nasdaq market, where the New York Stock Exchange includes shares of 2,764 companies (compared to about 3200 on the NASDAQ and a total market value of companies' shares in it by about \$ 25 trillion by the end of (2006) The New York Stock Exchange Group merged with the European Stock Exchange Euronext to form NYSE Euronext, which became the first global stock exchange and the New York Stock Exchange contains several indicators to read economic sectors such as the Dow Jones Industrial Average for the 30 largest American industrial companies and the S&P 500 index or S&P for the largest 500 American financial companies (Mohammed,Hussein,2016).

The stock exchange, which is classified as the largest stock exchange in the world by market capitalization, was owned by the American group "Intercontinental Exchange", and the number of companies listed in it is 1868 companies. The value of the capital of the listed companies is \$ 19.69 trillion, and the average daily trading volume is \$ 169 billion, and the stock exchange has foreign offices, the most important of which are in Washington, Houston, Dubai, London and Hong Kong, and the commodities traded in it vary between aluminum, gold, oil, uranium, platinum, natural gas, silver, coal and copper.

The most prominent commodities traded on the New York Stock Exchange are: aluminum, coal, copper, important oil, electricity, gasoline, gold, heating oil, natural gas, palladium, platinum, propane, silver, uranium.

Wall Street has witnessed several historical crises, the most important of which is the collapse of (October 24, 1929), known as the "Great Depression", and "Black Thursday", which occurred because 13 million shares were put up for sale in one day, but they did not find buyers due to their loss of value.

There is the (1962) crash, known as the rapid decline of US financial markets under President John F. Kennedy, which lasted (from December 1961 to June 1962).

It was followed by the (October 19, 1987) crash, known as "Black Monday", in which global financial markets suffered huge losses, as the wave of severe declines began in Hong Kong and the rest of the Asian markets, and moved to Europe and then the United States.

It was also hit on (October 27, 1997), by a collapse described as not major after a sharp fall caused by the economic crisis in Asia, where the Dow Jones recorded the eighth largest daily loss since the establishment of the stock exchange (Sari, Hani,2013).

This was followed by a collapse following the New York attacks on (September 11, 2011), which had significant economic impacts, as the stock exchange headquarters were closed until the following week - after the planes crashed into the World Trade Center - for fear of possible attacks. The stock market collapsed on (October 6, 2008) after the US markets plummeted due to the fallout from the mortgage crisis and the specter of an economic recession.

Then came the collapse of (August 24, 2015) after a sharp wave of decline swept the global stock exchanges in which stocks lost more than three trillion dollars, due to the collapse of the Chinese stock market, the emergence of signs of slowing the growth of the Chinese economy, and the loss of oil by 6% of its value, which led to fears of a global economic crisis.

A social media movement emerged in (September 2011) under the name "Occupy Wall Street" attacking what it describes as the greed of capitalists, starting with small street marches and then becoming a global protest movement across 25 countries (Mohammed, Zikry,2015) 2 Chicago Mercantile Exchange (CME).

“Chicago Merck”, or “Merck” is a Chicago-based U.S. derivatives and commodity exchange located at 20 Wacker Drive Street and was founded in (1898) as the Chicago Butter and Egg Trade Board and the Agricultural Commodity Exchange. Initially, the exchange was a not-for-profit organization. Merck became a joint stock exchange in (November 2000) and went public in (December 2002), merged into the Chicago Board of Trade in July 2007 to become a marketplace for specific agreements for the Chicago Mercantile Exchange Group, which manages both markets. Bandar Gill is Group CEO of the Chicago Mercantile Exchange, Terence A. Duffy is Chairman and Chief Executive Officer of the Board, and Leo Melamide is Honorary President. On (August 18, 2008), shareholders approved mergers into the New York Mercantile Exchange (NYMEX) and the Commodity Exchange (COMEX). Currently, Merck, the Chicago Board of Trade, the New York Mercantile Exchange and the Commodity Exchange are the markets owned by the Chicago Mercantile Exchange Group.

### **Materials traded on the Chicago Stock Exchange**

Interest rates, stocks, currencies and commodities. It also provides trading in alternative investments, such as weather and real estate derivatives, and has more options, futures and open contracts (the number of pending contracts) than any futures exchange in the world(Abdul Aty, Mohammed,2013).

The Chicago Mercantile Exchange is also the pioneer of the Modular Portfolio Risk Analysis Program developed by the Chicago Mercantile Exchange which is used worldwide as the official mechanism to ensure proper execution (margin) for 50 registered exchanges, clearing



organizations, service bureaus and regulators worldwide. Trading takes place in two ways; the first takes the form of public bidding and the second takes the form of the Globex electronic trading software used on the Chicago Mercantile Exchange. Nearly 80 percent of the total trading volume is done electronically on the Globex system used on the Chicago Mercantile Exchange (Hijab, Essam, 2013)

### **Tokyo Stock Exchange**

It was founded in Tokyo, Japan, on (May 15, 1878) and is the second largest stock market in the world by the volume of cash found in Tokyo, and only the second on the New York Stock Exchange. Currently, there are 2,271 domestic companies registered with them and 31 foreign companies, with a total capital of more than \$4 trillion.

The Tokyo Stock Exchange or the Kabutocho Stock Exchange (English: Kabuto-cho) as it is called after the name of the street in which it is located as well, and according to statistics in (1990), it was placed in the first place in the world in terms of trading volume, which reached \$ 3 billion, or 40% of the total global trading, which is a very huge number as it represents a market for 130% of the Japanese crude national production.

Trading began on the Tokyo Stock Exchange on (May 15, 1878), under the supervision of Sasuke Ohio and Okuma Shigenobu, then Minister of Finance, and trading began on (July 1, 1878).

The Tokyo Stock Exchange (TSE) is the largest stock exchange in the Japanese market and one of the largest in the world, and is one of the arms of the Japan Stock Exchange (JPX) Group. It serves as a hub for the country's financial markets and provides a platform for companies to raise capital and investors to trade shares. The Tokyo Stock Exchange has a rich history dating back to (1878) and has undergone many changes and developments over the years. Today it offers a variety of products and services, including stocks, bonds and other securities, and is home to some of Japan's largest and most influential companies. With its significant impact on the Japanese economy and its growing impact on the global financial landscape, the Tokyo Stock Exchange is an exciting and dynamic market worth exploring. Read on about Japan's largest stock exchange, how it works, when the Tokyo Stock Exchange will open, and what you need most importantly (Abdullatif&Mohammed, 2018).

The emergence of the Tokyo Stock Exchange as the largest global stock exchange is due to the combined market capitalization of companies listed on the Tokyo Stock Exchange today and at the same time what confirms this is that since (2015), the Tokyo Stock Exchange has had listed companies of 2,292 companies with a combined market capitalization of 4.09 trillion US dollars. The Tokyo Stock Exchange serves as a central market for Japan, which only shows its utmost importance in trade in the country and investors usually have different needs, the Tokyo Stock Exchange currently encourages the diversification of product groups. In order to meet these needs. These product groups include ETFs. This, in turn, will allow investors on the Tokyo Stock

Exchange to benefit from more diversified asset allocations without having to spend more money. These financial assets are calculated across the TSE General Index (Swailem&Mohammed,2018).  
Stocks: The Tokyo Stock Exchange has a large number of ordinary shares of publicly traded companies in Japan. Shares are listed on the first section of the Tokyo Stock Exchange, which is also known as the "Mothers" market.

ETFs: The Tokyo Stock Exchange offers a wide range of exchange-traded funds (ETFs) that track various indices, sectors, and commodities.

Real Estate Investment Trusts: The Tokyo Stock Exchange also offers real estate investment funds (REITs) that allow investors to invest in real estate assets without actually owning the property.

J-REITs: The Tokyo Stock Exchange also lists Japanese Real Estate Investment Trusts (J-REITs) that are similar to REITs, but are specific to Japan.  
Bonds: The Tokyo Stock Exchange also provides a market for trading bonds issued by the Japanese government, municipalities, and corporations.

Derivatives and options: The Tokyo Stock Exchange also offers collateral and options trading on stocks and ETFs, which provide investors with the ability to gain leverage or hedge their positions. What should be noted is that there is daily competition between both the New York Stock Exchange and the Tokyo Stock Exchange to occupy the first corner in the world from the point of view of the volume of capital and deals concluded in them since the end of the seventies, but since the beginning of the nineties, specifically since the Second Gulf War (1990-1991 AD), the Tokyo Stock Exchange fell to second place after the New York Stock Exchange, due to the decline in the commodity value of Japanese establishments, which is due to very multiple reasons, including: The collapse of four of the most important and largest financial intermediary houses in Japan, the adoption of a short or (austerity) policy of granting loans and credit operations by the Central Bank of Japan, the occurrence of many financial scandals between politicians and financiers in the heart of the Tokyo Stock Exchange, the collapse of prices in the real estate market and finally the decline in industrial activity and the slowdown in investment, and the second London Stock Exchange has always ranked third in the world and first in Europe for more than twenty years ago, leaving behind Frankfurt and Paris Milan etc. This is without forgetting the growing importance of the stock exchanges of Southeast Asian countries despite the financial disasters that occurred in them starting in the second half of the nineties. Finally, it is also necessary to mention the increasing prevalence of such financial markets in the developing world, given their paramount importance in financing a large part of their economic development (Nisreen, 2012).

Trading in the Forex market is the most widespread, as companies dealing in foreign exchanges allow investors to trade in currencies online and allow large numbers of individual traders who do not have great financial capabilities to enter this market, unlike the situation in the past, where only owners of large capitals could enter this market, and the person who wishes to enter this

market only has to open an account with one of the Brokers in this market, where there are two types of brokers:

**First type:** market makers who set buy and sell prices for foreign currencies traded in the Forex market.

**Second type:** electronic communication networks, which develop programs that collect all the prices issued by market makers, and display the best of them on trading platforms. They are companies of a special nature that deal only with electronic transactions over the Internet through applications designed to trade on foreign exchange, often with the addition of precious metals, petroleum, CFDs, stocks and bonds. They are mostly foreign companies, where the United Kingdom and the United States are considered one of the most dealing countries in Forex, the volume of daily transactions in them exceeded 50% of transactions in the world, where the volume of dealing with these two countries of Forex transactions in (April, 2010) was estimated at about 2.758 trillion dollars per day on average, and Singapore, Hong Kong, Japan, France and Australia are among the most countries dealing in Forex.

The first thing that comes to mind when dealing with the traditional concept of the liability of companies dealing in the foreign stock exchange (local broker) is to identify the nature of this responsibility, as it will vary according to the breach of obligations whether it was signed before the conclusion of the contract or later, because in the first case, the service provider's tort liability is held as a result of his breach of the general legal duty imposed on all, which is to respect the rights of others and not to harm them, while in the second case, his contractual responsibility is held. As a result of breach of contractual obligations when the contract meets its conditions, and therefore we will study the most important pillar of contractual responsibility, which is the element of error through the second section.

### **Error in Civil of Companies Dealing in a Foreign Stock Exchange according to Jordanian Law**

The responsibility is generally the legal liability of a person as a result of committing the fault of him and the effects of responsibility are either a criminal penalty according to penal laws, called criminal liability, and compensation may be imposed on the one who caused the damage in accordance with the provisions of the Civil law, or any other laws called civil liability. The source of civil liability may be the existence of a prior contract between the parties, and the breach of obligations arising from the contract by one of them entails contractual liability, and its source may be a breach of a previous obligation originating from the law and is then called tort liability. Acknowledging the existence of contractual liability may be much easier than acknowledging the existence of tort liability, because it is sufficient for the creditor to prove that the debtor has not performed his contractual obligations or delayed their implementation or performance defectively, while in tort, it is more difficult as the breach of the contract must be proved by a previous legal obligation by the creditor. Since the legislator will not be able to determine the obligations that

result in breach of them to harm others, he resorted to the development of a general text, obliging anyone who caused damage to others to compensate, and when, in light of the obligations contained in the laws specialized in regulating the capital market, it becomes clear to us that the contractual and tort liabilities are intertwined with each other. The laws that we have dealt with in this study are almost consistent about obliging the brokerage company to conclude a contract with its client before executing his orders to buy or securities through an agreement to open an account between the brokerage company and the investor, and this is called the financial brokerage contract, and the laws, instructions and regulations have also identified some data that are part of the content of those contracts. We note that some legal obligations, such as the obligation of confidentiality and the submission of a statement of account included in these contractual forms, and thus the aforementioned obligations, turn from being general legal obligations to contractual obligations, and therefore the liability resulting from their breach is a contractual responsibility, so the behavior of the financial brokerage company may result in damage to its client without that behavior constituting a breach of the company's contractual obligations, in this case it is necessary to refer to the general provisions of tort liability contained in the Civil law.

The Jordanian legislator has indicated in Articles (18-23) of the Instructions Regulating the Dealing of Financial Services Companies in Foreign Stock Exchanges for the year (2020) that the business of companies dealing in foreign stock exchanges is limited to several forms according to the company's license, where the companies' licenses include one or more of the **following objectives**:

- \* Carrying out the works of the intermediary for the account of others by buying and selling.
- \* Carrying out the works of the broker for his account so that dealing is limited to the broker's own account.
- \* Carrying out the works of the Introducing Broker, whose role is limited to introducing clients to a foreign or local broker licensed to deal in foreign exchanges.
- \* Carrying out the works of managing investment for the account of others in foreign stock exchanges.
- \* Carrying out the works of financial advisor by providing continuous advice and advise to the client and others in foreign stock exchanges, either directly or through bulletins or writings related to investment and dealing in foreign stock exchanges, in return for a fee or commission.

Therefore, the liability varies according to the legal adaptation of the company's work and activity and the obligations entrusted to it, and the contractual liability does not exist unless we are dealing with a valid and existing contract in the relationship between the injured and the official, and that the damage arises from the breach of the obligations arising from the contract. This means that the liability of the financial intermediary of companies dealing in the foreign stock exchange is - basically - a contractual liability, which is based when its pillars of error, damage and causal relationship are established.

If the Jordanian legislator has issued the Law Regulating Dealing in Foreign Stock Exchanges of (2017), what is the error that gives rise to the civil liability of companies dealing in foreign stock exchanges in Jordanian law?

And research in the corner of error positive for civil liability in the field of work of brokerage companies dealing in foreign stock exchanges requires a statement of error on the grounds that the original that the company's error is a contractual error and therefore we will study the error in the contract between exerting care and achieving the end in the first requirement and in the second requirement show the pictures of the error of companies dealing in foreign exchanges.

**First Requirement: The Contractual Error Between Exerting Care and Achieving the Goal**

The obligations specified under the Foreign Stock Exchange Dealing Law of (2017), the regulations and instructions issued pursuant thereto, the decisions issued by the Board of Commissioners of the Securities Commission, and the dictates of the legal rules in the Securities Law and the regulations and instructions associated with it shall apply to the obligations of the local broker for companies dealing in foreign exchanges, as stipulated in the Law on Dealing in Foreign Exchanges, as stated in Article (5) thereof. The Board of Directors of the Central Bank of Jordan and the Board of Commissioners of the Jordan Securities Commission shall issue, as the case may be, the necessary instructions and decisions to implement the provisions of this law, as indicated in Article 26 of the Instructions Regulating Financial Services Companies' Dealing in Foreign Exchanges for the year (2020) that the provisions of the Law Regulating Dealing in Foreign Exchanges, the Securities Law, and the regulations, instructions, and decisions issued pursuant thereto shall apply to what is not stipulated in these instructions, and the general rules of civil law are applicable, such as the execution of the contract in good faith, Article (202) of the Jordanian Civil law.

The Jordanian legislator has regulated the work of companies dealing in foreign stock exchanges under Law No. (1) of (2017), to put an end to the problems that result from the dealings of unlicensed companies in foreign stock exchanges, and the serious damage caused to economic and social security as a result of the existence of the legislative vacuum before the issuance of this law. As the Law Regulating Dealing in Foreign Stock Exchanges of (2008) did not meet its expectations, which prompted the legislator to repeal it under Law No. (1) of (2017).

Persons licensed to work as a broker in foreign stock exchanges are legal persons who are licensed by the Council for the Regulation of Dealing in Foreign Exchanges, in accordance with the text of Article (2/3) of Law No. (1) of (2017) to regulate dealing in foreign exchanges, and the transaction must be between a local broker and a licensed foreign broker subject to the supervision of a recognized body in the licensed country, whether this transaction is a direct transaction or merely mediating in concluding transactions with market.

The local broker is subject to Law No. (1) of 2017 regulating dealing in foreign stock exchanges, in terms of obtaining a license to practice their activities in those exchanges, violations that may be committed by these persons, and legal responsibility for such transactions.

The Jordanian legislator, in accordance with the provisions of Article (3), has limited the practice of the activity of dealing in foreign exchanges or brokering them for the benefit of others to banks and financial services companies, and it is not permissible for non-banks and financial services companies to carry out, for the benefit of others or on their behalf, any act or activity related directly or indirectly to dealing in any foreign exchange or brokering in such transactions. Any person who promotes or advertises by any means that he is dealing for the benefit of others in a foreign exchange or mediate directly therein." or indirectly".

### **Error and the amount of care needed**

Contractual error, as defined by Doctrine (Abdul Razzaq,1981), is the debtor's failure to perform one of his obligations arising from the contract, depending on the nature of the debtor's obligations. If the service provider is obligated to achieve a certain result, such as his obligation to ensure the trading process in terms of the prices that are supplied, the mechanism for executing operations when buying and selling, opening and closing positions without delay, the amount of commissions that are charged, covering operations with the foreign broker, or his obligation to keep secrets and others, his obligation does not expire until he achieves the result, 26and when the commitment is to achieve a result, failure to achieve it means a breach of the implementation of his obligation, and here his responsibility arises if The customer was able to establish evidence of non-performance of the contractual obligation as soon as the contract was submitted, because the error is assumed in this case as long as we are in the process of an obligation to achieve a result, and the service provider will not be able to pay his responsibility for this error unless he proves the foreign cause or provides evidence that he achieved the result, but if the service provider is obliged to exert care,(Nazih,2021)such as his obligation to inform contractually, to provide advice and advice, or to take care of the interests of customers, the contractual error is achieved in the event of lack of due diligence, and here the responsibility of the contractual companies is as long as the obligations in the contract have not been performed or there is a delay in their implementation or implementation in a defectively.

Therefore, the liability of companies dealing in foreign exchanges is based if the customer can prove not only the non-performance of the obligation, but also the failure to exercise due diligence in its performance, because the fault in this case is obligatory to prove as long as we are in the process of an obligation to exercise diligence and if the obligations of the service provider; As some see - in most - obligations to exert care rather than to achieve a result, there is a question that arises: what is the criterion for estimating the error of companies dealing in foreign stock exchanges (local broker)?

It is recognized - according to the general rules of responsibility - that the estimate of error depends on the standard of the average person, or the standard of the usual man as some call it, which is an objective criterion (In abstract) where the tendency of jurisprudence and the judiciary to take this criterion where it is considered a person abstract from any personal circumstances, and this abstract person is the average person any average intelligence, discernment and vigilance (Ahmad,2008). It is based on the standard of behavior of the ordinary person, so that the fault is considered to exist if it can be proven that the debtor of the obligation has committed negligence that the ordinary person would not have committed in the same circumstances.

It is also not possible to take the necessary care at all, whether at the level of the type of obligations contained in the contracts concluded between financial brokerage companies and the investor, or at the level of the laws regulating these obligations, as many of these obligations are repeated within the scope of the model contracts for the mediation contract between the company and its client, such as the obligation to confidentiality and the obligation to submit the account statement by reviewing those obligations, it turns out that the nature of each obligation determines whether the obligation of the brokerage company finance is an obligation to exercise care or to achieve a result, from all of this we conclude that it is possible that the contract to open an investor account brokerage contract includes two types of obligations 9 namely the obligation to exercise care and the obligation to achieve a result as is clear from the models of those contracts, which are usually valid between the two parties for a period of one year from the date of signing. It also appears to us in standard contracts for opening an investor's account in the financial market that the care that the brokerage firm is required to exert in order to keep investment risks away from the investor is the utmost care, and therefore it is not reasonable to apply to the standard of an ordinary man who is not professional of the profession, so the company's error is subject to the criterion of a careful professional, which means that any mistake made by the company, even if it is easy, entails civil responsibility(Hussam,1995).

We conclude that liability is based on presumed contractual fault because in the obligation to achieve a result, the contractual error is achieved as soon as this result is not achieved, and in order to get rid of contractual liability it is necessary to establish evidence of the performance of the obligation or to prove the foreign cause in which it has no hand, such as force majeure, the fault of the investor or the fault of others (Alnassafi,2010).

The error is a pillar of the broker's responsibility, in terms of concept, we note that the error is a breach of the implementation of buy and sell orders (stock exchange orders), or a breach of the commitment to manage the securities portfolio in the case of the broker who is the investment manager, and in terms of persons, the error can occur from the broker himself or his legal representative, meaning that the contractual responsibility lies with the broker, as he is in the circle of contractual relations.

The broker's management is fully responsible for the actions of its employees in violation of the regulations and instructions (Abdel Fattah, without publishing).

In French law, the broker is obliged to exert the best possible care when executing the orders of clients, while the broker is obliged, according to Jordanian law, to exert the necessary care from the common man not the careful man, as the broker always works with a wage and is thus subject to the general rule in the Civil Code, which stipulates that the agent is obligated to exert the care of the usual man, but in the case of the broker manager, he is obligated to exert the care of the careful professional in managing the portfolios of securities belonging to his agency with a wage to his clients (Hussam,1995) The researcher believes that The amount of care in the commitment of companies dealing in foreign stock exchanges must be the diligence of the professional keen in the management of securities portfolios belonging to his agency with a wage to his clients and the researcher believes that the amount of care in the commitment of companies dealing in foreign stock exchanges must be careful care meaning. The jurisprudence of commercial law confirms that the manager's error in the implementation of his obligation stems from the fact that he is practicing an important activity that affects the economic interest of individuals and the state together, and it is in the judgment of error attributed to the owners of professions in the exercise of their professions, as each profession has certain duties imposed on it by the principles of the profession and the assessment of the error is subject to a special criterion commensurate with the fact that the mediator is a professional man who may have a distinct position from the client who does not have the necessary knowledge and experience, and the error of any breach is considered by The English judiciary has held in this regard that in the event of specific instructions ordering the broker to make a sale or purchase at a specific price, the broker must execute the transaction as soon as the shares reach that price. The Egyptian and Iraqi legislators have done well as the responsibility of the broker in the Iraqi capital market for the mistakes committed towards investors, whether at the stage of contractual negotiations or in the implementation of the brokerage contract is measured according to the usual professional standard that represents the middle of people belonging to the category to which the broker belongs and thus his responsibility is more severe than the responsibility of the ordinary person, and the judge estimates the responsibility of the broker for the error he committed based on the brokers. Professionals with medium experience and know-how in the profession of brokerage in securities, and on the basis of that, the error of the broker is estimated according to this criterion (the usual professional), as an experienced and seasoned professional investing in securities, and that the legislator gave him the right to monopolize this profession after taking into account several conditions that must be met in order to be allowed to practice this profession, and therefore no person may mediate in the sale and purchase of securities unless he has the conditions imposed on him legislator, this leads to the broker being considered a professional person and his commitment to care and care makes it his responsibility to be more severe than the average man, but the responsibility of the broker in the Egyptian capital market is measured according to the standard of professional keen required to exert maximum care when implementing the orders of investors and thus measured his responsibility according to the standard of professional keen, measured by the qualifications and experience of the broker keen



average experience and knowledge of the activity of brokerage in the capital market stock exchange, but went some jurisprudence by saying to If the erring person holds a doctorate degree, his responsibility is measured based on the persons who hold a doctorate, his responsibility is not measured in relation to persons who hold a bachelor's degree, but the level of medium experience and foresight. The Egyptian legislator has also stipulated, as we have mentioned, that the broker shall, in the performance of his obligation, exercise the care of a careful man and exert sufficient precision and caution when performing his obligation.

Being a professional and experienced professional and that the law allowed him to practice this profession according to his honesty, integrity and ability to practice this activity, and his quest for the interest of investors, and the assessment of the broker's commitment to exert the necessary care or not is an objective matter subject to the authority of the trial judge, and he has the assistance of experts to determine whether the debtor has exercised the necessary care when dealing with the investor according to the criterion of the keen man or not does this (Ali,20212022).

Regardless of the level of standard required of the broker, whether it is the standard of the usual professional or keen, the responsibility of the mediator is a professional responsibility resulting from his professionalism of the profession, which leads to tightening the responsibility of the broker as a professional for what he has experience and knowledge of the brokerage profession, so it is difficult to rely on the standard of the usual man to estimate the responsibility of the broker, the usual man does not have the sufficient knowledge and know-how that the broker possesses, which is reflected in the level of care that It is carried out by the ordinary man, while the experience possessed by the broker would affect the level of care required of him as a professional(Ali,2021-2022)

When the client gives an order to the broker, he accepts all the potential risks to which all dealers in the stock exchange are exposed, which may go by a large percentage of his balance, and these risks cannot be held responsible for the broker and there are many forms of contractual error depending on the contract concluded and what the law requires of the clauses that must be available in the contract, and therefore we will show the images of error in the second requirement.

**Second requirement:** Wrong pictures of companies trading in foreign stock exchanges

- The legislator indicated that there are clauses that must be available in the contract as a minimum in accordance with Article 15 of the instructions regulating the dealings of financial services companies in foreign stock exchanges for the year 2020, which regulates the relationship between the customer and the licensee under a written agreement that is compatible with the provisions of the Regulating dealing in foreign stock exchanges, the applicable securities law, and the regulations, instructions and decisions issued pursuant thereto, and the licensee shall prepare and organize the terms of the contract with the client so that the agreement includes the following items as a minimum:

- Clarifying the risks related to dealing in foreign stock exchanges.
- Expressly referring to the mechanism of entering orders, whether by the customer directly, by the licensee, or both.
- Confirm to the customer that maintaining the confidentiality of the username and password is his responsibility.
- Mechanisms for registering purchase ownership in foreign exchanges as it is in the name of the client directly or through consolidated accounts.
  
- The mechanism of financial settlements between the customer and the licensee.
- Commissions to be received by the licensee and all costs related to dealing in foreign stock exchanges.
- The agreement and its annexes signed via the Internet shall include a clause that expressly indicates that the customer's electronic approval of all the terms of the agreement and its annexes is a signature from him on them and an acknowledgment of what is stated in them.

The company is also committed to the decisions of the Board of Commissioners of the Jordan Securities Commission, and recently issued resolution. (39/2024) based on the provisions of articles (8) and (12) of the Securities Law No. (18) of 2017, according to which the licensed companies were requested to commit to providing all agreements and their annexes in the Arabic language, and to determine the margin call percentage and commissions, and to inform the customer of any amendments to the agreements or policies, and to inform the customer and the authority in the event of a pricing error as soon as error and correct the conditions of customers immediately, and in the event that it is proven to the authority that this error did not occur, the company must recalculate for each affected customer according to the correct prices.

The resolution also stressed the need for the prices that customers trade on real and real-time prices without any delay or interference by companies or by any other party, and the customer has the right to obtain these prices without paying any additional costs.

The complexity aspect of the contractual relationship between the company and the broker and the receipt of many complaints through dealers was the motivation for the issuance of subsequent circulars and through the commanding formula in the legal regulation shows that the conditions that must be met by the public order and may not be agreed to violate, and undoubtedly the bulk of the complexity lies in the practical implementation after the start of the trading process, as the technical superiority and contractual imbalance and monopoly if In order to speak, the weak party needs greater legal protection that guarantees him compensation for the damage when it occurs, and the company's error, according to the researcher's opinion, is not an ordinary mistake, considering the company a specialized professional, it is either a serious error or fraud, as compensation in contractual liability is limited to the damage actually occurred, except in the cases of fraud and serious error (Article 363 of the Jordanian Civil law),the company's control of the

trading system and its ability to carry out trading operations by giving a worse price to the client or delay in implementation or failure to cover the positions with actual coverage and other serious violations cannot be considered an ordinary error, and the customer has the right to claim expected and unexpected direct damage according to the rules of tort, and the invalidity of the contract and the return of the contractors to what they were before the contract does not compensate the customer effectively in the event of returning the money to him. It may be a great effort in trading and made actual profits, so who compels this damage, the entire fact of nullity is suitable to be the error in tort.

In jurisprudence, we find that (... The void contract is not a legal act, as it is as a contract that does not exist, but it is a material act or a legal fact, and as such it may produce a legal effect, it is not the original effect that results from the legal act as a contract, but it is an accidental effect resulting from the material work as a legal fact, and then the void contract may result in exceptional cases its original effect as a contract ... etc.) (Al-Sanhouri, A.1964).

The aforementioned jurist continued to explain the incidental effects of the void contract and the theories on which compensation for these effects was based until he concluded on page 561 to say (the first is therefore to refer to the idea of tort liability in error when forming the contract, and to consider the void contract as a material fact that may complete the elements of the tort fault and require compensation, and the contract is void in this case also has produced an incidental effect, not as a contract, but as a material fact).

One of the complex operations in trading is self-contracting or carrying out practical operations, as the Jordanian legislator followed the example of his French counterpart and stipulated the possibility of implementing self-contracting operations or applied operations by the financial intermediary in Article 3/1/12 of the Instructions for Trading Securities at the Amman Stock Exchange and Article 17 of the Instructions for Licensing and Accreditation of Financial Services and its Regulation for the year 2005. Under these two articles, the Jordanian legislator obliges the financial intermediary to inform his client that he or one of his associates was a party to the transaction carried out for the benefit of the client, unless the dealing agreement provides otherwise. This media commitment embodies the rule of transparency in implementation and ensures that the source client does not prioritize his personal interest or the interest of one of his clients over him.

Articles 34 & 35 of the Manual for the use of the Securities Trading System at the Amman Stock Exchange also set controls related to price determination, stipulating that this type of transaction is carried out directly during the continuous trading phase and that the execution price must fall within the best prices on both the buying and selling sides.

The fault giving rise to liability in the field of dealing services in foreign stock exchanges takes multiple forms, and the most prominent of these images can be reviewed by searching some of the

obligations imposed on the company in accordance with the laws governing the work of companies dealing in foreign stock exchanges and in judicial applications that reveal aspects of the broker's breach of his obligations, and this is explained as follows:

**(a) Breach by companies trading in foreign stock exchanges of their obligations to provide advice and advise:**

The obligation of companies dealing in a foreign stock exchange to advise and advise, the most important of which is the risk statement to its clients regarding the transactions on which their decisions are to be taken.

Therefore, capital market legislation tightens in obliging brokers and portfolio managers to inform their clients of the risks of trading operations, and the preferential extent of postponing or accelerating some of these operations, as well as their initiative to advise their clients on all circumstances affecting the advice or advice they provide, including, for example: the client's experience in the field of dealing in the stock exchange, his financial position and investment objectives.

There is no doubt that a breach of this essential obligation falls within the scope of fault when the remaining elements of responsibility are present; This breach manifests itself in two main cases: first: omission of giving advice that should have been given to the client, and second: giving advice or advice that is not commensurate with the client's situation (Rasha,without publishing).

There is no doubt that a breach of this essential obligation falls within the scope of fault when the remaining elements of responsibility are present; This breach appears in two main cases; the first case: the omission to give advice that should have been directed to the client, and the second case: the provision of advice or advice that does not suit the client's situation and the researcher believes that the special nature of dealing in the foreign stock exchange, which is based on very high risks in terms of its nature, especially that the execution of transactions is through trading programs automatically and at a high speed that does not exceed a fraction of a second, and what increases the complexity of the process is that trading It is done according to the principle of leverage, which may reach 1/500, meaning that the trader gains or loses 500 times what he earns from the deposited amount, which makes his funds vulnerable to loss according to market fluctuations, and Article 16/3 of the instructions regulating the dealing of financial services companies in foreign stock exchanges for the year (2020) stipulates that the leverage is 1/30 and may exceed that if the parties agree to do so in writing, all of this requires that the company's obligation is not limited to alerting the existence of risks, but rather the obligation to do something to stop trading if it considers that the client is exposed to consecutive losses and that the nature of his trading exposes him to loss continuously and this commitment continues as long as the client trades, so the implementation of the contract in good faith and commensurate with the interest of the creditor requires that, so foreign legislation subjects traders to tests to classify them between ordinary and professional trader and determines contracts Especially consistent with their experience.

The Jordanian law stipulates that the licensee wishing to promote its services in any way must clearly place warning phrases regarding the risks of dealing in foreign stock exchanges on all its advertisements, as well as on its official website and social networking pages. -**Article 24 of the Instructions on Dealing in Foreign Exchanges**-. In application of the above, the French Court of Cassation ruled that the broker's omission to inform his client of the risks related to investing in the futures markets constitutes a liable error(Peltier,1993).

In another judgment, the same court also ruled that the broker was liable for providing advice inappropriate to his client's circumstances, which led to the purchase of riskier securities that exceeded his ability to meet his obligations (Nizard,2000), and the Paris Court of Appeal ruled that advice by a non-specialist without examining the client's financial circumstances, investment objectives and market risk tolerance would give rise to liability(Mars,1999).

In the field of portfolio management, the Paris Court of Appeal ruled that there was a contractual error that required the responsibility of one of the stock exchange companies, because it did not inform and advise an elderly couple, as those in charge of this company had to take great care when managing the couple's funds, which did not happen, which caused damage - clearly - the value of their securities portfolio, and the court confirmed in its judgment that the responsibility of the service provider was held, even though the spouses did not object. on the notification received from the company of the operations carried out, because the absence of objection does not mean a waiver of the right to criticize the management of funds(Ruet,2002).

The Jordanian legislator has expanded by introducing regulated and unregulated stock exchanges, and the researcher believes that the expansion itself does not meet the necessary protection in the field of dealing in foreign stock exchanges due to the lack of inventory of price providers accredited by the commission so that the commission can impose the necessary control when a dispute occurs about the validity of prices or not, as the general rule requires that the customer be given the best price, and if this is not done, we are in front of a conflict of interest, which raises doubts About the nature of the broker's work, so that if his role is limited to mediation, his interest is in the interest of the client and it is necessary to carry out the operations at the best price, but if the process is not carried out according to this mechanism, the role of the broker is in doubt so that he tries to inflict a loss on the client and make profits for him and the client's profit means a loss to the company so that it does not cover the operations in practice or that the foreign brokerage company is owned by him or they share common interests.

**(b) Breach by companies dealing in foreign stock exchanges of their contractual information obligation:**

The Jordanian law dealt with the subject of the licensee's obligation, which includes the financial intermediary, to comply with disclosure and preserve the interests of customers through several texts, as it defined in Article (2) of the Securities Law misinformation as (incorrect statement related to material information or any omission or concealment of material information or any

other information necessary for the data provided to be true and accurate). The Jordanian legislator promised the practice of deception, deception and prohibited acts among the illegal acts, and it also obligated the licensee or the accredited and the persons who work for either of them during the exercise of their activities to abide by the rules of professional conduct and preserve the interests of their customers, without discrimination between them. This means that despite the dispersion of the provisions contained in the Jordanian law, regarding the obligation of financial intermediaries to disclose and preserve the interests of clients, the desire of the Jordanian legislator to preserve the interests of clients was behind placing this obligation on brokerage companies through several legal texts. Perhaps this is what led him to define misinformation (at the outset), which is rarely found in other laws, and restricted its meaning to what is contained in the stock markets(Rezan,2015).

The legislator also indicated in Article 14/g of the instructions regulating the dealings of financial services companies in foreign stock exchanges for the year (2020) on an obligation not to publish or promote any incorrect data or information about foreign exchanges or the transactions carried out by them. In Article 16 thereof, the licensee must adhere to attaching the mandatory guidance bulletin prepared by the Authority with each agreement signed by the customer and introducing the customer to it, and the customer must sign it and consider it part of it. Integral to the Convention.

As well as the need to attach a declaration prepared by the Authority to be signed by the client in the event that he wishes to obtain a leverage exceeding 30 times the advance cash amount deposited for investment, so that this declaration indicates the percentage of leverage that the customer wishes to obtain, provided that the declaration includes an explanation of the risks related to the leverage.

Ensure that the customer signs the agreement and all its attachments, and notifies the customer according to the agreed mechanism of the operations carried out on his account on the same day of implementation, and the customer may object to any operation by informing the licensee of the same mechanism of any error or objection to the operations that were carried out for his account in accordance with the mechanism set forth in the agreement.

Send a detailed statement of account every three months as a minimum to each client for the accounts on which financial movements were made or dealt during the previous three months, indicating his balance of dealing in foreign exchanges and the details of his transactions in them or in accordance with the mechanism set forth in the agreement, with a copy of the documents related to his account with the licensee upon request.

There is no dispute that information in the economic field translates into decisions that bring profits if they are correct or decisions that waste capital if they are wrong. From this standpoint, the importance of the investment service provider's commitment to contractual notification, which

means informing the client first and foremost of the necessary information related to the rules in force at the ASE, as well as providing him with any material information related to the operations that meet his investment objectives, and this commitment also goes to inform the client of what he has reached in his implementation of the contract, in addition to submitting an account statement to that effect. On this basis, the service provider's breach of its contractual information obligation manifests itself in two manifestations: one negative, the other positive(Jaber,2002).

As for the negative appearance, it is in cases of concealing essential information that benefits clients regarding transactions that take place within the Exchange, or failure to disclose the rules in force and developments in these rules, and the service provider's breach appears in its negative appearance if it does not inform its clients of the operations carried out for their benefit and all the difficulties it faces in implementing them, or when it refrains from submitting the periodic statement of account required by the capital market legislation.

The positive manifestation of a service provider's breach appears in the event that it provides its customers with misleading and incorrect data or information, such data or information has been deliberately provided or failed to exercise the due diligence required by the legislator when compiling and providing such information(Mahmoud,1978).

In application of the above, it was ruled in France that the failure of the service provider - one of the banks that were entitled to engage in financial intermediation business - to provide material information to its client about the Mud araba rules in force within the stock exchange and the developments that occurred in these rules - constituted a liability-based error, as it had to inform him of the risks to which he might be exposed when he speculated on the stock exchange, in light of the developments in the rules of its operation, which caused Harm to the client (Abdul Razzaq,1981).

The liability of the service provider was also ruled for breaching its obligation to foresee by failing to explain to its client at a later stage of the conclusion of the account opening contract the substantial differences between the portfolio management contract and the deposit contract with the custodian(Saadoun,1981).

**(c) Breach of restrictions with foreign broker by companies dealing in foreign exchanges:**

The legislator obligated the local broker to carry out the client's operations with a foreign broker, as it was stated in Article 10/6 of the instructions regulating the dealing of financial services companies in foreign stock exchanges for the year (2020) that the licensee is prohibited from dealing with any foreign brokerage company or foreign investment funds that are not licensed or not registered by the competent authorities in their countries, and thus we find that the obligations of the local broker are determined in accordance with the laws regulating the work of the foreign broker, as stated in the text of Article 9 of the instructions Regulating the Dealings of Financial Services Companies in Foreign Exchanges for the Year (2020):

- a) The foreign broker contracted by the licensee to deal in foreign currencies, precious metals and/or other commodities in foreign exchanges must be licensed and subject to the control and supervision of the licensing authority approved by the Authority under the list approved by the Board in this regard, and the licensee shall ensure this on an ongoing basis.
- b) The Licensee shall immediately notify the Authority in the event of any change in the license, control and/or supervision of the foreign broker contracted in accordance with the provisions of paragraph (A) of this Article.

In practice, the previous text requires the foreign broker to abide by foreign legal texts, for example, if the maximum leverage limit of the foreign broker is 1/30 as a maximum, then the local broker's dealing with a leverage of 1/100 with the consent of the customer makes the transaction invalid, despite the existence of a provision in the local law that allows this in accordance with Article 16/3 of the instructions regulating the dealing of financial services companies in foreign exchanges for the year (2020), which determined the leverage of 1/30, it may be more than that if the parties agree on it in writing, so the researcher believes that the imposition of dealing with the local broker with a foreign broker does not meet the necessary legal protection for the client in several respects, the first of which is that the foreign broker is subject to the control of an external body and it is known that these regulations are amended continuously and there may be leniency in control of them on the other hand, and then what if this broker goes bankrupt and all customer funds have The local broker is invested with him, and dealing with a foreign broker would take out hard currency outside the Kingdom, meaning that all customer losses would be profits for these companies, so it was better to license market makers companies in the Kingdom to ensure the protection and control of dealers, maintain economic security and increase the treasury by preventing tax evasion.

Obliging the broker to some of the obligations related to the foreign broker does not meet the necessary protection and control, as the legislator, in Article 12, obliges the local broker to provide the authority **with the following, before starting to deal in foreign exchanges:**

- a) The names of foreign exchanges and the financial instruments available in them and in which he wishes to deal.
- b) The names of the foreign brokerage companies through which he wishes to trade and the foreign investment funds through which he wishes to invest for his clients.
- c) Documents proving the licensing or registration of such stock exchanges, companies and investment funds from the licensed or registered entities, and the Authority may, as it deems appropriate, verify the validity and validity of the licenses and documents submitted.
- d) A duly certified copy of the agreement signed with the foreign broker or foreign investment fund.
- e) Any agreement signed by him with any other party to carry out the requirements of dealing.
- f) Any other documents requested by the Authority in this regard.



Article 13 also stipulates specific clauses that must be met in the agreement with the foreign broker, so that the agreement signed between the licensee and the foreign broker or foreign investment fund must include the following items as a minimum:

- A) The foreign broker or investment fund is licensed or registered by the competent authority in his country.
- B) The licensee's clients are granted leverage through a foreign broker for clients dealing in foreign currencies and precious metals.
- C) The mechanism for giving and receiving customer orders should be clarified.
- D) Determine the applicable law and the competent court to resolve any dispute that may arise between the licensee and the external broker or investment fund. Determining the methods of settling disputes and the methods of terminating the agreement.
- E) Determine commissions or any costs that have been agreed upon. The foreign broker or foreign investment fund shall be obliged to inform the licensee immediately and without delay of any material matters that may affect its license or registration by the competent authority, or in the event of a decision issued by that authority to suspend or cancel such license or registration.
- F) The right of the licensee to obtain all data or information related to his accounts or the accounts of his customers.
- G) All orders issued by the licensee's clients for foreign exchange and precious metals are fully covered by the foreign broker.
- H) Financial settlement mechanism between the licensee and the external intermediary or investment fund.

From the above, it is clear that the broker's obligation is an obligation to achieve a result with regard to his relationship with the foreign broker in terms of the existence of a contract between them and the obligation in the previous articles, however, in the event of a mistake committed by the foreign broker, the one who bears the responsibility for this error is the local broker as he is in the position of the guarantor agent.

From the above, it is clear that there are many forms of violations that are achieved when companies dealing in foreign stock exchanges breach the contractual obligations contained in the contract or those contained in the Law Regulating Dealing in Foreign Exchanges and the Securities Commission Law and the instructions and regulations related to it, where we find that the legislator obligated companies dealing in foreign stock exchanges to take into account the compatibility of the agreement concluded between them and the client with the provisions of the Law Regulating Dealing in Foreign Exchanges and the Securities Law in force. And the regulations, instructions and decisions issued pursuant thereto, so that there are clauses that must be met in the contract as a minimum in accordance with Article 15 / A of the Instructions Regulating the Dealing of Financial Services Companies in stock Foreign Exchanges for the year (2020).

As we found that dealing in foreign exchanges is often under a written contract between the client and the company (local broker) so that the client signs an agreement for the purposes of trading in

foreign exchanges on commodities, metals, oil, stocks, futures and contracts for difference, and the agreement is signed in writing or electronically so that the client is provided with a password and password for trading purposes through one of the electronic programs, the most famous of which is the (Meta Trader) program so that it can This program is for the trader to enter the system of the contracted company after typing its name and enter it and enter the password and password so that the customer, after depositing the investment amount, can download the codes for the contracts he wants to trade on and their prices appear on the screen and choose from them what he wants and carry out buying and selling operations by using his available balance and the implementation of operations is done directly at the local broker and trading is done using leverage Finance.

There is also a contractual relationship between the local broker and the foreign broker, where the operations are carried out directly with the local broker, who in turn executes them directly through the foreign broker, and the implementation may be carried out for customer centers, each separately or through a cumulative account, where the law regulating dealing in foreign stock exchanges allows it, but this is fraught with many risks that may constitute a contractual error in the event of non-actual implementation of the operations or in the event of the existence of a conflict of interest in other cases as the local broker may be linked in one way or another to a partnership or interests with the foreign broker, and a question arises about whether the foreign broker actually carries out operations with market makers or not.

The contractual error is achieved when the contractual obligations are not implemented or delayed in their implementation or implementation in a defective manner, and the responsibility is achieved whatever the type of error, whether it was done deliberately or negligent and negligent, and whether the violation was partially or completely, it has the same legal effect unless the error is serious or that the breach is caused by fraud, so the effects of tort liability are based here so that the company becomes responsible for the expected and unexpected direct damage.

And for the contractual error to exist, there must be a valid contract between the parties, and the contractual error is not in the void contract, as the Civil Code arranged a penalty for invalidity that the case is returned except what they were contracting before the contract, and thus the amounts received by the company are refunded to the customer in the event of the elimination of the invalidity of the contract, but in practice it is not possible to imagine that if there is actual trading and the implementation of sales and Buy it so how will it be invalidated.

## **CONCLUSION AND RECOMMENDATIONS**

1-It has become clear through this study that the Jordanian legislator did not regulate the civil liability of companies dealing in stock exchanges in Law No. (1) of (2017) regulating dealing in foreign stock exchanges, which requires reference to the general rules in the Civil Code.

- 2- There are many violations that constitute illegal practices that may lead to the annulment of the contract.
- 3- The necessary care of companies dealing in foreign stock exchanges in their obligations may be obligations to exert care or to achieve a result.
- 4- The amount of care that must be available must be the care of the careful professional.
- 5- The obligations of the company dealing in foreign stock exchanges are considered contractual obligations.
- 6- The existence of legal provisions that expose traders to great risks, such as the text that allows the use of leverage with a limit exceeding 1/30.

**Through this study, we have reached several recommendations, as follows:**

- 1- The general rules of civil liability are insufficient to determine the liability of companies dealing in foreign stock exchanges, but there must be special rules that need further development in order to keep pace with the risks of dealing in foreign exchanges, which are mainly based on the idea of risk.
- 2- The company's mistake must be considered a professional error that requires the necessary care so that the companies dealing in foreign stock exchanges are stressed as technically superior and professional for their work from a technical point of view.
- 3- The difficulty of determining the mistakes of the foreign broker in light of his non-compliance with Jordanian law, so it is necessary to amend the texts and oblige the accredited foreign broker to license in the Kingdom to be subject to the necessary control.
- 4- The Jordanian legislator must set special standards and take into account the risks involved in dealing in those exchanges so that customers are classified as ordinary and professional.
- 5- The Jordanian legislator must determine the client's right to compensation in the event of the invalidity of the trading contract and take into account the privacy of trading so that it is impossible to return the operations that have been carried out and return the received funds does not achieve fair compensation for the client who suffered damage from the breaches of companies dealing in foreign exchanges.
- 6- And to amend the text of Article 4 / b of the Law Regulating Dealing in Foreign Exchanges for the year (2018) which does not consider contracts issued by non-banks and licensed companies in the event that the customer knows that the company is not licensed and despite that he contracted with it.

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