

The Adoption of the Keeper and Custodian system in the Iraq Speculative Market

by Samaa Al Lami - s.allami@tamimi.com - Baghdad

April 2015

Incorporation of the Iraq Speculative Market

For a period that extended from 1992 to 2003, the Iraq Speculative Market was known as the Baghdad Speculative Market, which was incorporated according to Law No. 24 of 1991. This market was a state market that enrolled at that time 113 Iraqi joint stock private and mixed companies. The Baghdad Speculative Market was closed according to a decision dated 19 March 2003 issued by its Board of Directors on 18 April 2004 (Law No.74 of 2004), which was issued to incorporate two significant entities in the field of capital, namely the:

- Iraq speculative market; and
- Commission of Iraq speculative market.

A speculative market is financially and administratively independent and is managed by a board of nine members representing different economic sectors of the investment field, which is called the Governors Council.

The most important trading feature of the speculative market is that the prices of the marketable shares are free and rely on factors of supply and demand and on available information and statements from joint stock companies.

The Iraq Speculative Market adopted the licences of brokers, which were issued from the dissolved Baghdad speculative market, and they were allowed to carry out trading operations therein.

The Iraq Speculative Market Commission was incorporated in compliance with law No.74 of 2004 and its amendments; it is a state independent commission having a legal personality consisting of five members including the chief. Its accounts and records are subject to audit by the Financial Supervision and Integrity Commission. The most important service offered by the Commission is to carry out brokerage business in the Iraqi Speculative Market.

In the light of the above, the Iraqi Deposit Centre of Speculative Market has carried out many initiatives to build and support its infrastructure and apply updated IT systems aimed at achieving its prospective targets. This is especially with regard to updating the bilingual electronic system relating to the Keeper Custodian System.

The Keeper Custodian System was determined in 2012 by the Speculative Market Commission (to be applied optionally) which preserves the investors' shares with that keeper instead of keeping it with the brokers, and obliges the investor to pay the complete value of the shares which he buys according to the payment system applied in the local speculative market.

It is noteworthy that this system complies with the international standards of the:

- Technical committee of the international organisations of speculative market committees ("10 SCO");
- Committee on Payment and Settlement Systems ("CPSS");

- Group 30 (“G30”);
- International Federation of Exchanges (“FIVB”)
- International Organisation of Securities Services (“ISSA”)
- World Federation of Exchanges

The Keeper Custodian is a corporate person duly licensed by the Speculative Market Commission to carry out safe-keeping activity and preserve and convert securities between investors’ and brokers’ accounts and vice versa, and to pay commitments incurred through securities trading on behalf of its investors.

According to Instruction No.17 of 2012 in order to be licensed as a custodian for securities the relevant corporate person must be:

- An authorised Iraqi bank, which has an approval from the Central Bank of Iraq (“CBI”) to practise this activity; or
- An Iraqi firm specialised in financial services; or
- A branch of a foreign bank on the condition that it is licensed from the main bank and has the approval of the CBI.

Conditions of Keeper Custodian Activity

- The paid-up capital to carry out this activity should be not less than 50 billion Dinars.
- Preparation of the required electronic programs to carry out this activity in compliance with the conditions and specification provided by the market.
- Provision of what is required for insurance to cover damages that may occur to the investors arising from commercial risk, professional negligence, loss, damage, or theft of the investors’ documents or property, according to the discretion of the Commission.
- Payment of the subscription allowance with the bank guarantee, which is not less than 1 billion Dinars for the market order after receiving the Commission’s approval.

Functions of the Keeper Custodian: The Custodian’s functions

The functions of the Keeper Custodian are determined according to a safe keeping agreement concluded with the investor, which includes opening an account for the securities of the investor and providing the rights connected therein including receiving the interest and profits and the right to subscribe with the pledge of securities. The Keeper Custodian is also responsible for converting the securities to and from brokers and other safe-keeping accounts in accordance with investors’ requests.

Obligations on Keeper Custodian

According to the valid instructions of the Speculative Market, the Keeper Custodian shall abide by the agreement of safe keeping of securities with every investor separately which include all investor statements.

The Keeper Custodian will use the securities only according to securities law and decisions issued accordingly and in conformity with the agreement concluded with the investor.

The Keeper Custodian shall inform the investor about all operations and conversions which occurred on his account, within 24 hours, including providing the investor with a detailed monthly account clarifying all trading and conversions which occurred in his account.

The Keeper Custodian shall keep the investors’ statements, their names or any information about their accounts confidential.

The Keeper Custodian must pay the annual subscription and submit an annual report about the financial position duly certified by the local supervisor. He must also submit the licence application to carry out the activity of Keeper Custodian to the Commission of Securities.

If the Keeper Custodian commits any breach of the law and rules, such as missing one of the licence terms or a material violation of any duties or obligations included in these rules, for example by defaulting in payment of the annual subscription or declaring bankruptcy of the licensed Keeper Custodian company, the Commission may:

- Address a notice to him and oblige him to rectify the breach within the period specified by the Commission or the market.
- Suspend the activity of the Keeper Custodian or cancel his licence.

Conclusion

The Keeper Custodian system has been effectively adopted in the Iraq speculative market, providing high transparency in dealing and evidenced by great success in the international stock exchange. It should be an attractive factor for investors especially with the prospect of strong economic investment in Iraq.

This new system ensures absolute independence for the Keeper Custodian, makes it obligatory for the investors to pay but at the same time provides a high degree of protection for the foreign investor.