Issuance and offering of securities in Jordan

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Recent years have seen a significant increase in the issue of securities in Jordan; particularly in the bond market, as there seems to be a growing need for such investment instruments due to the rising costs of borrowing. This article provides an overview of the legal requirements for the issue and offering of securities in Jordan.

The basic rule for the issuance of securities
Every issuer in Jordan shall submit to the Securities Commission an application for registering securities. The Securities Commission has the right to reject the registration and issue of any securities if such issue risks causing damage to the owners of the securities of that issuer or to the investors in general.

The "Issuer"
According to the Securities Law No. 76 of 2002 (the "Securities Law"), any legal person issuing or announcing the intention to issue securities is considered as an "Issuer".

Securities under the Securities Law
The Securities Law defines securities broadly, as any ownership rights or any instruments local or foreign that are commonly recognized as securities and considered as such by the Board of Commissioners of the Securities Commission. The Securities Law includes the following, in particular, under the definition of securities:

1. Transferable and tradable company shares;

2. Bonds issued by companies;

3. Securities issued by the Government, official public institutions, public institutions, or municipalities;

4. Securities depository receipts;

5. Shares and investment units of mutual funds;

6. Equity option bonds;

7. Spot contracts and forward contracts; and

8. Put and call option contracts.

What is the procedure to offer securities?
The procedure will depend on whether the issuer wishes to offer to sell securities, after registering them at the Securities Commission, through a public or a private offer. The following will touch upon the definition and legal requirements of both types of offering securities:

1. Public Offer

The public offer is the offer to sell securities to more than thirty persons.
Legal requirements for a public offer:

The Securities Law provides that no person shall make a public offer unless a prospectus is filed with the Securities Commission, together with all the information and data which enables investors to make their investment decision. An announcement approved by the Securities Commission of the prospectus shall be made public through two local daily newspapers.

The prospectus must be prepared by a licensed underwriter and, for disclosure purposes, shall include copies of the following:

1. Any agreement or agreements concluded with the underwriter;

2. A legal opinion in respect to the legality of the issue;

3. The issuer's Memorandum of Association if the issuer is a public shareholding company or a private shareholding company, and a copy of its articles of association and any other documents relevant to the company;

4. If the issuer is a limited liability company, the documents pursuant to which the company was established or declared;

5. If the Issuer is a partnership or any other form of organization, the articles of partnership or association and any other papers pertaining to its organization, and a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered;

6. All contracts that contain substantial facts; and

7. The agreements concluded between the issuer, the payment agent, and the custodian of the securities subject to the offer.

The prospectus is deemed to be effective thirty days after its submission to the Securities Commission.

Exceptions:
It is worth mentioning that the Securities Commission may grant exemptions from submitting a prospectus in any of the following cases:

a) If the number of investors, to which the public offer is made, is limited, and the investors are capable of assessing and bearing the investment risks (sophisticated investors); or

b) If the funds intended to be raised by the offer are limited; or

c) If the disclosure submitted to the investors is accurate and sufficient to be considered as a substitute for the prospectus.

2. Private Offer
The private offer is the offer to sell securities to thirty persons or less.

Legal requirements for a private offer: The Securities Law does not require issuers offering securities through a private offer to submit a prospectus, however the relevant directives provide that the issuer must submit all the documents relating to the issue of securities including the required approvals and decisions; therefore, in practice underwriters prepare an information memorandum, that serves as a prospectus; disclosing to the investors all needed information that would help making their decision.

The relevant directives also provide that an issuer offering securities through a private offer must announce such offer in two local daily newspapers at least twice, and include the data and information relating to the issue, the value of the issue and the parties to whom the offer is made.

Penalties for violating the Securities Law
Offering to sell securities upon false or misleading information is a violation of the Securities Law. Penalties for violating The Securities Law range from a fine not exceeding one hundred thousand (100,000) Jordanian Dinars, in addition to a fine of not less than twice the amount, and not more than five times the amount, of profit made or loss avoided by the person committing the violation. Certain violations may also result in imprisonment for a term not exceeding three years. The penalties also include the right of any investor who incurs financial loss as a result of the violation to claim remedies for damages from the seller or the issuer violating the Securities Law.