BALTIC JOURNAL OF LAW & POLITICS
A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 3 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:3 (2022): 1477-1487
DOI: 10.2478/bjlp-2022-002100

Civil responsibility of financial intermediary in managing the investments of investors in the Bahraini financial markets, an analytical study

Dr. Nashat Mahmoud Jaradt
Applied Science University, Bahrain
College of Law, Private Law Department

Received: August 8, 2022; reviews: 2; accepted: November 29, 2022.

Abstract

The financial intermediary occupies an important position in that it is a professional person specialized in executing buy and sell orders for investors in the stock market, so his work was a means to move the money of investors in those markets, and stimulate and stimulate the national economy. The breach by the financial intermediary of its legal and contractual obligations has serious dimensions. Therefore, the civil responsibility for the financial activities carried out by the financial intermediary in managing the investors' money will be discussed in general, especially with the inadequacy of the general rules regarding civil responsibility to protect them, as well as the general litigation. Absence of effective protection rules in the Bahrain Securities and Commodities Authority Law. In particular, discussing the issue of the insurance system is the responsibility of the financial intermediary as an effective means of achieving protection and creating investment security and confidence in the market, and that would attract investments and create economic and social stability.

Keywords

Finance , Investment, Securities, insurance, Authority.

Introduction

The financial intermediary occupies an important position in that it is a professional person specialized in executing orders.

Buying and selling for investors in the stock market, and that it has a monopoly on this commercial activity, and in addition to the services it provides to its customers, it is a means to move their money and invest it, and a means to stimulate and stimulate the economy.

The Bahraini legislator defined mediation in Article (204) of the Bahraini Trade Law No. 7 of 1987: (Indication is a contract in which the auctioneer undertakes to a person to search for a second party to conclude a specific, intermediate contract in return for a fee.)

This showed the danger of his commercial activity, as well as the fact that mediation in terms of a contract

The practices of the financial mediator may exceed the frameworks of the contract until the guidance of the interests of the other as well as the contracting investor, so that it was a matter of trust, integrity and transparency in the work of the financial mediator, and there is no doubt that the inactivity of the investment is not the case of And that would threaten the stability of the market's work, especially since the world has witnessed the collapse of some large stock exchanges, and the emergence of suffocating economic crises.

And from here we found that the insurance system is the responsibility of the financial mediator and a subject in the creation of investment safety and the trust in the market, from the same investment, and the creation of economic stability and the subordination, so that this inspection is obligatory, and that you are a specialist, and that you will be a disobedient, Disputes As a matter of urgency, their decisions are binding and not subject to appeal. or certain practices that have misrepresented his benefit and established his ruling within the limits of that, so every agreement to the contrary is void[1].

Research Problem: The major investors have extensive experience in the field of trading in the financial markets, however. They usually need to protect their investments by various means, especially if the investor is a foreigner, including arbitration. As for the young investors, they are among that of the experience of the expert, just as the pilgrimage of their investments does not give it to these advantages, so the connection of the protection of small investors to disrupt the financial women with its legal and contractual obligations, especially with the absence of the public in the public, in the public, in the public, in the absence of the public. Effective protection rules in the Securities and Commodities Authority Law.

Objectives of the study: The study aims to solve the aforementioned protection problem, and the researcher has found that the best realistic solution that ensures the sustainability of business for small investors, and achieves for them their goals of investing in the financial markets and the securities market, the insurance system is the responsibility of the financial intermediary. This is what the study seeks to propose, while revealing the most important provisions governing it.

Study Approach: the researcher relies on the descriptive approach in explaining the meaning of insurance from civil responsibility, its importance, and its parties, then the analytical approach in revealing the reasons for its activation. As well as the monetary approach in the weakness of investor protection in

[1] - Farouk Ibrahim Jassim, Legal Frameworks for Stock Markets, Al-Halabi Human Rights Publications, 1st Edition, Beirut, Lebanon, 167 AM, 2016.

accordance with the general rules of responsibility and the legislative void in the Securities and Commodities Authority Law No. 4 of 2000 AD.

- The insured risk in the event that the responsibility of the financial intermediary and related provisions.

Risk can be defined as: A potential incident, the occurrence of which constitutes a threat to a legitimate interest. The insured shall have his will to pay its effects by insurance from the amount of the insurance or the guarantee. The insured risk of harm to the investor is proved by the action of the financial intermediary. This necessitates the establishment of the broker's responsibility towards the aggrieved investor, and the proof of the broker's responsibility is obligatory for all persons practicing these trading operations in the market.

1 - To be of good reputation.

2- Completing the experience or passing the tests or studies issued in their regard or organizing them by a decision from the Capital Market Authority.

3- He must have legal capacity.

4 - To have a scientific qualification.

5- He shall not have been dismissed or disciplinary banned from practicing the profession of financial intermediation, or any free profession, or sentenced to a felony or misdemeanor in a crime affecting honor or trust, or with a penalty for any of the crimes stipulated in the laws of companies, commerce, the capital market law, or He ruled before that he was bankrupt.

6- He shall be full-time and not work in any way or in any capacity in another brokerage firm or in commercial business. But are these conditions necessary to prove the quality of concluding the insurance contract? The researcher does not see this in that they are conditions for proving his validity in trading in securities in the market as a representative of the brokerage company, and are not conditions for establishing his capacity to represent the financial broker, and then it is sufficient to prove this quality in him to conclude the insurance contract; That is, he is a representative of the brokerage firm.The legal relationship that binds the financial [2] broker with his clients of securities investors is adapted as an agency. He buys and sells securities for his clients, and therefore he is committed to them with ability and great care, and he has a duty to implement his clients' orders and instructions accurately without any errors. He or one of his subordinates made a mistake, so he asks about that mistake and bears the losses incurred by his client, and therefore the insurance of his responsibility only goes out to cover his guarantee towards these investors, and not others.

- The insured's obligation towards the broker to insure his liability based on the insurance contract from his responsibility towards third parties.

It may be difficult to identify the images of the mediator's breach of his legal and contractual obligations in the field of trading in the market, but the images of violations or illegal practices of the mediator are usually in the following images of

[2] - Mahmoud Samir Al-Sharqawi, Commercial Companies, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 130

false commitments, disclosures, or breaches of information and information: And the disadvantage of the misguided propaganda, and the speculative, unnoticed at the price of the arrow, and the manipulation of the price of arrow, the disclosure of secret information, and the cover -up of unnamed dealers permitted to deal with the market, which is from the form of the mock of the sterility, and the group is between two jobs in two years, and the group is in two. It is not permissible for her to circulate in the market, which is active in the market through the means of the licensed for it, and the bribery crime to prevent the movement of criminal, commercial or disciplinary cases in its right, and the detention of the verification in the shadow or a complaint of the corporation of the debate in front of the disadvantage in front of the dismissal or the disadvantages of the disadvantages. It undertakes its obligations to receive orders from clients, or not to execute them according to their orders, and to delay returning the invested money to the investors, or to clearing it by transferring it to another company[3].

The amount of the guarantee that the insured is obligated to

The amount of the guarantee is determined according to the estimation of the extent of the insured risk, and the risk may be fixed or variable, specific or not. What is certified for insurance by the responsibility of the financial intermediary? The safety that the insured seeks must come from a certain danger of two things, one of which is that the absence of specific danger necessitates the lack of safety, and when safety is definite, there must be a certain risk between them. The second is that the risk is the subject of the insurance contract, and the place must be specific, and the risk may be specific at the time of the contract, and it may only be necessary at the time for the insured to implement his commitment and commitment to the risk. appointed, taking into account the commitment between them. The second is that the man is the subject of the contract of insurance, otherwise it is possible in the place that it is with us, and the rhetoric may be with us and the time of the contract, and it may not be appointed except at the time of implementing the believer, the commitment, and it is the time of the risk, and this is what is wrong with the risk, a conflict between them regarding the appointment requirement; However, the difference between them is the time of appointment, not the condition of appointment itself. Appointment is fixed and its time varies between the time of the contract or the time of the occurrence of danger, and this is not prohibited by law, and an example of the risk is the occurrence of the risk.

Those who are then if we say that insurance is the responsibility of the financial mediator, it is absolutely or met with a standard of insurance.

And when it was a proportion of the occurrence of the danger in the period of insurance, the danger is considered a fixed man, unlike the changing danger, as the causes of its occurrence in the period of contracts are difficult or descending, and it is intended with the extent of the occurrence of the occurrence that the possibility of

[3] - Ali Al-Mahdawi, Activating the Insurance System, p. 193

its occurrence applies to the time An event linked to the action of time, and the temporal circumstance is a conducive factor in its occurrence, such as the time circumstance in price fluctuation. The criterion for this risk is that time does not constitute an essential element in the increase or decrease in the rate of its occurrence. when it is presented, the importance of the distinction between the specific danger and the disgrace is not shown, and it is time to ensure that the insurance is to be appointed to appoint what the believer must pay by the occurrence of the believers of the believers from it, contrary to the steadfast danger and the changing danger, because the importance of the values of them for the benefit of the believer. If the risk was specific at the time of the contract, the amount that the insurer is obligated to pay when the risk occurs must be specified. But if the insured risk is not specified at the time of contracting, then the amount of insurance that the insured is obligated to pay when the risk occurs can be released. Restricting it to a maximum. In the first case, the insured is obligated to cover any liability, and in the second case, the insured is obligated to the maximum specified in the insurance contract if the amount of damage is increased to protect him, or if the risk increases. If the investor suffers a loss arising from the illegal practices of the financial intermediary, the risk is not specific, considering its determination at the time of its occurrence and not at the time of insurance. This means that what the insured must perform to fulfill his obligation is determined only by the time of the occurrence of the risk, which is the amount of loss that the insured financial intermediary owes, which is the beneficiary who is also covered by the insured investor.

However, if the insured becomes bankrupt and stops paying his debts, this bankruptcy does not affect the contract Insurance, so the believer is committed to covering the dangerous danger from him, but the percentage of insurance premiums, if what he was entitled to before the issuance of governance in the month of bankruptcy is our debt to the believer for the soul, he enters the believer who is always in separation, either Bankruptcy is a debt to a group of creditors[4].

Amount of premium to be paid by the insured (mediator)

The insurance is a binding contract for the side, and then it is based on the two parties of the opposite obligations, all of which is a reason for another, for the believer in cooperation with the believer is obligated to cover the risk of the believer from the subject of the commitment of the believer to pay the installment, It represents the corresponding obligation to cover this risk. In addition, the premium is considered a basic condition of the technical insurance conditions necessary for concluding the insurance contract in practical terms, and without it, the insured cannot achieve this process and compensate for the losses.

The debtor of the premium is the insured in whose name the insurance policy was issued, and who is committed to carrying out his obligations corresponding to the obligations of the insured. The one contracting with the

[4] - Abdul Khaleq Hassan, The Insurance Contract, second edition, Dubai Police Academy, 2008, p. 17

insured may have three characteristics, he is the insurance applicant, the insured, and the beneficiary[5].

when the man is the basis in calculating the price of the installment, it is obligatory to equate them from two terms, one of whom is to appoint the degree of the possibility of the right to be caused by the risk covered by the installment, and that is by challenging the lineage of the cases in which there is a reason for the severity. Hence, calculating the insurance premium is based on statistical studies and mathematical operations that take into account the proportion of potential risks occurring in one period of time, which is usually a one-year period.

It has been presented that determining the premium can be calculated consistently at the time of the contract as long as the risk is fixed, and the risk insured from the broker's liability is a fixed risk. The risk against the investor is considered constant when it arises from the illegal practices of the broker.

That the illegal practices do not include the element of time, as they are liable to occur at any time. A time of dealing in the market.

Three elements are involved in calculating the insurance premium, which are:

1. The amount equivalent to covering the risk, known as the net premium.
2. The amount that covers the insured's expenses in managing the insurance process, known as the premium burden.
3. The profit attributable to the insured.

The clear installment represents the extensive interview of danger, and it is called the counterpart, but we have looked at the actual condition that the believer pays for him to make him informed of this view, and this outfit is repeated in that the believer does the assertion of the assignment, then they will be fulfilled. A mediator between the insured, and he needs to mediate[6]. The insured for specific expenses distributes their burden on the total of the insured, by adding them to the theoretical net premium that is determined on the basis of the risk, and these premiums are called the net premiums, or the premiums. It results from the total of the actual premium paid by the insured, which is called the commercial premium or the actual premium, in addition to calculating the percentage of his profits from managing the insurance process among the insured. The investment interest rate must also be calculated for the benefit of the insured, and this interest is paid by the insured to the insured in cash directly, but indirectly. In that when determining the net premium, the insured deducts from it an amount equal to the interest rate that must be paid to the insured in return for the use of his money in investment[7].

Return of the affected investor to the insured

If the compulsory insurance of the financial intermediary is regulated by

[5] - Nazih Muhammad al-Sadiq al-Mahdi, role of Stock exchange market for invesments. p. 155
[6] -Abdel Moneim Al-Badrawi, The Art of Insurance - Insurance Contract - Insurance of Persons, p. 81, item 55
[7] - Muhammad Shukri Sorour, Lessons in the General Provisions of the Insurance Contract, Dar Al-Fikr Al-Arabi, Cairo, without a year of publication, pg .115

legal legislation and a unified insurance policy, and the insured risk occurs, and the liability of the financial intermediary, the investor may have recourse to the insured directly with the guarantee, considering that the injured person derives his right from the law and not from the insurance policy between the insured and the financial intermediary who is insured by the insured's clients. Hence, there is no need to enter into a jurisprudential difference as to the basis for the non-injury's return to the believer, in which it was said that; to stipulate the interest of others, the motivator of the contract, the right his right to be compensated for the damage caused by imprisonment on the part of the insured as long as the injured party did not specify what Injury by the insured, or the rules for seizing the debtor's money with a third party, assuming that the insured owes the insured to the insured, and the aggrieved party returns as a creditor of the private insured to the insured according to that there is a privileged right for the injured party over the amount owed by the insured to the insured, or that surrogacy is the basis for direct recourse from the side of the injured party to the insured, considering that the insured is the insured by the insured[8].

Conditions for verifying the liability of the financial intermediary

The challenge of the displacement that the responsibility of the civil mediator is based on its resurrection, it is necessary to consider that it is a responsibility that is reviving in the confrontation of a professional, professional person who is specialized, which is the mediator, and upon him, if it is that it involves the same concepts, which is in general, that is in general. The general framework with a kind of privacy. In the sense that if it requires that it requires the general instances of civil responsibility in its general meaning, from the mistake, release and a reasonable relationship between them, then the public understanding in these staff is affected by the personal profession of the mediator, from the meaning of the meaning of the meaning of the same and the meaning On the other hand, the dyes of this responsibility as the objectivity make it possible for them to do a possible matter with an anchor that does not require error and the captivating relationship between him and between the harm to the duty of their resurrection, as it is possible to do the same.

Whatever; These words do not mean that this responsibility can arise from the pillar of harm alone, without the other two pillars, from an error and a causal relationship between them, because even if it is objective in its character, it is not possible for the defendant to act on the side of the harm. A high knowledge and news that makes his works with a deliberate and reinforced characteristic, with all the precautions that take away from the possibility of harm to change, and that the financial money of the mediator enables him to capture all the consequences that make the way of its work, which is the same as its business, which is the same as its work, which is the same as its work, which is not. With that money, and then

[8] - Muhammad Shukri Sorour, Lessons in the General Provisions of the Insurance Contract, Dar Al-Fikr Al-Arabi, Cairo, without a year of publication, pg 93

the error of the error is a basis in challenging the effects of responsibility that the mediator will bear, not, and the most prominent of these effects is to overlook the person who is the deceased who is a destiny, as a result of the extent of the extent.

Mediator Fault

An error is defined as; The short act or the other than the short, which causes a non -transformed freedom, arranged for those who were issued by it, the obligation of compensation if it is distinguished, then the reason for the change is not the manifestation is the error of the same and the mistake of the mediator is that it is not implemented by one of its obligations, which is the one who is in the same way. A legal text, or dictated by the usages in the financial market. A large part of legal jurisprudence has held that the broker's obligation is an obligation to take care of the common man, and therefore the responsibility of the brokerage company is not based on presumed Fault. The degree of care that the financial intermediary must exert is the utmost care, so the company must take the utmost care to ensure that its clients get the best and most affordable prices, Following their orders and this care is limited to the time of its existence when executing the deal. As for the period preceding the implementation and following the implementation process, the obligation imposed on the mediator is a commitment to his hard work and his diligence. As a result, the mediator's error can be envisaged in one of the following degrees:

1. The grave error: the error emanating from the intermediary, which is represented in not taking the required care regarding a particular process and in a manner that is issued only by the least careful and most chaotic intermediaries.
2. Simple error: It is the error that accompanies the normal functioning of the measures taken by the mediator without the intention or intent to obtain it.
3. Neglect: It is a behavior characterized by a lack of care and caution in the duty of giving care to the mediator when executing a certain operation.[9]

Causal relationship between error and damage

It is not sufficient for the civil mediation company to prove the error and the customer's injury, but there must be a relationship between the error and the damage that the customer has suffered and the liability of the claimant can be

[9] - Mustafa Al-Auji, Civil Law, Part 2, Civil Liability, Al-Halabi Human Rights Publications, 4th Edition, 2009, p. 246

proven. The relationship of the captivity to the general rules that control civil responsibility, which requires that the civil responsibility is not sufficient for a stagnation of association with the blind and the existence of a mistake from the other party, but rather that the error must be the reason for the occurrence of harm. Its framework for the mediator's responsibility for concluding the mediation contract, the concept of causation the causal relationship is the direct link between the error and the damage, because the error is the cause for the occurrence of the damage, and this damage is the natural result of the committed fault.

There are two racists, the first of which is that there be a violation with a legal or real commitment that has been obtained from the mediator "fascinating or from the way of its followers", and the second of them is the feat of the harm that afflicted the deceased to this violation, which is the matter that is in the way that the relationship has been fulfilled, which is the matter of the relationship, which is the matter of the relationship, which is the matter of the relationship, a third party, if this act does not in itself constitute a breach of a legal or contractual obligation, or if it is, but it is not a direct cause of causing the harm. And the reason for the causes, even if it is a link between the two cornerstones of civil responsibility, but it is independent of them from its existence, and if you may be established in this face by one of them in the majority, then it is in the way of the right to the right, so it is not possible for me to be in. From his liquidation, and that is because there is an argument on the calculation of the benefit of his creditor, because they are not in this way, even if it does not describe the error, except that it represents the reason for which the successful harm arises from it. The act of the mediator, and if the responsibility is to be paid to the mediator, it is based on the absence of his fault, not on the basis of the absence of a link between this act as a mistake and the damage caused. This relationship may be fulfilled by the existence of error, and if the mediator issued a decision, he rejects the rejection of dealing with one of the people without a reasonable or sufficient reason, and at the same time, the hearing of this commercial person was shaken in the market, and its desire to trade in the interest of the money that is in the market. What led to the many stones of merchants from dealing with him, as well as the assumption of the mediator with a mistake with us represented by its issuance of the rejection decision without a legal or true justice, except that this decision was not the reason that led to the weakness[10].

With a note that the censure of the captive relationship is linked to the blessing of the harm, but it is in the event that it is with him from the verification of the verb, so the abuse of the harm is sung by the researches in the availability of or the fulfillment of the captivity that even if you find that it will link the mistake Negation is not the only element of harm. There is no doubt about the existence of a causal relationship between the error and the damage, unless the reasons that led to this damage are multiple, so that the mediator's fault is only one of them, or if the damages caused by the risks are cascaded.

[10] - Abdel Razek Al-Sanhoury, The Mediator in Explaining Civil Law, p. 1222

Proving and denying causation

The causal relationship represents the linking pillar between the pillars of error and damage for the establishment of civil responsibility, and that the original proof of these two pillars falls on the shoulders of those who claim that this responsibility is fulfilled. if the matter of proving it is often what is ease and easily, especially if it is decided that the corner of the corner of error and freshness, then some of the difficulties are established in some kind of difficulty, and not when it enters several reasons in the events of the etc. Attempting to prove and negate this relationship by taking more space between the claimant of its existence, as the direct and influencing reason for the damage, and the one who denied it on the basis that it was against it, or all of that would have caused him to be wrong.

Whatever the means used by the aggrieved party to prove his claim that the mediator's act or mistake may have caused him this damage, the mediator can claim from the other side. The prosecution is completely or part, and that is through the provisions of the fact that the error that happened was not the reason for the foresight and expected in the events of the harm, and that is because of the extent of the last of my foreigner, which led to the right to the action, or that it is not the right to release alone is enough to prove it[11].

Conclusion and Recommendations

The inadequacy of public rules in the guarantor of the investor, and the legislative void in the law and the decisions issued, will be exiled to him in achieving a fascinating protection for the investor in the face of the financial mediator in the event of his obligations, as a result of a solution to the form of a solution to It is the responsibility of the financial intermediary, in a way that achieves safety for the investor, and ensures the permanence of his trading in securities in the financial market, and this would consolidate confidence in the stock market and its sustainability. The one who concludes an insurance contract with the insured is the insured, as he is the second party to the contract, and the characteristics of the insured and the beneficiary may meet in it, as in the responsible insurer. The insured in this regard is the financial intermediary, and he benefits from the insurance contract from his civil liability arising from his professional mistakes. The insured risk of harm to the investor by the financial intermediary is proven. This requires the broker's responsibility towards the damaged investor, and the proof of the broker's liability is the responsibility of the insurer. If the investor suffers a loss arising from the illegal practices of the financial intermediary, the risk is not specific, considering its determination at the time of its occurrence and not at the time of insurance. This means that what the insured must perform to fulfill his obligation is determined only by the time of the occurrence of the risk, which is the amount of loss incurred by the insured financial intermediary, which is the rightful

[11] - Jalal Muhammad Ibrahim, Insurance A Comparative Study, p 235

investor who compensates the rightful investor. The risk against the investor is constant when it arises from the illegal practices of the financial intermediary, because its illegal practices do not include the element of time, as it is universal. Insurance is mandatory when it is related to an activity that affects the society or public interests in the country. The legislator sees the need for insurance from its risks. And since the financial papers markets are a place to trade in the financial papers of the companies registered in it, and that its stability and support for confidence in it have its positive resources in the investment of investments in it and the support of the economy, as well as the social dimension, so it is necessary to interact with the insurance system, and that the market is necessary, and that the market is necessary, , according to a unified insurance policy. Enacting a law on compulsory insurance from the responsibility of the financial intermediary, and regulating a document Unified insurance. Establishing a specialized insurance company in which the government owns no less than 51% of the shares. Its capital is affiliated with the Securities and Commodities Authority.