THE ROLE OF THE AMMAN STOCK EXCHANGE IN JORDANIAN CORPORATE GOVERNANCE

By

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Dedication

This thesis is dedicated to my parents who have supported and encouraged me throughout my life and in particular my study.
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Statement of Authentication

The work presented in this thesis is, to the best of my knowledge and belief, original except as acknowledged in the text. I hereby declare that I have not submitted this material, either in full or in part, for a degree at this or any other institution.

Signature

Yousef Ahmed Al-Tal

March 2014
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<th>Full Form</th>
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<tr>
<td>ACGC</td>
<td>Australian Corporate Governance Council</td>
</tr>
<tr>
<td>ACH</td>
<td>Australian Clearing House Pty Limited</td>
</tr>
<tr>
<td>AFM</td>
<td>Amman Financial Market</td>
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<tr>
<td>AMEX</td>
<td>American Stock Exchange</td>
</tr>
<tr>
<td>APCA</td>
<td>Australian Payments Clearing Association</td>
</tr>
<tr>
<td>APRA</td>
<td>Australian Prudential Regulation Authority</td>
</tr>
<tr>
<td>ARAMIS</td>
<td>Surveillance System for Real Time Trading</td>
</tr>
<tr>
<td>ASE</td>
<td>Amman Stock Exchange</td>
</tr>
<tr>
<td>ASIC</td>
<td>Australian Securities and Investment Commission</td>
</tr>
<tr>
<td>ASTC</td>
<td>ASX Settlement and Transfer Corporation Pty Limited</td>
</tr>
<tr>
<td>ASX</td>
<td>Australian Securities Exchange</td>
</tr>
<tr>
<td>CBJ</td>
<td>Central Bank of Jordan</td>
</tr>
<tr>
<td>CCD</td>
<td>Companies Control Department</td>
</tr>
<tr>
<td>CCM</td>
<td>Central Control Module</td>
</tr>
<tr>
<td>CCO</td>
<td>Chief Compliance Officer</td>
</tr>
<tr>
<td>CCPS</td>
<td>Central Counterparties Standards</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CFD</td>
<td>Contracts for Difference</td>
</tr>
<tr>
<td>CFR</td>
<td>Council of Financial Regulators</td>
</tr>
<tr>
<td>CG</td>
<td>Corporate Governance</td>
</tr>
<tr>
<td>CHESS</td>
<td>Clearing House Electronic Subregister System</td>
</tr>
<tr>
<td>CPSS</td>
<td>Bank for International Settlement's Committee on Payment and Settlement Systems</td>
</tr>
<tr>
<td>CRO</td>
<td>Chief Risk Officer</td>
</tr>
<tr>
<td>CS</td>
<td>Clearing and Settlement</td>
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<tr>
<td>CSD</td>
<td>Information Technology</td>
</tr>
<tr>
<td>EAP</td>
<td>External Advisory Panel</td>
</tr>
<tr>
<td>EDS</td>
<td>Electronic Disclosure System</td>
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<tr>
<td>EMH</td>
<td>Efficient Market Hypothesis</td>
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<tr>
<td>ERP</td>
<td>Education and Research Program</td>
</tr>
<tr>
<td>ETF</td>
<td>Exchange Traded Fund</td>
</tr>
<tr>
<td>ETS</td>
<td>Electronic Trading System</td>
</tr>
<tr>
<td>FIBV</td>
<td>International Federation of Stock Exchanges</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GFC</td>
<td>Global Financial Crisis</td>
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<tr>
<td>IAS</td>
<td>Committee of International Accounting Standards</td>
</tr>
<tr>
<td>IC</td>
<td>Insurance Commission</td>
</tr>
<tr>
<td>ICGN</td>
<td>International Corporate Governance Network</td>
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<tr>
<td>IFRS</td>
<td>International Financial Reporting Standards</td>
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<tr>
<td>IOSCO</td>
<td>International Organization of Securities Commissions</td>
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<tr>
<td>IPO</td>
<td>Initial Public Offering</td>
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<tr>
<td>IRS</td>
<td>Interest Rate Securities</td>
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<tr>
<td>ISSA</td>
<td>International Securities Services Association</td>
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<tr>
<td>IT</td>
<td>Information Technology</td>
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<tr>
<td>ITS</td>
<td>Internet Trading Service</td>
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<tr>
<td>JD</td>
<td>Jordanian Dinar</td>
</tr>
<tr>
<td>JSC</td>
<td>Jordan Securities Commission</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>LSE</td>
<td>London Stock Exchange</td>
</tr>
<tr>
<td>MAS</td>
<td>Market Analysis Software</td>
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<tr>
<td>MIS</td>
<td>Management Information System</td>
</tr>
<tr>
<td>NASD</td>
<td>National Association of Securities Dealers</td>
</tr>
<tr>
<td>NASDR</td>
<td>NASD Regulation</td>
</tr>
<tr>
<td>NED</td>
<td>Non-Executive Director</td>
</tr>
<tr>
<td>NGF</td>
<td>National Guarantee Fund</td>
</tr>
<tr>
<td>NYSE</td>
<td>New York Stock Exchange</td>
</tr>
<tr>
<td>NZ</td>
<td>New Zealand</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>PBR</td>
<td>Principles Based Regulation Regime</td>
</tr>
<tr>
<td>RBA</td>
<td>Reserve Bank of Australia</td>
</tr>
<tr>
<td>REIT</td>
<td>Real Estate Investment Trust</td>
</tr>
<tr>
<td>ROSC</td>
<td>Report on the Observance of Standards and Codes</td>
</tr>
<tr>
<td>RTGS</td>
<td>Real Time Gross Settlement</td>
</tr>
<tr>
<td>SCORPIO</td>
<td>Securities Central Operation Registry Processing and Information Online</td>
</tr>
<tr>
<td>SDC</td>
<td>Securities Depository Centre</td>
</tr>
<tr>
<td>SEGC</td>
<td>Securities Exchanges Guarantee Corporation Ltd</td>
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<tr>
<td>SF ECC</td>
<td>SFE Clearing Corporation Pty Limited</td>
</tr>
<tr>
<td>SMART</td>
<td>Stock Market Replay Tools Program</td>
</tr>
<tr>
<td>SMSF</td>
<td>Self Managed Super Fund</td>
</tr>
<tr>
<td>SRO</td>
<td>Self Regulatory Organisation</td>
</tr>
<tr>
<td>SSFS</td>
<td>Securities Settlement Facilities Standards</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>WFE</td>
<td>World Federation of Exchanges</td>
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Abstract

The reforms adopted by the Jordanian government between 1997 and 2003 to promote and globalise the securities market in Jordan have contributed directly in the significant improvements that the Amman Stock Exchange (ASE) witnessed in all market indicators in the last decade and accordingly in reinforcing the ASE role in boosting the Jordanian economy through mobilising funds for listed companies from the public. The Securities law 1997 no. (23) and the introduction of new technology for trading and dealing in securities (Remote Electronic Trading) are considered the cornerstone of these reforms. The Securities law 1997, which set the legal framework for the key elements of the securities market, separated the regulatory function from trading and technical side of the market by establishing three independent institutions: Jordan Securities Commission (JSC), ASE and Securities Depository Centre (SDC). In this new environment, the ASE witnessed a remarkable improvement in its performance. However, the sluggish performance of the ASE after the Global Financial Crisis in 2008 to date highlights the need to review all the securities regulators roles in the Jordanian Capital Market and corporate governance in particular the role of the ASE to reform the securities market to continue its important contribution in reinforcing the Jordanian economy.

The thesis discusses the role of the ASE in corporate governance in Jordan. While the ASE plays a pivotal role in the raising of much needed finance in the development of the Jordanian economy, its efficiency appears to have been hindered by its regulatory structure and institutional constraints. These include: first, the ASE institutional structure as a non-official public institution strengthens the government and JSC control over the ASE and weakens the administrative and financial autonomy of the ASE; secondly, the functional overlaps between the regulatory bodies entrusted with the oversight of the securities market with no clear demarcation and the lack of coordination between officials of the various regulatory bodies; thirdly, the dominance of families and government and some other obstacles such as the lack of appreciation of what corporate governance rules require, prevent listed companies from complying with corporate governance rules particularly those in the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008.

This thesis examines these structural and institutional deficiencies and the constraints they impose on the operation and efficiency of the Jordanian securities market and suggests ways of overcoming them by enhancing the five fundamental elements of market structure (technology, regulation, information, participants and instruments) so as to improve the market's efficiency and appeal to investors both within and outside the Middle Eastern region. This thesis argues that privatisation of the ASE leading to its listing as a public corporation is a potential solution for some of the problems relating to the ASE's institutional structure and its operation.
Chapter 1

Introduction

1.1. Introduction

The thesis evaluates the role of the Amman Stock Exchange (ASE) as a regulatory and facilitative body in the Jordanian Capital Market. In this connection, it examines its role in listing and trading in securities, ensuring compliance with the disclosure requirements, and its role in corporate governance in Jordan. The ASE is one of six bodies entrusted with a regulatory role. This responsibility is shared with the Jordan Securities Commission (JSC); the Companies Control Department (CCD); Securities Depository Centre (SDC); Central Bank of Jordan (CBJ) and the Insurance Commission (IC). The effectiveness of the ASE as a regulatory and facilitative body is tied in with how these bodies are able to interact, complement each other, and are able to resolve problems arising from such interaction in an expeditious and efficient manner. This section begins by providing background on Jordan.

1.2. Jordan

Jordan is a part of the Arabic Islamic civilization. Jordan was governed by the Ottoman Empire for more than 600 years until the end of the First World War. In 1921 the Transjordan Emirate was established under the British mandate. After the end of the Second World War Jordan emerged as an independent country on 25 May 1946 and is known as the Hashemite Kingdom of Jordan. It is situated in West Asia in the Middle East and has an area of 89 318 square kilometres with a population of 6.547 million as at 13 February 2014. The literacy rate among Jordanians is about 93%. Jordan is classified as a developing country. At the end of 2011 its Gross Domestic Product (GDP) was JD 20.47 billion (approximately US$ 28.912 billion) and GDP per capita was JD 3275 (approximately US$ 4625). It is a country with limited natural resources, and other than Potash and Phosphate, Jordan has no natural resources. Its capital market is a developing market discussed in Chapter 3. The limited resources of a small capital market must be borne in mind in making recommendations for the Amman Stock Exchange.

1 Amman is the capital city of Jordan and the ASE is Jordan's only stock exchange.
2 The British mandate period from 1921 to 1946.
3 Department of Statistics, Jordan in Figures 2011 (14 May 2012) 4
5 Jordan in Figures 2011, above n 3, 20.
6 Ibid 32.
7 Both terms 'Developing Market' and 'Emerging Market' will be used interchangeably throughout the thesis. The term ‘emerging market’ implies a stock market that is in transition, increasing in size, activity, or level of sophistication. Standard and Poor’s classifies a stock market as emerging if it meets at least one of two general criteria: 1- It is located in a low or middle income economy as defined by the World Bank, 2- Its investable market capitalisation is low relative to its most recent gross national income figures, see Standard and Poor’s, Global Stock Markets Factbook 2008 70.
Jordan is governed by a royal parliamentary system. While the legal system of Jordan has been influenced by many sources, its legal system belongs to the civil law family. The legal system of Jordan developed from codes of law instituted by the Ottoman Empire (based on French law). These were supplemented by British laws during the mandate period. Islamic law has also been influential in adapting European models.\(^8\) But as will be seen in the following chapters the operation of the ASE is generally based on standard western models. It will be argued that the ASE should take the opportunity to further modernize and extend its operations to match international standards in its operations. In this respect, chapter 8 argues that the ASE can learn from the model adopted by the publicly listed Australian Securities Exchange (ASX).

This section now sets out the scope and structure of the thesis.

1.3. Scope of the Thesis

The thesis discusses the role of the ASE in corporate governance in Jordan. While the ASE plays a pivotal role in raising capital finance to support the development of the Jordanian economy, its efficiency appears to have been hindered by its regulatory structure and institutional constraints. These include first, the absence of clear demarcation and problems with the functional overlaps between the various regulatory bodies entrusted with the oversight of the securities market; secondly, turf battles resulting from the lack of co-ordination between officials of the various regulatory bodies; thirdly, the lack of independence of these various regulatory bodies from government interference. This thesis examines these structural and institutional deficiencies and the constraints they impose on the operation and efficiency of the Jordanian securities market and suggests ways of overcoming them so as to increase its efficiency and appeal to investors both within and outside the Middle Eastern region. It will be argued in Chapter 9.3.2 that privatisation of the ASE is a potential solution for some of the problems relating to the ASE's institutional structure. As will be discussed in Chapter 4, some steps towards privatisation have already been legislated so that formal processes of privatisation are the final steps towards this goal. The thesis will argue that before these final processes are put in place, significant reform needs to take place in order to ensure that the ASE performs an effective role in the Jordanian Capital Market. The privatisation will assist the ASE to remove the government's and JSC's control over its financial and administrative affairs and accordingly reinforce its independence. But privatisation will not solve all the overlap between the regulatory bodies' roles in the capital market and the failures which impact the ASE performance in the listing, trading and disclosure fields. In contrast, some problems must be faced now to facilitate the ASE conversion to the new model in the future.

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\(^8\) A uniform law is applied across the country since it is a unitary state.
1.4. Thesis Structure

The discussion in the thesis is structured as follows:

**Chapter 1: Introduction.**

This introductory chapter outlines the subject of the thesis and the structure of its analysis and evaluation.

**Chapter 2: Securities Markets and Corporate Governance.**

This chapter sets out general definition of what is corporate governance, its key principles and its conceptual underpinnings. The thesis then turns to examine the broader context of securities markets in Jordan in Chapter 3.

**Chapter 3: The Securities Market in Jordan.**

The role of the ASE is set in the context of the establishment and growth of the securities market in Jordan. It examines the development of the Jordanian securities market from its beginnings as the Amman Financial Market (AFM) 1978-98, and its transformation into the ASE in the period 1999 to the present.

**Chapter 4: The Institutional Structure of the Amman Stock Exchange.**

This chapter examines the legal status of the ASE, and its goals, powers and organizational structure, and how this has influenced its role in the Jordanian Capital Market and corporate governance. This chapter will question whether its structure hinders its effectiveness.

**Chapter 5: Amman Stock Exchange: Listing, Trading and Disclosure.**

This chapter examines the role of the ASE in the securities market and in relation to corporate governance, and its role in respect of regulation and supervision. The role of the ASE includes the listing of securities, trading in securities, and the disclosure and dissemination of information. This chapter will also evaluate the adequacy of the ASE mandatory disclosure policy and disclosure mechanism, and their impacts on the ASE performance and the market efficiency. It will be argued in this chapter that the ASE falls short on the requirements for an effective exchange.

**Chapter 6: Regulatory Framework of the Securities Market in Jordan.**

This chapter evaluates the interrelationship between the ASE and other regulatory bodies which include the Jordan Securities Commission, Companies Control Department, Securities Depository Centre, Central Bank of Jordan and Insurance Commission. These bodies play a major role in the Jordanian Capital Market and corporate governance. Highlighted here are the main difficulties encountered by the ASE in the performance of its functions alongside these other bodies. The chapter will examine whether Jordan can learn from experience in other jurisdictions such as Australia.
Chapter 7: Listed Companies Compliance with Corporate Governance Rules.

This chapter examines some of the difficulties inhibiting Jordanian companies from complying with corporate governance rules. The chapter examines the corporate structures and governance in Jordanian listed companies. In this connection, it explores the issues of family ownership and influence on board structure, control and management in companies, and the consequent need for independent non-executive directors as a prerequisite for good corporate governance. This chapter also examines the directors’ statutory and fiduciary duties and their responsibilities to meet the needs of good corporate governance. These issues are important for the discussion of the effectiveness and possible reform of the ASE if it is to play a leadership role in Jordanian corporate governance and enforce the Corporate Governance Code for Listed Companies instead of the JSC.

Chapter 8: Evaluating the Amman Stock Exchange Role in Corporate Governance

This chapter examines the structural and institutional changes required to make the Jordanian system internationally competitive and attractive to both domestic and foreign investments. In this connection, the chapter compares the ASE with the ASX and what lessons can be learnt from the Australian experience. The ASX was the first exchange to become a publicly traded exchange in 1998 after demutualization. It provides a possible model for a privatised ASE.

Chapter 9: The Way Forward

The chapter provides a summary of the key findings of the thesis. It also concludes by presenting recommendations to enhance the performance of the ASE and other regulatory bodies in the capital market with a view to ensuring that the Jordanian system is internationally competitive. This chapter argues that privatisation builds on existing legislative provision so that formal processes of privatisation are the final steps towards the ASE’s independence. Privatisation will require as a pre-requisite that the ASE solves existing problems relating to its effective role in corporate governance and the difficulties with overlapping functions with the JSC as a regulator.
Chapter 2
Securities Markets and Corporate Governance

2.1. Securities Markets
Securities markets play a crucial role in the economic growth of a country. Securities markets bring together companies needing funds for further development and those with financial capital to lend. It also provides liquidity to investors by providing a venue through which securities in the forms of shares (stocks), debentures (bonds), various hybrid versions of shares and debentures (e.g. redeemable preference shares) can be bought and sold freely. Securities markets also develop new financial instruments and assist financial institutions to diversify their investments and reduce risk. The empirical literature has found a positive correlation between stock market development and economic growth. The presence of a stock market increases the stock of funding that can be accessed for investment projects. The regulation that accompanies an official exchange also provides improved accounting and reporting standards, increasing investor confidence. Such regulation would seem to be particularly important in attracting foreign investment. A study conducted by Levine and Zervos, using a sample of nearly 50 countries, strongly supports the view that improved economic growth is positively related to having an effective securities market. There is also evidence that opening a stock exchange is positively correlated with subsequent growth rates, at least over the first five years of the exchange's existence.

2.2. Origins of Securities Markets
The origins of the securities market are to be found in late medieval Italy. In Genoa, Venice and Florence companies paid a fixed rate of interest on bonds and annual dividends on stock. Following the establishment of the Dutch East India Company in 1602 and its successful trading in the Far East, its shares were actively traded. An active stock market formed in Amsterdam in response to the needs of investors for liquid assets and capital for long-distance trade and shipping. The Amsterdam bourse developed many essential features of trading in a modern derivative security market including the provision of clearing and settlement mechanisms. This provided

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9 Both terms 'Securities Market' and 'Capital Market' will be used interchangeably throughout the thesis.
13 Minier, above n 11, 135-140. The study conducted during 1960-1998.
15 Ibid 39.
a model for international finance when trading took place of British funds in the 18th century.\footnote{Poitras, above n 14, 79.}

By the end of the 17th century, government debt securities started developing in England. With the formation of the Bank of England in 1694, the English government started borrowing from the public through issuing debt instruments and public loans.\footnote{P G M Dickson, The Financial Revolution in England (Macmillan, 1967) 39-57.} In 1700 with the active market of debt instruments and the increase in number of joint-stock companies and market intermediaries (professionals), the first English institutional market was formed.\footnote{D C North and B R Weingast, ‘Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England’ (1989) 49 (4) Journal Economic History 821-28.} London became the dominant financial centre for global trading of stocks and shares following the closure of the Paris and Amsterdam bourses in 1793 and 1795 respectively. This dominance continued until the First World War.\footnote{Poitras, above n 14, 88.}

On the other side of the Atlantic, there was an organised auction market trading mostly in commodities on Wall Street in New York City during the 17th century, but this trading did not include financial securities.\footnote{Rik W. Hafer and Scott E. Hein, The Stock Market (Greenwood Press, 2007) 10.} The issuance of the government debt securities in 1790 to finance the Revolutionary War (American War of Independence) encouraged trading in debt instruments in New York and across America.\footnote{Ibid.} In the beginning trading in Wall Street was unstructured, there was no set time or process by which trades took place, or how deals were closed.\footnote{Ibid.} However, the railway construction boom, the transition of businesses to publicly traded joint-stock companies and changes in communication technology such as telegraph and telephone in the 19th century increased the importance of the New York market to become America's as well as the world's financial capital.\footnote{Ibid 10-14, Poitras, above n 14, 90.}

In Australia the first informal broking operations began around 1829. Mining companies were initially the main focus, as companies listed in the hope of capitalising on Australia's rich mineral reserves. In 1859 the Melbourne Brokers' Association was formed and established the first exchange in Australia. Soon after, stock markets were established in each of the other five state capitals, and in 1987 the six state-based markets were merged into the ASX.\footnote{Adam Steen and Keith Kendall, Introducing the Australian Stock Market (John Wily, 2005) 4. The state-based markets were: Melbourne - Victoria 1861, Sydney - New South Wales 1871, Hobart - Tasmania 1882, Brisbane - Queensland 1884, Adelaide - South Australia 1887 and Perth - Western Australia 1889.} The establishment of the securities markets was not uniform. For example, in the newly emerging capital markets of Eastern Europe, securities markets have come into being only since the 1989 with the fall of Berlin Wall and the proclamation of 'Perestroika'. This has also been true of Latin America and some South East Asian
countries including China. In Jordan, the first stock market had been established by the end of the 1970s.

2.3. Types of Securities Markets

Markets are divided into two main divisions, the primary market and the secondary market. The distinction is based on the time the security is issued. The primary market constitutes the issuance of the security by the company, including private placements; the secondary market is concerned with its trading either through a stock exchange (if listed), or off market through other means.

The Primary Market

The primary market is known as the issue market or new issue market. Securities issued by companies or the government are called primary securities. New issues are classified into initial public offerings (IPO) and secondary offerings.

An IPO is the first time that the general public is given the opportunity to buy shares and invest in a company. The IPO may occur by a newly formed company or an existing company following its conversion from private company to a public company. The IPO is also referred to as a float and going public.

Similarly, a secondary offering is a public issue made by an existing company to increase its capital. The secondary offering may occur where a company has already raised funds through an IPO, but wishes to issue more shares and raise additional funds. In the secondary offering the company sells its shares to its existing shareholders, institutional investors (private placement) and to the general public. The secondary offering is also called a further offering, subsequent offering, follow-on-offering and seasoned offering.

Both the IPO and secondary offerings have been significant sources of funds for business growth and development. The company may borrow more capital from the securities market on more favorable terms. By increasing its equity capital the company avoids paying interest on the debt capital and reduces its debts. These are regulated and used in Jordan as will be explained in Chapters 6.4.4 and 9.3.2.

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25 There has been an explosion in the number of exchanges opened since 1989; 49 exchanges opened between 1989 and 1998, see Minier, above n 11, 137.
26 Details of the historical background of the Jordanian securities market will be provided in Chapter 3.
27 Based in different bases, which produce various types of markets, securities markets include: capital and money markets, stock and bond markets, regular and over the counter markets, derivatives and cash markets, primary and secondary markets, developed and emerging markets, and national and international markets. For more information in this regard, see Sabri, above n 10, 4-13.
28 Hafer et al, above n 20, 39.
29 In this connection, there are two common methods of issuing shares to the existing shareholders as bonus shares and rights shares. The bonus shares are alternative to cash dividends. The right shares issued mostly at premium (above nominal value) by avoiding the costs of capital.
The Secondary Market

Unlike an IPO, a secondary market transaction simply represents an exchange between two investors; one investor is selling the stock that the other investor is buying. The key difference is that in a secondary market transaction, the company for which the stock represents an ownership obligation does not receive anything from the transaction.\(^{30}\) Securities traded through such public markets are known e.g. as stock market (US, UK), stock exchange (US) and bourse (France).

As a market operator, the exchange is responsible for creating and enforcing rules for a range of market activities. The exchange is a rule setter in respect of the admission of members/participants, the admission of products to trading and the trading process itself.\(^{31}\) The exchange sets the eligibility rules for admission of members and a comprehensive regulation of member firms to regulate sales practices, prudential requirements and qualifications standards for industry professionals.\(^{32}\) Furthermore, the exchange is responsible for setting standards for the listing/admission to trading of securities and for the imposition of the ongoing requirements on issuers.\(^{33}\) In the regulation of trading the core responsibility of the exchange is to ensure fair, orderly and efficient trading. This trading regulation function includes setting trading rules, conducting trading surveillance, and taking disciplinary actions against participants who breach the trading rules.\(^{34}\) In addition to the traditional trading services the exchange may provide non-trading services such as data distribution services, clearing and settlement, custodian and shareholder registry.\(^{35}\) In relation to corporate governance, the contributions of exchanges to enhance corporate governance have taken two forms: First, the issuance of listing and disclosure standards, and the monitoring of compliance. Secondly, stock exchanges have established themselves as promoters of corporate governance recommendations for listed companies. Many exchanges issued such codes and recommendations by themselves, or participated actively in the development of other national codes.\(^{36}\) In Jordan, as will be discussed later in Chapters 4 and 5, the ASE performs the main traditional trading services through regulating and managing its members issues, the listing and trading in securities. Amongst its non-trading services, the ASE only distributes trading information. The ASE assisted the JSC in issuing the Code of Corporate Governance for listed Shareholding Companies 2008 but does not play any role in enforcing the Code, see Chapter 6.8.4.

\(^{30}\) Hafer et al, above n 20, 39.


\(^{32}\) Exchange Evolution report, above n 31, 6-7; Gadinis et al, above n 31, 1244.

\(^{33}\) Exchange Evolution report, above n 31, 7.

\(^{34}\) Gadinis et al, above n 31, 1244; Exchange Evolution report, above n 31, 7.

\(^{35}\) Exchange Evolution report, above n 31, 7.

The last two decades of the 20th century witnessed remarkable changes in stock exchanges activities and their governance. The improvements in internet technology and the adoption of an automated trading system by exchanges in 1980s dramatically affected trading activities all over the world. A new era in stock exchange history commenced in the 1990s when major exchanges worldwide radically changed their structure from cooperatives owned by members (private clubs controlled by brokers) into publicly listed companies with ownership opened to outsiders.  

This process of 'demutualization' allowed exchanges to make international alliances and achieve significant expansion internationally. In 2000 Paris, Brussels and Amsterdam bourses were merged in Euronext, after in December 2006 NYSE-Euronext was created from the combination of the New York Stock Exchange (NYSE) Group and Euronext. In parallel with the NYSE-Euronext merger, another effort to create a major transatlantic stock exchange occurred in 2006 when Nasdaq, the second largest American exchange, acquired approximately 29% of the London Stock Exchange (LSE).

In the light of these developments, the US Securities and Exchange Act 1934 amended the definition of a stock exchange as:

"any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange".

The ASE is currently a non official public entity. As will be discussed in Chapter 9 privatising the ASE into a publicly listed company is the natural progression for the ASE and is the potential solution for some of the problems relating to its institutional structure.

The next section examines the role of the stock exchanges in helping facilitate good corporate governance.

2.4. The Quest for Securities Market Efficiency

The hallmark of a good securities market is how efficient it is in making materially relevant information known to the investing public and to regulatory bodies in respect of the traded securities. Efficiency is an essential prerequisite in stock markets for fulfilling their primary role the allocation of capital resources. In an efficient market, the stock prices provide investors with a good measure of firms' performance and

37 Frank Donnan, 'Self Regulation and Demutualisation of the Australian Stock Exchange' (1999) 10(1) Australian Journal of Corporate Law 3; Poitras, above n 14, 163; Gadinis et al, above n 31, 1242. The transformation process started in January 1993 when the Stockholm Stock Exchange changed its structure from a cooperative owned by members into a for-profit company opened to outsiders.
38 The term demutualization is used when the exchange is owned by brokers, and the term privatization is used when the exchange is owned by government.
39 Gadinis et al, above n 31, 1241; Role of Stock Exchanges report, above n 36, 21.
40 Gadinis et al, above n 31, 1241.
their values. In other words, an efficient market can discipline managers and consequently improve the process of capital allocation. On the other hand, inefficiency in the stock market creates barriers to investors and could lead to market failure. The resulting uncertainty may induce investors to withdraw from the market until this uncertainty is resolved or discourage them from investing for the long-term.

Securities markets face four problems in their quest for efficiency. The first is the difficulty in ensuring contemporaneous and timely disclosure of all market sensitive information. Managers are reluctant to release unfavourable information but only too anxious to release favorable forecasts. The second problem is the problem of information asymmetry where one party is in possession of more information than the other, e.g. the owner of a used motor vehicle as against the buyer, and in the case of securities markets the advantageous information possessed by managers and substantial shareholders as against other market participants. A third problem which impacts adversely on the integrity of securities markets is that of insider trading.

The disclosure regulations of the ASE seek to ensure contemporaneous timely disclosure through its requirements in the Disclosure Directives, Listing Directives and ASE Internal By-Law. It also seeks to overcome bounded rationality by requiring the meaningful disclosure of information which is true and is fair in the context in which it is provided. It attempts to overcome the problem of information asymmetry by trying to ensure a level playing field by the prohibition on information being provided to insiders or to a favored few. How far Jordan's securities market is able to overcome these problems is discussed in Chapters 5 and 6.

Efficient securities markets ensure operational and allocational efficiency, meaning the competitive allocation of investment capital to the most efficiently managed firms. Stated differently:

"… a market in which prices provide accurate signals for resources allocation: that is, a market in which firms can make production-investment decisions, and investors can choose among the securities that represent ownership of firms' activities under the assumption that security prices at any time 'fully reflect' all available information. A market in which prices always 'fully reflect' available information is called efficient".  

The competitiveness and efficiency of securities markets are reflected on how well the particular institutions and markets manage and reduce transactions costs, including the disclosure and availability of price sensitive information to all market participants. In other words a reduction in search costs, and hence transaction costs relating to

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42 Al-Zoubi et al, above n 10, 491.
obtaining market information and informed decision making greatly facilitates the efficiency of securities markets.\footnote{44} 

Financial economists have attempted to classify markets into three categories of efficiency: weak, semi strong, and strong.\footnote{45} The market is inefficient, weak, when securities prices in the market reflect mainly the historical information about the securities in the market. It is characterised as semi-strong when securities prices reflect the publicly available information about the securities in the market. The ideal, the strong form of efficiency, is where securities prices reflect all information – public and private - about the securities in the market.\footnote{46} While an efficient securities market is taken to be one which is semi strong efficient, the claim that securities markets can be strong form efficient has been generally rejected.\footnote{47} As a result of this classification, the investors in semi-strong form and strong form cannot gain superior benefits from using the information.\footnote{48} As discussed in Chapter 5.6.5, several studies confirmed that the ASE is weak-form inefficient.

While securities markets focus on the trading of corporate securities, and where the concern is how efficiently and economically it transmits all market sensitive information in respect of the corporation and its securities, corporate governance is concerned with the good governance of the corporation itself. By good governance in this context is meant the existence of transparent systems and procedures which enable accountability to be placed on those officers of the corporation entrusted with the responsibility of running and monitoring the performance of the corporation for the satisfaction of its shareholders and stakeholders. This process of accountability of the responsible corporate officers and of the corporation itself, and the ensuring of transparent processes and their monitoring is itself achieved through various instrumentalities in the marketplace. These include regulatory bodies such as e.g. in Australia through Australian Securities and Investment Commission (ASIC), and related regulatory bodies such as Reserve Bank of Australia (RBA), Australian Prudential Regulation Authority (APRA), and ASX, and in Jordan through e.g. the ASE, the Jordan Securities Commission (JSC), Central Bank of Jordan (CBJ), Companies Control Department (CCD), and marketplace accountability through financial analysts, the external takeovers market, share price, and the financial press generally.

\subsection*{2.5. Corporate Governance}

The Global Financial Crisis in 2008 and the collapses of some of the largest companies in the world, Enron in 2001 and Parmalat in 2003 highlight the importance

\footnote{44}{Fama, above n 43, 387.}
\footnote{45}{Ibid 388.}
\footnote{46}{Ibid 388.}
of good corporate governance to ensure the economic, social, and political welfare of nations and the global community generally.\(^{49}\)

There is no universally accepted definition of corporate governance. It has been defined in different ways and from different perspectives depending on the viewpoint of the policy-maker, practitioner, researcher and theorist. From a regulatory perspective, Gillan defines corporate governance as "the system of laws, rules, and factors that control operations at a company".\(^{50}\) From a viewpoint of participants, corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment.\(^{51}\) A narrow view of corporate governance is that it deals with the relationship to the company and its shareholders. The Cadbury Report 1992 defined corporate governance as "the system by which companies are directed and controlled".\(^{52}\) From the point of view of corporate social responsibility, corporate governance is defined as "the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activities".\(^{53}\) These various definitions reflect to varying degrees the two primary theories underpinning what is corporate governance, the agency theory and the stakeholder theory. These theories are discussed in the next section.

### 2.6. Theories Underlying Corporate Governance

While there are a number of theoretical frameworks which examine corporate governance from their various perspectives, two theories commonly used to represent contrasting positions are agency theory and stakeholder theory. The former focuses on the shareholder. In contrast stakeholder theory also considers as integral to corporate governance the welfare of creditors, employees, consumers, and the general community. The discussion below will focus on these two theories only.

#### 2.6.1 Agency Theory

The agency problem arises in agency relationships when cooperating parties (principals and agents) have different goals and division of labour.\(^{54}\) Jensen and Meckling pointed out that there is good reason to believe that the agent will not always act in the best interests of the principal.\(^{55}\) Agency theory is concerned with

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\(^{51}\) A Shleifer and R Vishny, 'A survey of Corporate Governance' (1997) 52(2) *Journal of Finance* 737-75.


\(^{53}\) Solomon, above n 49, 6.


resolving the agency problem that arises when the desires of the principal and agent conflict and it is difficult or expensive for the principal to verify what the agent is doing.\textsuperscript{56}

The development of the limited liability company in the middle of the 19\textsuperscript{th} century has allowed investors to buy shares in companies without being responsible for the debts of the companies in which they invest. This has influenced the way in which companies were controlled and led to separation of ownership and control in companies.\textsuperscript{57} This is because shareholders (principals) provide capital to the company and need skilled persons (agents) to run the company.\textsuperscript{58} The main objective of the company is to maximize the shareholders wealth and align the interests of the management with those of the shareholders. The agency problem arises as a result of this system of corporate ownership when the interests of management and shareholders are not in accord and when there are difficulties in verifying management activities.\textsuperscript{59} The divergence represents a cost on the activities of the firm. This cost is the reduced return to the shareholders due to managers pursuing their own objectives and the costs incurred by shareholders in monitoring management.\textsuperscript{60}

Under agency theory, corporate governance is designed to align the interests of the management with those of the shareholders and reduce the agency costs. There are several internal and external corporate governance mechanisms used for this purpose as will be discussed in more detail in 2.7 below.

### 2.6.2 Stakeholder Theory

The development of the stakeholder concept started in the late 1960s and early 1970s alongside the social movements in this period such as civil rights, the antiwar movement, consumerism, environmentalism and women's rights.\textsuperscript{61} The basis for stakeholder theory is that the impact of companies on society is so large, that companies should discharge accountability not only to their shareholders but also to society. This theory focuses on maximisation for all stakeholders. Stakeholders are all those inside and outside a company who are directly affected by its activities, including contractual participants such as shareholders, employees, suppliers, customers and creditors; and social constituents such as community and the general public.\textsuperscript{62} In this connection, some scholars add to the social constituents the environment, animal species and future generations.\textsuperscript{63}

\textsuperscript{56} Eisenhardt, above n 54, 58.
\textsuperscript{57} Solomon, above n 49, 8.
\textsuperscript{59} Rezaee Zabihollah, Corporate governance and ethics (Hoboken, c2009) 94.
\textsuperscript{60} Grantham, above n 58, 185.
\textsuperscript{61} R Edward Freeman and David L Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' (Spring 1983) 25(3) California Review 88-105.
\textsuperscript{63} Solomon, above n 49, 15.
One motivation for encouraging accountability to the society derives from a belief that companies have a moral responsibility to act in an ethical manner. Abrams states that:

"Professional men do not work solely for themselves, but also for the good of mankind … business managers are gaining in professional status partly because they see in their work the basic responsibilities that other professional men have long recognized in their. Businessmen are learning that they have responsibilities not just to one group but to many."  

Another motivation is that not only are stakeholders affected by companies, but they in turn have an impact on companies so it is in the company’s economic interests to recognise this. For instance, social and environmental groups have gathered information on business activities and targeted companies that have treated their stakeholders in an unethical manner.  

Successful companies in making long term decisions need broad social understanding as well as economic understanding. Under the stakeholder theory, the primary goal of corporate governance is to enhance the long–term shareholder value while protecting the interests of other stakeholders. Stated differently, stakeholder theory requires decision makers to bear in mind the consequences of zero sum decision making where corporate financial gains are at the expense of the welfare of creditors, employees, consumers, as well as the community, and that for this purpose corporate governance should focus on financial, social, environmental, and economic concerns of all stakeholders.

In Jordan, the Corporate Governance Code for Shareholding Companies Listed on the Amman Stock Exchange 2008 adopts the broad definition of corporate governance from the point of view of corporate social responsibility and states expressly that the Code aims to establish a clear framework to regulate the listed companies relations and management and defines their rights, duties and responsibilities in order to realise their objectives and safeguard the rights of all stakeholders. Thus, the thesis, in examining the ASE role in Jordanian corporate governance, will adopt the stakeholder theory which balances the interests of all stakeholders including the shareholders.

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65 Zabihollah, above n 59, 32.
66 Abrams, above n 64, 29-34.
2.7. Corporate Governance Principles

In 1999 the Organization for Economic Co-operation and Development (OECD) released the Principles of Corporate Governance (hereinafter referred to as OECD Principles) as one of the 12 key standards for sound financial systems. The OECD Principles are intended to assist governments to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, corporations and investors and other parties that have a role in the process of developing good corporate governance. The OECD Principles are a living instrument offering non-binding standards and good corporate practices as well as guidance on implementation, which can be adapted to the specific circumstances of individual countries and regions. The OECD Principles, which are applicable to a wide range of jurisdictions around the world as the minimum acceptable standards, have become an international benchmark for policymakers, companies, investors and other stakeholders. The OECD Principles are identified as follows: ensuring the basis for an effective corporate governance framework, protection of shareholders rights, equitable treatment of shareholders, protection of stakeholders rights, timely and accurate disclosure and transparency, and diligent exercise of the board of directors’ responsibilities. The OECD Principles are discussed when examining the legislation governing corporate governance in Jordan in Chapters 5-7.

The foundation for the OECD Principles can be found in the Code of Best Practices, of the Cadbury Report issued in December 1992. In May 1991 the Committee on the Financial Aspects of Corporate Governance was established by Financial Reporting Council and London Stock Exchange (LSE) to review the aspects of corporate governance related to financial reporting and accountability, and to contribute positively to the promotion of good corporate governance as a whole in the United Kingdom (UK). The Committee designed principles of corporate governance to raise the standards of corporate governance and the level of confidence in financial reporting and auditing by setting out the responsibilities of the board of directors and auditors. The report consists of a Code of Best Practices summarising the recommendations relating to the structure and responsibilities of the boards of directors. A number of these recommendations deal with the accountancy profession. Other recommendations relate to the rights and responsibilities of shareholders as well as roles of some bodies such as the Financial Reporting Council, Institutional

68 Although, there are many corporate governance principles, policies and rules issued by several organisations such as the International Corporate Governance Network (ICGN). This Section will deal only with the OECD Principles which can be applied across a broad range of board structure; business practices; legal, political and economic environment as will be explained later.

69 The OECD was established in 1961 to promote policies that will improve the economic and social well-being of people around the world through providing a forum in which governments can work together to share experiences and seek solutions to common problems. There are 34 permanent members in the OECD including Australia, France, Germany, Italy, Japan, United Kingdom and United States of America. For more information see OECD <http://www.oecd.org> (1 July 2013).

70 OECD Principles of Corporate Governance 2004 (Preamble).

71 OECD Principles (Foreword).

72 The OECD Principles were reviewed in 2004 in response to developments in corporate governance.

73 The OECD Principles based on four pillars; fairness, transparency, accountability and responsibility.

74 Cadbury Report, above n 52, 11.

75 Ibid 15.
Shareholders Committee, and the LSE.\(^{76}\) The principles on which the Code of Best Practices is based are those of openness in relation to disclosure of information to promote efficient working of the market economy, integrity of financial reporting, and board of directors’ accountability toward their shareholders.\(^{77}\) It first sets the basis for "if not, why not" approach "comply or explain" rule by encouraging the listed companies in LSE to comply with the Code through identifying and giving reasons for any areas of non-compliance,\(^{78}\) which model has since been followed in Jordan as well as in Australian corporations legislation. The value of the "comply or explain" rule allows companies to determine their governance policy according to their needs, discussed in Chapters 6-8.\(^{79}\)

A distinction is drawn between internal and external corporate governance mechanisms which is illustrated by the Diagram 2.1 below. The internal mechanisms are designed to manage, direct and monitor corporate activities. Examples for the internal governance mechanisms are management and board of directors. The management runs the company's operations and the effectiveness of this function depends on the alignment of management's interests with those of shareholders. The board of directors oversees the managerial performance to ensure that it acts in the best interests of the company and its shareholders. The effectiveness of the board depends on the directors' composition, qualifications, experience, independence and accountability.

External mechanisms are designed to monitor the corporate activities and performance. Examples for the external governance mechanisms are company's external auditor, financial analysts, institutional shareholders and statutory requirements. The external auditor lends credibility to the company's financial statements and adds value to its corporate governance through auditing the internal control over financial reporting and financial statements.\(^{80}\) Institutional shareholders influence corporate governance through their proposals and nominations to the board of directors. In other words the institutional investors may mitigate agency problems by monitoring the firm's performance.\(^{81}\)

Major external governance mechanisms are the self regulatory organisations (SRO) such as the stock exchanges and credit rating agencies which play an important role in corporate governance through promulgating the listing standards and corporate governance measures. Listed corporations on a stock exchange make a commitment to abide by the listing standards and corporate governance rules designated to maximise shareholders wealth, the commitment is made credible by the threat of delisting which had serious impacts on companies.\(^{82}\) In Jordan the ASE does not have any role in enforcing the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008 which was issued by the Jordan Securities Commission (JSC); this

\(^{76}\) Cadbury Report, above n 52, 11.
\(^{77}\) Ibid 16.
\(^{78}\) Ibid 17.
\(^{79}\) Eddy Wymeersch, 'Enforcement of Corporate Governance Codes' [2005] European Corporate Governance Institute 20.
\(^{80}\) Ibid 253-55.
necessarily limits its power to monitor corporate governance. The role that ASE plays in Jordanian corporate governance will be explained later in Chapters 5-6. Those chapters will identify the strengths and weaknesses of the ASE system and provide suggestions on improving the performance of the ASE in the Jordanian securities market and corporate governance.

Recent financial scandals indicate that a combination of both internal and external corporate governance mechanisms is needed to encourage managerial performance that maximises profit and shareholder value and ensure that the interests of board of directors and management are aligned with the interests of shareholders and other stakeholders.\footnote{Zabihollah, above n 59, 43.}
Diagram 2.1: Internal and External Corporate Governance Mechanisms

* The Position of the Stock Exchanges between the corporate governance mechanisms.

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The next chapter will discuss the establishment and growth of the securities market in Jordan since 1978, and the role of the ASE in helping promote the Jordanian economy by mobilising funds for listed companies.
Chapter 3

The Securities Market in Jordan

3.1 Introduction

This chapter will examine the securities market in Jordan. It traces the growth of the securities market over two periods. The first period, from the establishment of the Amman Financial Market (AFM) in 1976 until the enactment of the Securities Law no. (23) in 1997. The Securities Law restructured the AFM by establishing three independent institutions, discussed below 3.3. The second period covers the period since the establishment of the Amman Stock Exchange (ASE) in 1997 to date. The discussion is set in the context of governmental reforms to improve the capital market in the period 1997 to 2002. The objective of this chapter is to demonstrate the ASE’s role in boosting the Jordanian economy and mobilising funds for listed companies from investors. This is discussed in the light of governmental reforms which have contributed strongly to the remarkable growth of the ASE in the last decade. In this chapter, the growth of the market and its contribution to the national economy will be measured in terms of the growth pattern of market indicators, trading value, share price index and market capitalisation, as well as the market capitalisation percentage to the Gross Domestic Product (GDP), non-Jordanian investments in listed companies and the growth of the public issue market.

This chapter is structured as follows. Section 3.1 is introductory. Section 3.2 traces the establishment and growth of the AFM between 1976 and 1996. Section 3.3 outlines the governmental reforms during 1997-2002 to improve the capital market. Section 3.4 traces the establishment and growth of the ASE between 1997 to date. Section 3.5 examines the performance of the ASE measured in terms of mobilising public savings for companies. This section also compares the ASE position among its Arab counterparts. The final section provides a summary.


In the early 1930s public shareholding companies were established in Jordan. The Jordanian public have been subscribing and dealing in shares over-the-counter in the absence of an organized market. The increased numbers of companies as well as the governmental issuances of public debt instruments highlighted the need for a regulated market in Jordan.  

In 1976 the AFM was established as a public institution with legal personality and financial autonomy by virtue of the Amman Financial Market Law 1976 no. (31). The AFM was responsible for the regulatory, supervisory and technical functions of the capital market. The AFM's General Assembly consisted of the Central Bank of Jordan (CBJ), licensed banks, specialised credit institutions, public shareholding companies and brokers.

The AFM began its operations on the first January 1978 in Amman (the capital city of Jordan) with 57 listed companies and with market capitalisation of Jordanian Dinar (JD) 286.1 million (approximately US$ 404 million). As will be seen from Figures 3.1 and 3.3 below, it experienced very slow growth until the early 1990s. The suggested reasons for the slow growth in 1980s were the political developments in the region including the Iraqi/Iranian war, the Arab/Israeli conflict and the Palestinian Intifada in 1987.

After the First Gulf War in 1991, and as a result of the cash flow to AFM from Jordanians who transferred from Kuwait to Jordan, the market growth was boosted and its trading value, share price index, and market capitalisation all of which increased rapidly in the years 1992, 1993 as can be seen from the Figures below. This trend continued until 1994 when the trading value slowed as a consequence of the political instability in the region, the deterioration in the peace process, and weak performance of the Jordanian economy until 1998.

87 The AFM goals were to encourage investments in securities, reinforce the savings culture and develop the national economy as well as to regulate and monitor the issuance of securities and dealings therein to protect national financial interests and investors in securities, see AFM Law 1976 art 4.A, B; Al-Khoury et al, above n 85, 224. The AFM was managed by a committee appointed by the Council of Ministers upon the recommendation of the Minister of Finance. The committee consists of the General Manager of the market (chairman of the committee); Companies General Controller in the Ministry of Industry and Trade; and a representative from each of the following: CBJ; member banks and specialised credit institutions; the member shareholding companies and the Amman Chamber of Industry, see AFM Law 1976 art 26.
88 In Jordan the term 'General Meeting' known as 'General Assembly', both terms will be used interchangeably throughout the thesis.
89 AFM Law 1976 art 6. AFM started its operations in 1978 with nine brokers only.
91 See Al-Khoury et al, above n 85, 224.
92 Other likely factors included the 1989 devaluation of the Jordanian Dinar.
Figure 3.1: Growth of the AFM during 1978-1998 Measured by Trading Value (JD in millions): 93

Figure 3.2: Growth of the AFM during 1978-1998 Measured by Share Price Index (points): 94

Figure 3.3: Growth of the AFM during 1978-1998 Measured by the Market Capitalisation (JD in millions): 95

93 Information has been taken from Table 3.1 in this section.
94 Information for the years from 1978 to 1998 has been collected from the ASE.
95 Information has been taken from Table 3.1 in this section.
Table 3.1: Growth of AFM between 1978 and 1998:

<table>
<thead>
<tr>
<th>Year (ended in December)</th>
<th>No. of Listed Securities*</th>
<th>Trading Value (JD in millions)**</th>
<th>Market Capitalisation (JD in million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>57</td>
<td>5.6</td>
<td>286.1</td>
</tr>
<tr>
<td>1979</td>
<td>71</td>
<td>16.6</td>
<td>452.3</td>
</tr>
<tr>
<td>1980</td>
<td>71</td>
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<td>495.5</td>
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<tr>
<td>1981</td>
<td>72</td>
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<td>834.6</td>
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<td>1982</td>
<td>99</td>
<td>130.2</td>
<td>1034.8</td>
</tr>
<tr>
<td>1983</td>
<td>109</td>
<td>142.0</td>
<td>1053.4</td>
</tr>
<tr>
<td>1984</td>
<td>115</td>
<td>61.0</td>
<td>911.7</td>
</tr>
<tr>
<td>1985</td>
<td>117</td>
<td>70.3</td>
<td>926.9</td>
</tr>
<tr>
<td>1986</td>
<td>115</td>
<td>72.1</td>
<td>891.8</td>
</tr>
<tr>
<td>1987</td>
<td>119</td>
<td>149.2</td>
<td>929.4</td>
</tr>
<tr>
<td>1988</td>
<td>120</td>
<td>149.3</td>
<td>1104.7</td>
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<td>1989</td>
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<td>1990</td>
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<td>272.0</td>
<td>1293.2</td>
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<tr>
<td>1991</td>
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<td>304.3</td>
<td>1707.1</td>
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<tr>
<td>1992</td>
<td>109</td>
<td>891.3</td>
<td>2295.6</td>
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<tr>
<td>1993</td>
<td>115</td>
<td>973.3</td>
<td>3463.9</td>
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<tr>
<td>1994</td>
<td>116</td>
<td>499.5</td>
<td>3409.3</td>
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<tr>
<td>1995</td>
<td>126</td>
<td>431.2</td>
<td>3495.4</td>
</tr>
<tr>
<td>1996</td>
<td>132</td>
<td>253.7</td>
<td>3461.2</td>
</tr>
<tr>
<td>1997</td>
<td>139</td>
<td>357.3</td>
<td>3862.0</td>
</tr>
<tr>
<td>1998</td>
<td>150</td>
<td>468.4</td>
<td>4156.6</td>
</tr>
</tbody>
</table>

* The number of listed securities includes all listed companies and listed mutual funds.
** The trading value includes the trading in shares, bonds, and units/shares of mutual funds.

3.3. The Jordanian Capital Market Reforms 1997-2002

The last three decades have seen transformational changes to securities markets. The securities market's structure, control and operation was enabled by modern technology as well as the creation of new financial instruments. The globalisation of securities markets and changes that have been taking place internationally in relation to the securities markets encouraged policymakers in Jordan to reform the capital market in accordance with international standards in order to establish a transparent and fair market in the region, attract and protect investors in securities, and accordingly liberalise and increase the openness of the national economy.

In 1997 the Securities Law no. (23) established the legal framework to restructure the Jordanian Capital Market. The first step was to separate regulatory functions from the trading and technical side of the market by establishing three independent institutions. These are the Jordan Securities Commission (JSC), the Amman Stock Exchange (ASE) and the Securities Depository Centre (SDC). The JSC is the legal and factual
successor to the AFM.\textsuperscript{99} The JSC is designated as the government watchdog for the capital market and empowered to perform the regulatory and supervisory roles.\textsuperscript{100} The SDC is authorised exclusively to operate in the capital market in relation to registration, depositing, safe-keeping, transferring ownership of securities and clearing and settlement of trading transactions related thereto.\textsuperscript{101} The third of these bodies is the ASE which is responsible for conducting trading activities in the capital market.\textsuperscript{102}

The second important aspect of the \textit{Securities Law 1997} is related to the regulation of financial services. It empowers the JSC to issue the necessary \textit{Instructions of Financial Services Licensing and Registration 1999} and to specify the licensing requirements for each financial service, the registration requirements for registered persons, and standards of training, experience, and competence required.\textsuperscript{103} The third important aspect of the \textit{Securities Law 1997} is enabling a wide variety of financial instruments in the capital market. This is achieved by setting a broad definition for what constitutes a security in art 3.\textsuperscript{104}

The \textit{Securities Law 1997} also regulated mutual funds and investment companies. In relation to mutual funds, the Act specified the nature, types, establishment, the requirements and procedures for registration with the JSC. It also set out the capital, the rights of investment unit holders, administration of its business and the responsibilities of the Investment Manager and Investment Trustee of the Fund. In this connection, the Law empowered the JSC to issue the necessary \textit{Instructions for Mutual Investment 1999} to set the principles and criteria for the diversification of mutual fund and investment company investments.\textsuperscript{105}

Another important aspect of the Act was to set out mechanisms for enhancing transparency and disclosure in the capital market through regulating and monitoring


\textsuperscript{100} The role of the JSC in the Jordanian Capital Market will be discussed in-depth later in Chapter 6.4.

\textsuperscript{101} The role of the SDC in the Jordanian Capital Market will be discussed in-depth later in Chapter 6.5.

\textsuperscript{102} The role of the ASE in the Jordanian Capital Market will be discussed in-depth later in Chapters 4 and 5.

\textsuperscript{103} For more information see Chapter 5 of the \textit{Securities Law 1997} and Repealed \textit{Instructions of Financial Services Licensing and Registration 1999} (Jordan) JSC, 15 February 1999. To enhance the self-regulation of the market participants and their role in the capital market, \textit{Securities Law 1997} art 43 offered the legal background for the establishment of the Association of Capital Market Registered Persons (a voluntary organization) which objectives to: develop financial professions, protect the interests of its members, promote interaction between members, and raise awareness about standards of professional conduct.

\textsuperscript{104} According to art 3 of the \textit{Securities Law 1997} the term Securities includes the following:“A- Transferable and tradable companies shares. B- Bonds issued by companies, the Government, official public institutions, public institutions, or municipalities. C- Securities depository receipts issued by financial services companies. D- Investment units issued by Mutual Funds. E- Equity option bonds. F- Spot contracts and forward contracts. G- Put and call option contracts. H- Any other local or foreign securities known as securities, subject to the JSC Board of Commissioners approval”.

disclosure issues.\textsuperscript{106} It authorised the JSC to monitor disclosure in the initial public offer phase so as to eliminate informational asymmetry between issuers and potential investors, as well as companies' periodic and continuous disclosures as will be explained in Chapter 6.4.4. In this connection, the JSC has adopted the International Financial Reporting Standards (IFRS) issued by the Committee of International Accounting Standards (IAS) and the International Auditing Standards issued by the International Federation of Accountants, and requires the financial statements of the companies to be prepared and audited in compliance with these standards.\textsuperscript{107} The Act also authorised the ASE to establish the Financial Broker's Guarantee Fund to cover the buying member's cash default and selling member's securities default resulting from trading in securities.\textsuperscript{108}

In the same period, as a part from the governmental reforms, the \textit{Companies Law 1997 no. (22)} was enacted. The \textit{Companies Law} deals with the aspects of corporate governance and corporate finance.\textsuperscript{109} Part 6 of the \textit{Companies Law} deals with the public shareholding company formation and procedures of registration, capital and the minimum limit of the subscribed shares and duration of paying for the unsubscribed part, underwriting of shares by founders and principles of subscription in shares by the public, methods of increasing and decreasing the capital, matters related to the corporate bonds, the board of directors, the general assembly's powers in the ordinary and extraordinary meetings, procedures of transformation and merger, and circumstances of the voluntary and compulsory liquidation.

Subsequent legislation the \textit{Securities Law 2002 no. (76)} was another step in the reform process commenced in the \textit{Securities Law 1997}.\textsuperscript{110} The \textit{Securities Law 2002}, which replaced the \textit{Securities Law 1997}, reinforced the independence of capital market institutions and their authorities particularly the JSC's regulatory and supervisory roles.\textsuperscript{111} The JSC was given more extensive powers over the issuance of securities and dealings, disclosure issues, financial services companies, mutual funds, investment companies, the ASE and SDC as will be explained in Chapter 6.4. The 2002 legislation improved disclosure and transparency in the capital market by setting the legal framework for an electronic disclosure regime.\textsuperscript{112} It also established the

\textsuperscript{106} For more information see Chapter 7 of the \textit{Securities Law 1997} and the repealed \textit{Instructions of Issuance and Registration of Securities (No 2) 1997} (Jordan) JSC, 16 October 1997.

\textsuperscript{107} Repealed \textit{Instructions of Disclosure; Accounting, Auditing Standards and the Conditions to be fulfilled in Auditors of the Entities Subject to Securities Commission's Supervision (No 1) 1998} (Jordan) arts 24.A, 26, JSC, 1 September 1998.


\textsuperscript{109} As will be explained later in Chapter 6.3.1 amongst three types of companies which capital comprises shares able to be listed in the ASE; the Limited Partnership in Shares Company, the Private Shareholding Company and the Public Shareholding Company, the latter is the only type of company which is listed on the ASE.


\textsuperscript{111} As will be explained in-depth later in Chapters 4.3 and 6.5.1 the \textit{Securities Law 1997} and \textit{Securities Law 2002} have restructured the boards of both the ASE and SDC in a unique way to make them more acceptable to the public.

\textsuperscript{112} See \textit{Securities Law 2002} arts 35, 37, 40, 43.
Investors Protection Fund to enhance investor confidence.\textsuperscript{113} This Fund is a compensation fund to compensate investors dealing with the licensed financial brokers for their losses resulting from the bankruptcy or compulsory liquidation of these brokers.\textsuperscript{114} The effectiveness of the structure established by the 2002 legislation is examined in Chapters 5 and 6.

The reforms also put in place measures to develop and modernise the capital market infrastructure. As will be explained in Chapters 5 and 6 many measures were taken since 2000 such as shifting from a Manual Trading System to Remote Electronic Trading System; the installation of the Wide Area Network in 2001 to link the capital market institutions with each other as well as with brokers, issuers and data providers;\textsuperscript{115} and developing a comprehensive system for registration, depositing, safe-keeping, transferring ownership of securities, clearing and settlement called "Securities Central Operation Registry Processing and Information Online" (SCORPIO). As will be seen below, these reforms have been central to the performance of the ASE in the last decade.

It is to be noted that the Securities Law 2002 and the Companies Law 1997 together with internal by-laws and directives issued by securities regulators (JSC, ASE, and SDC) constitute the main present legal framework of the regulation of the Jordanian securities market.\textsuperscript{116} Other legislation relevant to the regulatory framework are the Central Bank of Jordan Law 1959 no. (4), Banking Law 2000 no. (28), Insurance Regulatory Law 1999 no. (33), Public Debt Law 2001 no. (26) and the Islamic Finance Sukuk Law 2012 no. (30).\textsuperscript{117} Also important are the instructions issued by the Central Bank of Jordan and the Insurance Commission as will be discussed in Chapter 6. Thus, by 2002 the key elements of the current regulatory system have been established. A central plank of the Jordanian securities market is the establishment of the Amman Stock Exchange in 1997.

3.4. Establishment and Growth of the ASE from 1997

The ASE was established in 1997 by virtue of the Securities Law 1997 as a non-profit institution,\textsuperscript{118} with financial and administrative autonomy, to conduct trading

\textsuperscript{113} The Investors Protection Fund has started operating in 2007.


\textsuperscript{116} The JSC directives seek to regulate and manage issuance and registration of securities, issuing companies disclosure, accounting and auditing standards, financial services licensing and registration, investment funds. The ASE and SDC directives focus on the trading and technical side of the market through regulating and managing the listing and trading in securities as well as depositing, clearing and settlement of Securities.

\textsuperscript{117} The Islamic Finance Sukuk Law (No 30) 2012 came into force upon publication in the Official Gazette on 19 September 2012. The sukuk are certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services (in the ownership of) the assets of particular projects or special investment activity. The types of sukuk based on four contracts: sale contract (Murabah, Salam, Istisna); lease contract (Ijarah, Ijarah Muntahiyah bi Tamlik, Ijarah Mawsufah fi Zimmah); partnership contract (Mudarabah, Musharakah); agency contract (Wakalah bi Istithmar) (Translated from Arabic).

\textsuperscript{118} Securities Law 1997 art 23.
activities in the Jordanian Capital Market under the JSC oversight. The ASE began its operations on 11 March 1999 in Amman city. It started trading activities with 151 listed companies and with market capitalisation of JD 4137.7 million (approximately US$ 5844.2 million). The ASE started with 22 members. As at 31 December 2013, there were 62 members. Of these, 61 members are active in the market. To date, the ASE is the only stock exchange in Jordan.

In the period beginning early 1999 until the end of 2000, ASE trading values were sluggish. In the following years particularly between 2005 and 2008, the ASE witnessed significant improvements in all market indicators as will be seen from figures below. In addition to governmental reforms to promote the securities market, there were a number of other factors leading to improvement. The trading value increased four times approximately from JD 503.1 million in 1999 to JD 1921.3 million in 2003. Further, the trading value jumped sharply by 355.2% to JD 17 813.7 million for 2005 compared with JD 3913.3 million for 2004. This upward trend continued until 2008 when the trading volume reached JD 20 938 million. These changes resulted from the regulatory changes and other reforms noted in the earlier section as well as from the easing of liquidity, tax concessions and privatisation of state enterprises, and other developments in the marketplace.

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121 ASE began its operations in Amman - Hamzah Complex that is located in Shmeisani area, near to the Interior Circle, then it was shifted to its new permanent headquarter in Amman (Capital Market Building) located in Arjan area, near to the Ministry of Interior in 2001, see the ASE Annual Report (2001) 20.
124 Ibid.
125 It is worth mentioning that during the last decade some applications were submitted to the JSC for the establishment of other exchanges, but so far no additional licences have been granted.
126 Information has been taken from Table 3.2 in this section.
The macroeconomic indicators during 2004-2008 show improved performance of the different economic activities. There were improvements in public finance, the monetary sector, the balance of payments and the GDP. The average of the GDP growth over these years was approximately 7.12%. In this connection, it is to be noted that in 2008 the government implemented an early purchase of part of the Paris Club debt which amounted to approximately JD 1.7 billion (approximately US$ 2.4 billion). Another factor which encouraged growth was in relation to interest rates. The CBJ over five years had gradually decreased the interest rates (discount rate) from 9% in 1998 to 2.5% in 2003, rising again in 2004 and settling at 6.25% in 2008. Thus, the stock returns reacted positively to decreasing interest rates. The low interest rates influenced the stock market returns and were associated with improvements in stock prices.

One of the most important factors related to the improvements in all the ASE indicators has been the privatisation of government assets commencing in 1996. The Jordanian Government sold a significant part of its ownership (approximately 7% of the total market capitalization of the ASE) in many public shareholding companies such as Jordan Telecom Company (2002), Jordan Cement Factories (2002), Jordan Petroleum Refinery (2002), Arab Potash Company (2003), Jordan Phosphate Company (2006) and Alia-Royal Jordanian Airlines Company (2007).

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128 Information has been taken from Table 3.2 in this section.
130 Ibid (2008) 13. The Paris Club was created in 1956 as an informal group of official creditors whose role is to find coordinated and sustainable solutions to the payment difficulties experienced by debtor countries. There are 19 permanent members of the Paris Club: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, Russian Federation, Spain, Sweden, Switzerland, UK, USA. For more information see Paris Club <http://www.clubdeparis.org> (15 June 2013).
These sales attracted local and foreign investors and reinforced the institutional investments in the capital market.\textsuperscript{133}

There were also significant inducements for investors to invest in the Jordanian Capital Market.\textsuperscript{134} The \textit{Income Tax Law 1985 no. (57)}\textsuperscript{135} offered a package of tax benefits to investors in securities by exempting from tax capital gains that achieved from buying and selling the shares and bonds, share dividends, interest on treasury bills and bonds, development bonds, public institutions bonds and public shareholding companies bonds.\textsuperscript{136} In general, the \textit{Regulating Non-Jordanian Investments By-Law 2000 no. (54)} does not restrict ownership by non-Jordanians except in limited areas such as security and investigation services, with limitations on the level of participation in infrastructure such as rental services of aircraft and rail transport auxiliary services.\textsuperscript{137}

The increase in the trading value reflects an increase in the share price index and market capitalisation as will be seen from Figures 3.5 and 3.6 below. The share price index weighted by free float shares\textsuperscript{138} increased significantly from 1090.9 points by the end of 2002 to 2729.1 points in 2004 and reached the peak 4259.7 points in 2005.\textsuperscript{139} As well as, the market capitalisation increased from JD 4137.7 million in 1999 to JD 13 033.8 million, JD 26 667.1 million and JD 29 214.2 million in 2004, 2005 and 2007 respectively.\textsuperscript{140}

\textsuperscript{133} ASE \textltt{http://www.ase.com.jo/en/privatization-jordan}\texttt{> (31 May 2012); ASE Annual Reports (2002) 13-14, (2003) 11, (2006) 14, (2007) 14; Al-Najjar, above n 81, 180. For more information about the methods that were followed by Jordanian government to sell its shares in public shareholding companies see Chapter 9.3.2.}

\textsuperscript{134} Securities Law 1997 art 79 and Securities Law 2002 art 121 exempt from stamp duty all securities prospectuses and registration thereof, trading in securities and any other transactions related thereto.

\textsuperscript{135} The \textit{Income Tax Law (No 57) 1985} and its amendments have been repealed according to art 68.A of the temporary \textit{Income Tax Law (No 28) 2009} which became effective as of 1 January 2010 (Translated from Arabic).


\textsuperscript{137} For more information see arts 2, 3, 4, 6 of the \textit{Regulating Non-Jordanian Investments By-Law (No 54) 2000} (Jordan) 16 December 2000, \textit{Official Gazette}, No 4465, 16 November 2000, 4520 (\textit{Non-Jordanian Investments By-Law 2000}).

\textsuperscript{138} The ASE has launched the share price index weighted by free float shares in 2006.


\textsuperscript{140} Information has been taken from Table 3.2 in this section.
During the four golden years 2005-2008 the securities market in Jordan witnessed the best performance since the establishment of the AFM in 1978. The market capitalisation by the end of 2005 went up to JD 26 667.1 million (approximately US$ 37 665.4 million) representing 326.6% of the GDP.\(^{143}\)

It is notable that the non-Jordanian ownership of companies listed in the ASE has made a gradual progress over 14 years and increased from 43.1% in 1999 to 45%, 48.9% and 51.7% in 2005, 2007 and 2012 respectively.\(^{144}\) The main reasons for increase in the non-Jordanian ownership were the privatisation process mentioned above, cash flowing into the market from the Arabian Peninsula following the


significant increase in the oil price after 2003, and Iraqis who transferred their investments to Jordan after the Second Gulf War in 2003.

But the buoyancy was shortlived as share prices started falling by the end of September 2008 due to the Global Financial Crisis (GFC). The share price index dropped by the end of 2008 by 24.9% compared with 2758 points in 2007. It continued to decline to below 2000 points by the end of 2011. All the market indicators witnessed a sharp decline in the following years and by the end of 2012 the trading value and market capitalisation dropped to JD 22 million (approximately US$ 2855.9 million) and JD 19 142 million (approximately US$ 27 036.7 million) respectively. Jordan of course was not insulated from the effects of the GFC.

As a result of this, thousands of investors and businessmen lost their savings and investments, many brokerage firms closed their businesses, and some listed companies were liquidated. The number of brokerage firms and listed companies declined from 70 brokerage firms and 262 listed companies in 2008 to 62 brokerage firms and 240 listed companies by the end of 2012.

Table 3.2: Growth of ASE between 1999 and 2013:

<table>
<thead>
<tr>
<th>Year (ended in December)</th>
<th>No. of Listed Securities*</th>
<th>No. Trading Value (JD in millions)**</th>
<th>Market Capitalisation (JD in million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>152</td>
<td>503.1</td>
<td>4137.7</td>
</tr>
<tr>
<td>2000</td>
<td>193</td>
<td>362.7</td>
<td>3509.6</td>
</tr>
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<td>2001</td>
<td>191</td>
<td>727.0</td>
<td>4476.7</td>
</tr>
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<td>2002</td>
<td>190</td>
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<td>2003</td>
<td>189</td>
<td>1921.3</td>
<td>7772.8</td>
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<td>2004</td>
<td>192</td>
<td>3913.3</td>
<td>13 033.8</td>
</tr>
<tr>
<td>2005</td>
<td>201</td>
<td>17 813.7</td>
<td>26 667.1</td>
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<tr>
<td>2006</td>
<td>227</td>
<td>15 047.7</td>
<td>21 078.2</td>
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<td>2007</td>
<td>245</td>
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<td>272</td>
<td>9886</td>
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<td>2010</td>
<td>277</td>
<td>6832</td>
<td>21 858</td>
</tr>
<tr>
<td>2011</td>
<td>247</td>
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<td>2012</td>
<td>243</td>
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<td>19 142</td>
</tr>
<tr>
<td>2013</td>
<td>240</td>
<td>3027.3</td>
<td>18 233</td>
</tr>
</tbody>
</table>

* The number of listed securities includes all listed companies and listed mutual funds.

145 For more information see History of Illinois Basin Posted Crude Oil Prices <http://www.ioga.com/Special/crudeoil_Hist.htm> (15 July 2013).
146 By the end of 2012, non-Arab ownership in listed companies formed 33.8% of the total market capitalisation of the ASE, see the ASE Annual Report (2012) 24.
149 Between 2008 and 2012 only six listed companies were liquidated, actually the main reason for the decline in the number of the listed companies from 277 companies in 2010 to 247 companies in 2011 was that the ASE in 2011, as a result for amending art 14 of the Directives for Listing Securities on the ASE 2004, delisted 32 companies which were continued suspension of trading for a period exceeding two years, see the ASE Annual Report (2011) 31.
The trading value includes the trading in shares, bonds, and units/shares of mutual funds.

The financial difficulties (discussed in Chapter 4.4.4) have prevented the Jordanian Government from adopting a comprehensive program to develop the market and bring investors back after the market crash in 2008. However, there were some efforts to enhance the ASE performance. These included launching the new Capital Market Infrastructure and Internet Trading Service in 2009 and 2010. These are discussed in detail in Chapter 5.4.1. A further measure was the ASE amendment in October 2012 to the Listing Directives to classify the listed companies according to new listing requirements into three market segments instead of only two market segments which helps investors to recognise the current status of the listed companies, see 5.3.

### Table 3.3: The Main Indicators of the ASE (as at 31 December 2013):

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>No of Listed Companies</td>
<td>240</td>
</tr>
<tr>
<td>No of Listed Mutual Funds</td>
<td>0</td>
</tr>
<tr>
<td>No of Listed Bonds</td>
<td>168</td>
</tr>
<tr>
<td>No of Listed Bills</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total Number of Listed Securities</strong></td>
<td><strong>416</strong></td>
</tr>
<tr>
<td>No of Tradable Shares</td>
<td>2705.8 million</td>
</tr>
<tr>
<td>No of Tradable Bonds</td>
<td>2100</td>
</tr>
<tr>
<td><strong>Total Trading Value</strong></td>
<td><strong>JD 3027.3 million</strong></td>
</tr>
<tr>
<td>Turnover Ratio</td>
<td>38%</td>
</tr>
<tr>
<td>Free Float Price Index</td>
<td>2065.8 points</td>
</tr>
<tr>
<td>Market Capitalisation</td>
<td>JD 18 233 million</td>
</tr>
<tr>
<td>Market Capitalization / GDP</td>
<td>83%</td>
</tr>
<tr>
<td>Non-Jordanian Ownership of Market Capitalisation</td>
<td>49.9%</td>
</tr>
</tbody>
</table>

3.5. The ASE Performance Measured in Terms of Mobilising Public Savings for Companies

In the light of the changes resulted from the governmental reforms in the capital market after 1997 as well as from the easing of liquidity following the significant increase in the oil price, privatisation of state enterprises, and other developments in the marketplace noted in the earlier section, the ASE has succeeded in mobilising funds for companies from the public. The truth is evident from the following facts.

The market boom during 2005-2008 encouraged most companies to seek to raise capital through the primary market (public issue market) and encouraged young and small companies to enter the capital marketplace and gain the benefits of going

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1. There was only one mutual fund listed in the ASE between 1999 and 2002. According to art 2 Directives for Listing Securities on the ASE 2012 only closed end investment funds are able to be listed on the ASE. As will be explained later in Chapter 5.3 since 2002 all investment funds on the ASE were de-listed and investors could not establish new mutual funds to date.

The public issue market is shown in the figure below to have experienced significant growth between 2005 and 2008. During this period, the total initial public offering value amounted to JD 5011.4 million (approximately US$ 7078.2 million). The value for newly established companies was JD 1424.2 million (approximately US$ 2011.6 million) and for existing companies, JD 3587.4 million (approximately US$ 5066.9 million).\footnote{Mohammed M Ajlouni and Omar A Abu-Ein, 'Long-Run Performance of Initial Public Offerings in an Emerging Market: The Case of Amman Stock Exchange' (2009) 9(1) Journal of International Finance and Economics 29.}

![Figure 3.7: Growth of the Public Issue Market during 1999-2013 Measured in Terms of Value (JD in million).]({})

with a percentage of 4.22% of the market capitalization (as at 12 February 2014) after the Lebanese, Kuwaiti, Saudi Arabian and Qatari investments.\footnote{SDC<\url{http://www.sdc.com.jo/english/index.php?report_type=4&security_type=1&option=com_publicic&Itemid=28} (13 February 2014).}

Figure 3.8: Growth of the Non-Jordanian Ownership at Companies Listed in the ASE (%) during 1999-2013: \footnote{ASE Annual Reports (2001) 4, (2004) 25, (2005)25.}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure3.8.png}
\caption{Growth of the Non-Jordanian Ownership at Companies Listed in the ASE (%) during 1999-2013.}
\end{figure}

The ratios of market capitalisation to the GDP show a very strong performance. The market capitalisation to the GDP doubled twice in less than five years, from 76% in 2001 to 185% in 2004, and to 326.6% in 2005.\footnote{ASE Annual Reports (2001) 4, (2004) 25, (2005)25.} Although, the share prices, share price index, trading value and market capitalisation witnessed a decline after 2008 as above-mentioned, the market capitalisation by the end of December 2013 represents 83% of the GDP and is higher than it was in 2001.\footnote{ASE <\url{http://www.ase.com.jo/en/date}> (13 February 2014).}
The performance of the ASE appears to be comparable to some selected emerging Arab securities markets close to Jordan and bearing similar socio-economic characteristics. Almost all of these countries are financially in a much better position than Jordan, particularly the Arab gulf countries which are oil producers. Despite this, the ASE indicators reflect the ASE’s performance in improving the national economy. It is to be noted that the ASE was ranked first amongst the Arab securities markets in terms of the market capitalisation as a percentage of GDP. This is borne out by the figure and table below which compare selected Arab markets.

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165 The size and importance of the ASE as compared with other Arab stock markets were also significant during the hay season between 2004-2008 and before this period. In 2002 for example, the ASE ranked second after Egypt in terms of the number of listed companies, and only exceeded by Kuwait and Bahrain in terms of the market capitalisation as a percentage of GDP. For more information see Al-Khoury et al, above n 85, 224-225; Maghyereh et al, above n 41, 7; Al-Najjar, above n 81, 179.
Figure 3.10: ASE Position amongst the Selected Arab Markets in Terms of the Market Capitalisation as Per Cent of GDP (as at 31 December 2011):\textsuperscript{166}

Table 3.4: Some Key Indicators of Selected Arab Securities Markets (at 31 December 2012):\textsuperscript{167}

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of Listed Securities</th>
<th>Market Capitalisation US$ million as</th>
<th>Trading Value US$ million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jordan</td>
<td>243</td>
<td>26 998</td>
<td>2788</td>
</tr>
<tr>
<td>Bahrain</td>
<td>43</td>
<td>16 065</td>
<td>308</td>
</tr>
<tr>
<td>Egypt</td>
<td>234</td>
<td>58 008</td>
<td>20 161</td>
</tr>
<tr>
<td>Kuwait</td>
<td>189</td>
<td>97 091</td>
<td>22 998</td>
</tr>
<tr>
<td>Lebanon</td>
<td>10</td>
<td>10 296</td>
<td>408</td>
</tr>
<tr>
<td>Morocco</td>
<td>76</td>
<td>52 634</td>
<td>3501</td>
</tr>
<tr>
<td>Oman</td>
<td>124</td>
<td>20 107</td>
<td>2647</td>
</tr>
<tr>
<td>Qatar</td>
<td>42</td>
<td>126 371</td>
<td>15 320</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>158</td>
<td>373 380</td>
<td>514 423</td>
</tr>
<tr>
<td>Tunisia</td>
<td>59</td>
<td>8887</td>
<td>1251</td>
</tr>
<tr>
<td>United Arab Emirates\textsuperscript{168}</td>
<td>102</td>
<td>67 951</td>
<td>17 644</td>
</tr>
</tbody>
</table>

Table 3.4 shows that the numbers of listed companies are low in Arab markets. The ASE was ranked first amongst the Arab securities markets in terms of the number of listed companies. For example, listings on the Beirut Stock Exchange with a comparable population level of Jordan are just 10 companies. To an outside observer the number of listings on stock exchanges throughout the region is not high in comparison with more highly developed stock exchanges. Listings on the Australian Stock Exchange are a great deal higher approximately 2200 companies as at November 2013. There may be a variety of possible reasons for low listings in the region. In some countries, especially oil rich countries, there may not be the need to go to the market to raise funds where developments can be funded through existing oil


\textsuperscript{167} Standard and Poor’s, above n 166, 20-27. The key indicators of the Arab securities market are available until 2012.

\textsuperscript{168} Figures include data from both Dubai Financial Market and Abu Dhabi Securities Market.
These considerations will be important to the proposal to convert ASE to a publicly listed corporation with the capacity to develop new products and listings which will be discussed in Chapter 9.3.2. The ASE should be in a position to benefit from the available opportunities and to mobilise the Arab financial surpluses from oil revenues in the light of the political stability which Jordan enjoys in an overall unstable region.\textsuperscript{170} The ASE transfer to the business model may assist the ASE to continue its role in mobilising funds for companies and boosting the Jordanian economy.

3.6. Summary and Conclusions

During the last decade the ASE has played an essential role in boosting the Jordanian economy and mobilising funds for publicly listed companies from the public. The truth is evident from the following facts. The sound growth of the public issue market for both newly established and existing companies between 2005-2008 with a total value amounted JD 5011.4 million (approximately US$ 7078.2 million), the value for the existing companies was JD 3587.4 million (approximately US$ 5066.9 million); the non-Jordanian ownership in listed companies has increased to 49.9\% of the total market capitalization by the end of December 2013; and the ratio of market capitalisation to the GDP represented 94.25\% by the end of 2011 and reflected a strong performance in comparison with all selected Arab markets.

The governmental reforms adopted between 1997 and 2003 to promote and globalise the securities market have facilitated significant improvements in all market indicators for the ASE in the last 10 years. The \textit{Securities Law 1997} and the introduction of new technology for trading and dealing in securities (Remote Electronic Trading) are considered the cornerstone of these reforms. The Securities laws have set the legal framework for the key elements which the success securities market depend on. These are: designation of the JSC as the capital market watchdog and empowering it to enforce the law; establishment of the ASE to assure transparent and fair trading; establishment of the SDC to dematerialise share certificates, carry out electronic clearing and settlement of securities transactions and safe-custody functions; regulating financial services companies and persons associated therewith; enhancing the self-regulation of the market participants; reinforcing fair disclosure and transparency by regulating and monitoring the disclosure affairs and adoption of the IFRS and the International Auditing Standards; setting the base for innovation of financial instruments and investment mutual funds to attract and improve institutional investors in the market.

The sluggish performance of the ASE after the market crash by the end of 2008 highlights the need to review all the securities regulators roles in Jordanian Capital Market and corporate governance particularly the role of the ASE.

\textsuperscript{169} Statistics show that Arab oil producers have huge sovereign wealth funds which reflect the available investments opportunities, for more information in this regard see the sovereign wealth funds rankings at Sovereign Wealth Fund Institute \textlangle http://www.swfinstitute.org/fund-rankings\rangle (20 August 2013).

\textsuperscript{170} Arab ownership in listed companies formed 35.9\% of the total market capitalisation of the ASE by the end of November 2013, see ASE \textlangle http://www.ase.com.jo/en/non-jordanian-investment-ase-during-november-2013\rangle (13 February 2014).
The next chapter examines the ASE's institutional structure and some of the difficulties in relation to the ASE's performance in the capital market development and corporate governance in Jordan.
Chapter 4

The Institutional Structure of the Amman Stock Exchange (ASE)

4.1. Introduction

The Securities Law 1997 no. (23) established the ASE as a non-profit institution with exclusive licence to conduct trading activities in the Jordanian Capital Market.\footnote{Securities Law 1997 art 23.} Subsequently the Securities Law 2002 no. (76) removed the ASE's exclusive rights and allowed any Trading Market in Securities licensed by the JSC to conduct trading activities in the market.\footnote{Securities Law 2002 art 67.A, B.} No other exchange has so far been licensed. While it appears that the legislative purpose in the Securities Law 2002 was to pave the way for the eventual restructuring of the ASE from a non-profit institution to a publicly listed company licensed to operate in the market, the measures needed to effectuate this change have not yet occurred. The serious failure was that the Securities Law 2002 established the ASE as a regulator to conduct trading activities but did not deal with the ASE as a licensed holder. The Securities Law should have set the required conditions to grant a licence for operating trading activities in the market and require the ASE to adjust its status with these requirements. It will be argued in chapter 9 that the conversion of the ASE to a publicly listed company is important for the ASE to operate effectively. The institutional structure of the ASE under the current legislation is ambivalent in that to reflect some aspects of a government controlled entity and other aspects as an independent autonomous institution.

This chapter examines the ASE's current institutional structure and its influence on the role of the ASE in the Jordanian Capital Market and Jordanian corporate governance. It will focus on the hybrid nature of the ASE's legal status as a public entity and the conflict between the institutional structure of the ASE as an autonomous institution and the control exercised by the Jordanian government and the JSC and its influence on the ASE's financial and administrative independence. This involves examination of the Securities Law 1997 no. (23), Securities Law 2002 no. (76) and the ASE's internal by-laws and directives. It will also include reference to the Jordanian Constitution 1952, Civil Service Regulation 2007 no. (30) and decisions of the Special Tribunal to Interpret the Laws. This is an important backdrop to the thesis' central argument that these restrictions prevent the ASE from properly fulfilling its functions in the Jordanian Capital Market. It will be argued in chapter 9, that in order to be fully autonomous and to effectively perform its role within the capital market, the ASE should become a listed public company.

The following sections of the chapter discuss in 4.2 the ASE's functions, 4.3 deals with ASE's organisational structure, the legal status and institutional structure of the ASE and its influence on the ASE's role in the capital market and corporate governance in 4.4. The summary and conclusion are in 4.5. The role of the ASE in the Jordanian securities market and corporate governance is examined in Chapter 5.
4.2. The Functions of the ASE

The ASE was established in March 1999 by virtue of the *Securities Law 1997* as a non-profit institution, with financial and administrative autonomy, to conduct trading activities in the Jordanian Capital Market under the JSC’s oversight. The ASE aims to offer the appropriate environment to ensure the interaction between offer and demand of traded securities by assuring transparent and fair trading. In order to reach its objectives, it has the following functions. It provides the necessary infrastructure for the listing, trading, trading operations supervision, and disclosure through providing electronic and manual systems, means of communication and equipped trading rooms with the necessary technical tools and devices. It is also responsible for regulating and disciplining the use of its utilities, facilities and services. The ASE supervises trading operations in coordination with the JSC. It is also responsible for disclosing and disseminating the trading information as well as setting the Professional Code of Ethics, the standards of training, experience, and administrative efficiency for its members and persons associated therewith to improve their proficiency, and in theory impose disciplinary sanctions upon them if they breach the *Securities law*, regulations, instructions and decisions issued pursuant thereto and the provisions of the by-laws, instructions and decisions of the ASE.

4.3. The ASE Organisational Structure

The ASE is managed by a board of directors and a full-time Chief Executive Officer (CEO) appointed by the board. The board consists of seven members, three of them including the chairman and deputy chairman are appointed by the JSC's Board of Commissioners and the other four members are elected by the ASE's General Assembly which consists of the Financial Brokers and Dealers and any other entities designated by the Board of Commissioners. As indicated in the diagram below, the ASE organisational structure is composed of the Board of Directors, CEO, Deputy CEO and heads and staff of departments and divisions. The *ASE Administrative By-law 2004* specifies the ASE's departments and their powers as set out in the Diagram 4.1 below.

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174 *Securities Law 2002* art 65.A, G.
176 Ibid art 5.
177 Ibid art 17.B states that "The Board of Directors shall consist of: 1- Four members representing brokers. 2- Three members from the private sector who are experts in legal, financial and economic fields appointed by the Board of Commissioners".
179 *ASE Administrative By-law 2004* arts 4, 5.D. The Listing and Operations Department is responsible for the ASE market services into the following main functional areas; listing, trading operations, disclosure and dissemination of information, and membership issues. There is a separate department for Surveillance and Inspection which is responsible for monitoring the trading operations and the ASE’s members’ activities to ensure their compliance with legislation in force. There are a number of support departments including the Legal Department which is responsible for providing legal advice and services to all functions in the ASE, and conducting the sale of securities in accordance with decisions of courts and relevant official parties. The Internal Audit Bureau which ensures that the
actions and measures taken by the ASE are in conformity with the laws, regulations and legislations in force. The Research and International Relations Department is responsible for managing the ASE's website and data bank, computing the indexes, and preparing researches and the ASE's publications. Other essential support departments are the IT Department which is responsible for providing and improving the necessary technical infrastructure for the ASE; the Administration and Finance Department responsible for managing the financial affairs and providing human resources generalist advice and administrative support services; the Awareness and Public Relation Bureau which is responsible for educating investors in securities, disseminating the culture of investment and following up the ASE relations with relevant Arab, regional and international institutions.

180 ASE Administrative By-law 2004; ASE's Board of Directors, Decision No 62/2005, 22 November 2005 (Translated from Arabic); ASE's CEO, Decision No 4/2006, 3 April 2006 (Translated from Arabic). The decisions have been collected from the ASE.
As will be explained later in Chapters 8.7 and 9.3.2, restructuring the ASE by converting it from a non-official public institution to a listed public shareholding company managed on commercial basis is a potential solution for some of the problems relating to the ASE's institutional structure. But it is a solution that needs to balance commercial and public interest functions. What this will require and what lessons may be learnt from the Australian experience is discussed at Chapter 8.7. One approach is to establish a separate regulatory department that does not have any involvement in the ASE business which reports directly to the board of directors. The ASE may learn from the Australian experience in the field. The ASX Limited has set up a wholly owned subsidiary within the ASX Group, the ASX Compliance Pty Limited to ensure that ASX group entities have adequate arrangements for monitoring and enforcing compliance with ASX’s operating rules, see Chapter 8.7. Furthermore, the ASE is required to merge, establish and disband some departments and divisions to enhance its effectiveness. As ASX did for example, the ASE may establish a Business Development Division for product management to develop existing products, create new products and marketing.  

The ASE legal status and institutional structure have a significant impact on the ASE’s performance and consequently its role in the capital market and corporate governance. As will be explained below, the hybrid legal status of the ASE has been a problem from its inception in 1999. Although, the Special Tribunal decision in February 2012 has settled its legal status as a semi public entity, this constrains it from operating effectively. This is particularly in relation to its roles and functions vis a vis other entities in the regulatory structure.

4.4. ASE Legal Status

The Securities Law 2002 retains the earlier separation of the regulatory function from the trading and technical side of the AFM by establishing three institutions (JSC, ASE and SDC) which have independent legal personalities with financial and administrative autonomy. Whilst the 2002 Act makes it clear that the JSC and the Securities Law 1997 and Securities Law 2002 identify the JSC’s legal status as a public institution. The JSC has a legal personality with financial and administrative independence. In this connection, it may acquire all movable and immovable properties, and is authorised to undertake such legal action as is necessary to achieve its goals. The JSC as a governmental body must report and is responsible to the Council of Ministers. The JSC is also authorised to fulfil public functions by seeking to protect investors in securities, shield the capital market from dangers and regulate and improve the capital market. The JSC has public powers to regulate and monitor the issuance of securities and dealings therein, disclosure issues, financial services activities, and supervise the ASE,

183 Securities Law 1997 arts 6, 23, 29. The Securities Law no. (23) established the legal framework to restructure the Jordanian Capital Market, for more information about allocation of functions see Chapter 3.3.
184 The Securities Law 1997 and Securities Law 2002 identify the JSC’s legal status as a public institution. The JSC has a legal personality with financial and administrative independence. In this connection, it may acquire all movable and immovable properties, and is authorised to undertake such legal action as is necessary to achieve its goals. The JSC as a governmental body must report and is responsible to the Council of Ministers. The JSC is also authorised to fulfil public functions by seeking to protect investors in securities, shield the capital market from dangers and regulate and improve the capital market. The JSC has public powers to regulate and monitor the issuance of securities and dealings therein, disclosure issues, financial services activities, and supervise the ASE,
SDC\(^\text{185}\) have the legal status of non profit public entities,\(^\text{186}\) the legal position of the ASE is unclear. Under the repealed \textit{Securities Law 1997} the ASE was described as a non profit entity. There is no express provision in the 2002 Act setting out its legal status. It may be surmised that this may be deliberate in order to pave the way towards restructuring the ASE from a public non-profit institution to a publicly listed company licensed to operate in the market on commercial basis.

The \textit{Securities Law 2002} includes some implicit provisions which indicate the status of the ASE as a public institution. These are that the ASE has a legal personality with financial and administrative independence;\(^\text{187}\) the Council of Ministers determines to whom the ASE's properties should be devolved after restructuring it\(^\text{188}\) and the ASE is subject to the JSC's oversight and monitoring.\(^\text{189}\) But unlike the JSC, the ASE is managed by a board of directors, consisting of seven members, three of whom are appointed by the JSC and the other four members are elected by the ASE's General Assembly. A full-time CEO appointed by the board upon the JSC's approval.\(^\text{190}\) The JSC may form a temporary management committee to run the ASE for a period of six months if the ASE's board of directors resigns, or the quorum is not met, or for any other reason pertaining to public or capital market interests.\(^\text{191}\)

There are, however, provisions in the \textit{Securities Law 2002} which appear to indicate that the ASE has some features as a private body. First, the ASE's General Assembly consists of the Financial Brokers and Dealers and any other entities designated by the

\(^{185}\text{Securities Law 2002 art 76. The SDC's status as a public entity is confirmed by the status of SDC as a legal personality with financial and administrative independence. It has exclusive authority to carry out the following public functions; registration of issued securities, depositing the securities, transferring ownership of securities, conducting clearing and settlement for securities transactions. Like the JSC, SDC has authority in relation to its properties in accordance with the \textit{Collection of Domanial Properties law}. As well, the SDC's properties should be paid to the Public Treasury when its legal personality terminates. Similarly, management of the SDC is by delegation to a board of directors, consisting of seven members: three of them are appointed by the JSC and the other four members are elected by the SDC's General Assembly, and a full-time CEO is appointed by the board upon the JSC’s approval to manage the SDC, see \textit{Securities Law 2002 arts 76, 77, 78.A-B, 87.C, 88m and see also Internal By-Law of the SDC 2004 (Jordan) art 17.B}.\)

\(^{186}\)\textit{In Jordan the term 'Independent Government Body' known as 'Public Institution/Entity/Unit/Department', all terms will be used interchangeably throughout the thesis.}\)

\(^{187}\text{Ibid art 65.H.}\)

\(^{188}\text{Ibid art 65.G. In this regard the JSC may suspend the activities of the ASE for a period of no more than one week, or for a longer period subject to the Prime Minister's approval, see \textit{Securities Law 2002 art 75}.}\)

\(^{189}\text{Ibid art 65.C, D, ASE Internal By-Law 2004 art 17.B.}\)

\(^{190}\text{Securities Law 2002 art 119.}\)

43
Unlike the JSC, the ASE may engage in profit-making activities upon the JSC's approval provided that this does not influence trading activities. The deficit in the ASE's annual budget in any fiscal year should be covered equally by the ASE's members and their payments credited against the ASE's future net revenues. Further, upon the JSC's approval the ASE can borrow to cover any deficit. It is to be noted that the Securities Law 2002 provides part of the framework to privatise the ASE in the future to operate effectively by emphasising that the ASE may engage in profit-making activities and borrow to cover the deficit in its annual budget.

4.4.1. ASE Hybrid Status

The Special Tribunal was requested by the Prime Minister to interpret the provisions of the Securities Law 2002 no. (76) and art 3 of the Financial Surpluses Law 2007 no. (30) in order to identify and clarify whether the ASE is an official public institution or a private body.

Initially, the Special Tribunal relied on its previous decision no. 2/1985 to distinguish between official public institutions and non-official public institutions. According to the decision no. 2/1985 the official public institutions were identified as administrative law agencies established by virtue of laws to perform state functions. Non-official public institutions were identified as administrative law agencies established by virtue of laws with legal personalities to perform public functions but subject to state monitoring and supervision. The Special Tribunal relied upon its previous decision no. 19/1965 which set out five main elements relevant to deciding the status of a public institution. The institution should be one of the administrative law agencies, and exercise public powers to achieve its aims. Its purpose is to exercise public functions. In relation to its property, it should be considered public properties, regulated and monitored as the state's properties. Similarly, the institution's

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192 Securities Law 2002 art 65.B.
193 Ibid art 65.F.
194 Ibid art 66.A, B.
195 The Special Tribunal to Interpret Laws was established by virtue of the Jordanian Constitution to interpret, upon the Prime Minister's request, any provision in the law, provided that this provision had not been interpreted before by the courts. The Tribunal consists of five members; the head of the Court of Cassation as the head of the Tribunal, two judges from the Court of Cassation, one member from the government appointed by the Council of Ministers, and another member from the related ministry to the interpretation delegated by its minister. The Tribunal decisions which are adopted by an absolute majority of members, and published in the Official Gazette have the force of law see Jordanian Constitution 1952 (Jordan) art 123, 1 January 1952, Official Gazette, No 1093, 1 January 1952, 3 (Translated from Arabic).
196 Special Tribunal to Interpret Laws, Decision No 1/2012, 6 February 2012, Official Gazette, No 5143, 1 March 2012, 777 (Translated from Arabic).
199 Article 60.1 of the Civil Law (No 43)1976 (Jordan) 1 January 1977, Official Gazette, No 2645, 1 August 1976, 2 (Civil Law 1976) (Translated from Arabic) considers any property owned by the state or the public law parties and dedicated to the public interest a public property. See also the Special
employees should be considered public employees. In addition, the institution should have the right to sign contracts, and enjoy special financial privileges.

The Special Tribunal then reviewed the relevant provisions in the *Securities Law 2002* and art 3 of the *Financial Surpluses Law 2007* which indicate that the ASE's legal status bears some features of a public body and some features which point to a private body as mentioned above. The Special Tribunal concluded that the elements which distinguish the non-official public institutions apply to the ASE. That is the ASE was established by virtue of the *Securities Law 2002*, as a legal entity which enjoys financial and administrative independence. The ASE is a public utility entity which conducts trading activities in the Jordanian Capital Market under the JSC oversight. The ASE is also considered a governmental unit under the *Financial Surpluses Law*. However, the Special Tribunal indicated that the ASE management is different from other official public institutions since its General Assembly consists of Financial Brokers and Dealers and is managed by a board of directors and CEO appointed according to the *Securities Law 2002* and ASE internal by-laws, whilst the official public institutions managements are appointed according to the by-laws issued by the Council of Ministers. The ASE's employees are not considered public employees since they are appointed according to the ASE internal by-laws whilst the public employees are appointed according to the by-laws which issued by the Council of Ministers. Nor does the ASE enjoy financial privileges and exemptions such as tax and customs exemptions. Most importantly, the ASE does not exercise public powers to achieve its aims. The ASE does not enjoy the privileges which other public entities benefit from such as collecting its properties and rights against others in accordance with the *Collection of Domanial Properties Law 1951* no. (57).

In light of these factors the Special Tribunal concluded that the ASE is a non-official public institution. It is a hybrid with some features of the non-official public institutions and some features of a private body. Thus, the ASE's management and

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200 Article 76 of the *Jordanian Constitution 1952* considers any employee who receives salary from the public purse a public employee. Further, art 2 of the *Civil Service Regulation (No 30)* 2007 (Jordan) Council of Ministers, 1 April 2007, *Official Gazette*, No 4818, 1 April 2007, 2085 (*Civil Service Regulation 2007*) (Translated from Arabic) defines the public employee as the person whom is appointed by a decision of the concerned authority, in a job listed in the jobs formations table by virtue of the *General Budget Law* or any institution's budget. This definition includes the employees who are appointed under contracts but does not include persons who receive their salaries on a daily basis. In this connection, Kanaan considered the employee a public employee if appointed: 1- By a relevant public authority. 2- In a permanent job. 3- In a public institution managed by any of the administrative law agencies, see Naaf Kanaan, *Jordanian Administrative Law* (Aldustour Commercial Press, First edition, 1996) 31 (Translated from Arabic).

201 *Financial Surpluses Law (No 30)* 2007 (Jordan) art 3, 1 May 2007, *Official Gazette*, No 4823, 1 May 2007, 2606 (*Surpluses Law 2007*) (Translated from Arabic) states expressly, in an attached table, that the ASE as a governmental unit should transfer the financial surplus in its annual budget to the state public treasury.

202 In this connection, the ASE enjoys different financial privileges. The ASE may obtain movable and immovable properties, and practice all legal acts to achieve its public purposes such as signing contracts and suing, see *Securities Law 2002* art 65.A.

203 The ASE aims to offer the appropriate environment to ensure the interaction between offer and demand of traded securities by assuring transparent and fair trading, see *ASE Internal By-Law 2004* art 4.
personnel affairs regulated as private bodies and it does not enjoy the privileges and exemptions which other official public entities benefit from.

The decision is not free from criticism. Some aspects of the ASE point in the opposite direction. The ASE's properties are considered public properties. The government established the ASE in 1997 and the Council of Ministers determines to whom the ASE's properties should be devolved after restructuring it. Moreover, the ASE has to transfer the financial surplus in its annual budget to the state public treasury. Another aspect is that the ASE's public powers are not restricted in collecting its properties in accordance with the Collection of Domanial Properties Law, the ASE exercises public powers to ensure the existence of the efficient market in securities through regulating investment in listed public shareholding companies by regulating and managing; listing and trading in securities and disclosure of information. As well, the ASE in reality enjoys financial privileges and exemptions which other public entities benefit from such as tax exemptions. Like the SDC, which is a non-profit public utility entity, the ASE is managed by a board of directors, which consists of seven members: three of them are appointed by the JSC, and a full-time CEO appointed by the board upon the JSC's approval. There are also grounds upon which employees might be considered public employees.

The Special Tribunal decision no. 1/2012 clarified the ASE legal status as a non-official public institution that does not enjoy the privileges and exemptions which other official public entities benefit from. The decision solved the problems related to the uncertainty of the ASE legal status between a public non-profit institution and an independent non-government entity since the establishment of the ASE in March 1999 until the issuance of the Special Tribunal decision in February 2012. Whether the ASE's decisions are amenable to judicial review and if the ASE can enjoy the privileges and exemptions which the public institutions benefit from as will be discussed in the following sections 4.4.2 and 4.4.3. However, with the ASE new institutional structure old/new difficulties continue as will be discussed in sections 4.4.4 and 4.4.5.

204 Securities Law 2002 art 65.H.
205 Surpluses Law 2007 arts 3, 6.
207 As will be discussed later in Section 4.4.4 the ASE which has been listed in the Governmental Units Budgets laws since 2008, its employees receive salary from the public purse. Most importantly, the High Court of Justice decision no. 398/2011 issued on 10 February 2011 in the transport and travel allowances case considered the ASE's employees public employees and emphasised on the Council of Ministers authority to regulate the public sector as it deems appropriate. The question which should be asked in this regard, did the Special Tribunal exceed its authority in the constitution and breach the constitution by interpreting a provision had been interpreted before by the High Court of Justice? In our case there is no doubt that there was a serious need to interpret the related provisions in the Securities Law 2002 and art 3 of the Surpluses Law 2007 to clarify the ASE legal status particularly that the High Court of Justice did not deal in its decision no. 398/2011 with the ASE legal status. However, it is notable that the Special Tribunal arguably was in error in deciding that the ASE's employees are not public employees.
4.4.2. The Judicial Review of ASE's Decisions

This section is concerned with the ASE's decisions which are related to listing issues in Directives for Listing Securities on the ASE 2012 (hereinafter referred to as listing rules), and brokers issues in the Internal By-Law of the ASE 2004 and Directives for the Code of Ethics of ASE 1999 (hereinafter referred to as business rules).208

As will be explained in Chapter 5.3 the ASE listing rules play an important role in the regulation of the listed public shareholding companies and the investment in their securities through ensuring the efficient securities market and reinforcing the corporate governance to protect investors in securities,209 which are the listing rules key functions and reflect the essence of the ASE roles in the capital market and corporate governance.

The listing rules are enforceable by virtue of statute (Directives for Listing Securities on the ASE 2012) issued under the provisions of art 72 of the Securities Law 2002. The Listing Directives give the ASE discretion to administer the listing issues and enforce the listing rules.210 The ASE has discretion in four main areas. Firstly, the CEO of the ASE decides whether to accept or to reject any listing application filed to list a shareholding company on the ASE. In this connection, the directives do not determine a period for acceptance or rejection, and do not require the CEO to inform the applicant of the reasons for rejection.211 Secondly, the ASE board of directors and the CEO may decide to temporarily suspend listed companies shares,212 such as in emergency situations which influence the trading activities, the financial position of the listed companies,213 and the interests of investors in securities.214 Thirdly, the ASE has the discretion to list some types of companies on the First Market even where they do not meet the listing requirements of the First Market as will be clarified in Chapter 5.3. Fourthly, the ASE's board of directors, upon the CEO's recommendation, can impose one or more of the following sanctions against the listed issuers on the ASE who breach the listing rules:215 warning, monetary fines, transferring the listed shares between markets, suspension and de-listing of securities. Finally, the ASE board of directors make the necessary decisions to deal with any case which is not regulated by the listing rules.216 The ASE decisions under the listing rules have a significant impact on the listed companies business and investors in securities. For example, when the ASE decides to suspend the shares of a listed company which has breached the listing

\[208\] It will not consider other decisions in legislation such as the Internal By-Law of the ASE Employees 2005, which are not related directly to listing and brokers issues.


\[210\] For more information about the ASE powers in this field see Chapter 5.3.


\[212\] For more details about the ASE discretionary authority to suspend the companies’ shares see Chapter 5.3.


\[214\] Ibid art 14.G.

\[215\] Ibid art 24.

\[216\] Ibid art 28.
rules, the shareholders lose the opportunity to liquidate their shares any time via the ASE.

One of the ASE’s main responsibilities is the licensing of brokers and regulating their performance by setting up a Professional Code of Ethics for their conduct, standards of training, and requisite professional and administrative experience to improve their proficiency. The business rules are defined as internal rules which the stockbrokers must comply with both in relation to their conduct towards each other and towards their clients, the public investors, in trading in listed securities. The licence which the Securities Law 2002 grants to ASE's members, Financial Brokers and Dealers, to trade exclusively in listed securities on the ASE for their accounts and their clients' accounts, highlights the importance of the ASE business rules in regulating the securities market.

The business rules are enforceable by statute (Internal By-Law of the ASE 2004) issued under the provisions of art 65 of the Securities Law 2002. The ASE Internal By-Law empowers the ASE wide powers to regulate the activities of brokers and enforce the business rules. These powers of the ASE are important in three main situations. Firstly, The ASE board of directors decides to accept or reject broker membership application. Further, the board has to answer within 30 days of the filing of the complete application and inform the applicant of the reasons for rejection. In this connection, the board has the right to revoke the broker membership if its application includes misleading or incorrect information. Secondly, the ASE board of directors decides to cease, suspend and restrict the services that it offers to any member who is facing financial and/or administrative problems endanger the interests of the market, investors and other members. The member against whom the precautionary action is taken can appeal the decision before the board itself. Thirdly, the ASE's board of directors decides to impose one or more of disciplinary actions against the members and persons associated therewith who breach the Securities Law and related regulations. The possible penalties are monetary fines, restriction, suspension and revocation of the membership. The aggrieved person can appeal from the decision to the JSC's Board of Commissioners.

The Securities Law 2002 does not provide for the judicial review of ASE's decisions, particularly its decisions under the listing rules and business rules. There is no provision which indicates whether they are reviewable or not, to whom the review

217 ASE Internal By-Law 2004 art 5.
219 Securities Law 2002 art 69.B.
220 For more information about the ASE powers in this field see Chapter 5.4.3-4.
221 ASE Internal By-Law 2004 art 10.A, C.
222 Ibid art 11.
223 Ibid art 39.B.
224 Ibid art 39.C.
225 Ibid arts 36.A, 37.B.
226 Ibid art 37.C.
should be filed (if it is possible), or the period to file for review. Moreover, the ASE's legal status between a public non-profit institution and an independent for-profit body had implications for the reviewability of the ASE's decisions by the High Court of Justice.

The absence of specific statutory provisions does not necessarily prevent reviewability of the ASE's decisions. In Jordan, the High Court of Justice is responsible for reviewing administrative decisions. Administrative decisions are subject to judicial review by the High Court when the following conditions are met. There must have been a decision or a refusal to make a decision. The decision must be a binding and final administrative decision. The decision must not be an act of the state strict dominion. Under the High Court Law the appeal must be filed by an aggrieved person who has a personal interest as a prerequisite and continuing requirement. In addition, the appeal must be against the body which makes the decision. As is quite typical, decisions are reviewable if on the basis that the decision

227 It may be surmised that this may be deliberate in order to pave the way towards restructuring the ASE from a public non-profit institution to a publicly listed company licensed to operate in the market on commercial basis.

228 Courts in Jordan are divided into three categories: civil, religious and special courts. Civil courts exercise their jurisdiction over all persons in all civil and criminal matters which are not specifically reserved for religious and special courts. Four levels of courts make up the civil court system: Magistrate Courts, Courts of First Instance, Courts of Appeal, and the Court of Cassation. Religious courts have jurisdiction over all matters of "personal status" and inheritance. Also there are many types of special courts in Jordan such as the Major Felonies Court, Military Court, Police Court, Income Tax Court, Customs Court and the High Administrative Court (High Court of Justice) which was established by virtue of the High Court of Justice Law (No 12) 1992 (Jordan). It was reported in Adaleh (Translated from Arabic).

229 In addition, the appeal must be against the body which makes the decision. As is quite typical, decisions are reviewable if on the basis that the decision

230 Provided the appeal must be within 60 days from the date of submitting the decision to them

231 Ibid art 9.A.


233 High Court Law 1992 art 9.C.2. The appeal must be filed within 60 days from the date of submitting the decision, or publishing it in the Official Gazette or any other method when the legislation requires that. If there is a refusal to make a decision the appellate period starts after 30 days from submitting a request to make a decision, see High Court Law 1992 art 12.A-B. In this connection, when the High Court obtains its jurisdiction by another law, this law may set a different period to submit the appeal to the High Court, see Jordanian Bar Association Law (No 11) 1972 (Jordan) art 99.A-B, 6 May 1972, Official Gazette, No 2357, 6 May 1972, 666 states that the appeal must be filed by aggrieved persons within 15 days from the date of submitting the decision to them (Translated from Arabic).

234 High Court of Justice], No 256/2010, 26 January 2011 reported in Adaleh (Translated from Arabic).
breaches the constitution, laws or regulations, or misinterprets them or implements them incorrectly; there is a misuse of powers by the decision maker; the decision was made by unauthorised person or there was a procedural error.\textsuperscript{235} The High Court assumes that all administrative decisions are correctly made in the public interest. Any person who claims otherwise has to prove the error in the decision based on one or more of the above reasons.\textsuperscript{236} The High Court decisions in all cases are absolute and unreviewable.\textsuperscript{237} Currently the ASE's decisions, as one of the administrative law agencies, satisfy the mentioned above requirements and fall within the \textit{High Court of Justice Law} and are amenable to judicial review by the High Court of Justice as other administrative decisions.

This is an important backdrop to the later argument in Chapter 9.3.2 that if the ASE is restructured as a publicly listed shareholding company and the ASE relationship with its members (brokerage firms) and listed issuers identified on a contractual basis whether its decisions should be subject to judicial review. This concerns the issue of supervision over the ASE's powers in regulating the listing and brokers issues, the decision making process in the ASE, and consequently the listed public shareholding companies and investors trust in the ASE as an organised securities market. As will be discussed later in Chapter 8.7, in Australia where ASX is a listed public company, there is also a debate if ASX's decisions are absolute and unreviewable and whether ASX's decisions fall within the \textit{Administrative Decisions (Judicial Review) Act 1977} or only subject to judicial review at common law under the principles in the \textit{Datafin} and similar cases.

The status of the ASE is also related to the important question whether the ASE can enjoy the privileges and exemptions which benefit public institutions.

4.4.3. The ASE Public Aspect

The ASE's legal status between a public non-profit institution and a private for-profit body before 2012 caused another serious problem. The ASE did not enjoy the privileges and exemptions which the public institutions enjoy, in particular, the privileges in the \textit{Collection of Domanial Properties Law 1951 no. (57)} which grants public entities powers to collect and enforce their properties and rights against others.\textsuperscript{238} The \textit{Collection of Domanial Properties Law} considers all the types of due taxes, fees, monetary fines, and debts for the public treasury domanial properties.\textsuperscript{239}

\textsuperscript{235} \textit{High Court Law 1992} art 10.
\textsuperscript{236} \textit{High Court of Justice decisions} No 179/2010, 29 June 2010; No 154/2005, 31 May 2005; No 264/2007, 4 September 2007 reported in Adaleh (Translated from Arabic).
\textsuperscript{237} \textit{High Court Law 1992} art 26.B.
\textsuperscript{238} Domanial is a French term, it means public. This section will not consider other privileges and exemptions in other legislation such as the \textit{Taxing Law 2009 no. (28)} and the \textit{Customs Law 1998 no. (20)}, which are not related directly to the public institutions powers to collect their properties and rights against others.
\textsuperscript{239} \textit{Collection of Domanial Properties Law (No 57) 1951 (Jordan)} art 2, 16 February 1952, \textit{Official Gazette, No 1100, 16 February 1952, 84 (Collection of Domanial Properties Law 1951)} (Translated from Arabic). According to the \textit{Collection of Domanial Properties Law} the names of the debtors, who do not pay the due amounts within 15 days from date of submitting them the payment notices, published in the \textit{Official Gazette}. If they do not pay within 60 days from the date of publishing, the public institutions are authorised to exercise one or more of the following powers – as the
The ASE collects many types of properties and rights for the public treasury as a public body. This includes listing charges, trading commissions, monetary fines, membership fees and subscription fees. The ASE can discipline and impose sanctions against its members and listed issuers on the ASE to compel them to fulfil their financial obligations toward the ASE. The ASE's power to threaten to suspend or delist may often provide an effective tool to enforce compliance with the rules by listed companies, but suspension or delisting may have a more harmful effect on shareholders than the company by affecting the liquidity of their investments. Exercising the powers in the Collection of Domanial Properties Law and collecting the properties and rights against the brokerage firms and listed issuers in accordance with its provisions helps the ASE to perform its duties efficiently. However, the Special Tribunal decision no. 1/2012 held that the ASE cannot collect its properties

Administrative Governor - to collect their properties and rights against the debtors: Firstly, with hold one–third of the debtor's salary (if the debtor is an employee), one-fourth of his retirement salary (if debtor is a retired employee), and his debts and due amounts against the government and public institutions. Secondly, seizing the debtor's movable properties and selling them in auction if the debtor does not pay within one week from the date of seizure. Thirdly, seizing the debtor's immovable properties and selling them in auction if the debtor does not pay within one year from the date of seizure. Fourthly, transferring the ownership of the immovable properties from the debtor to the public treasury if the immovable properties were not sold in the auction. In this connection, the debtor can retransfer the ownership of the immovable properties to the debtor's name if the due amounts are paid within four years from the date of transferring the ownership of the immovable properties to the public treasury. Finally, sending the debtor to the prison for a period not exceeding one month. The Administrative Governor or the person who exercises those powers may order the debtor to pay all the due amounts immediately or on premiums, as deemed appropriate, after considering the financial position of the debtor who does not have any movable or immovable properties. In this case if the debtor does not pay, the Administrative Governor can send the debtor to the prison for not more than one month. Sending the debtor to the prison does not exempt him from paying the due amounts or the balance due. See Collection of Domanial Properties Law 1951 arts 6, C, 8, A, 9, 10, 11, A-D, 12, A-C, 16, A.

The ASE collects from the listed issuers on the ASE the annual listing charges: 1- (0,0004) four per 10 000 of the nominal value of the listed securities, provided that the maximum amount collected does not exceed JD 3000 (approximately US$ 4237). 2- (0,0001) one per ten 10 000 of the nominal value of the listed companies bonds, provided that the maximum amount collected does not exceed JD 1000 (approximately US$ 1412). 3- JD 250 (approximately US$ 353) per issue of treasury bonds. 4- JD 250 (approximately US$ 353) per issue of treasury bills, see the see By-Law for the ASE Fees, Charges and Commissions 2004 (Jordan) art 3, A-D, JSC, 1 September 2004, ASE <http://www.ase.com.jo/en/laws-fees-charges-and-commissions> (29 July 2013) (ASE's Proceeds Internal By-Law 2004).

The ASE collects commissions from each trader in securities (0,0005) five per 10 000 of the market value of traded securities, and (0,0001) one per 10 000 of the market value of traded bonds. In this connection the brokerage firms collect the trading commissions directly from their clients who trade in securities, then they send these commissions to the ASE, see the ASE's Proceeds Internal By-Law 2004 art 5.

As will be described later in Chapter 5.2, 3 the ASE imposes two kind of monetary fines: 1- Monetary fines - not less than JD 100 (approximately US$ 141) and not more than JD 10 000 (approximately US$ 14 124) - as disciplinary actions against its members and persons associated therewith who breach or take preparatory measures to breach the ASE's by-laws, instructions and decisions and the Securities Law and related regulations. 2- Monetary fines - not less than JD 100 (approximately US$ 141) and not more than JD 5000 (approximately US$ 7062) - as sanctions against listed issuers on the ASE who breach the Listing Directives and decisions pursuant thereto.

The ASE collects from its members JD 200 000 (approximately US$ 282 485) once only as a membership fee, and JD 500 (approximately US$ 706) as an annual subscription fee, see ASE's Proceeds Internal By-Law 2004 art 6.

and rights against others in accordance with the Collection of Domanial Properties Law. This weakens the ASE's powers to enforce its internal regulations, and consequently affects its role in securities market and corporate governance.

This is an important backdrop to the later argument in Chapter 9.3.2 what would happen to the ASE in the future after the privatisation as a publicly listed shareholding company in the light that the ASE cannot enjoy the privileges and exemptions which the public institutions benefit from. The ASE may learn from ASX experience in solving this problem. The Corporations Act 2001 provides statutory recognition for the listing rules to ensure their compliance with these rules, it provides a mechanism whereby the ASX and ASIC or any aggrieved party can seek judicial enforcement of those rules (see Chapter 9.3.2).

The ASE institutional structure as a non-official public institution is one of the major difficulties which prevent the ASE from fulfilling its functions efficiently. The principal factors which affect its efficiency are the control exercised by the Jordanian government and the JSC over the ASE. The next section 4.4.4 will examine the government financial and regulatory control over the ASE and its influence on the ASE. It considers the issues relating to lack of resources created by financial control. Then section 4.4.5 will consider the administrative and financial restrictions resulting from the regulatory oversight by the JSC.

4.4.4. Governmental Control over the ASE through Financial and Administrative Procedures

The significant increase in the price of oil between 2004 and 2012, the consequences of the Global Financial Crisis (GFC) by the end of 2008 until now, and the interruption of the Egyptian natural gas to Jordan after the revolution in the early 2011 to date have resulted in many serious financial problems for the Jordanian economy. As will be seen in Figures 4.2 and 4.3 below, the Jordanian Government debts doubled from JD 7.18 billion (approximately US$ 10.14 billion) in 2004 to more than JD 18.42 billion (approximately US$ 26 billion) in the third quarter of

245 Corporations Act 2001 s 793C.
246 The increase in the oil bill has affected the government budget negatively in the light of the governmental policy to subsidize the oil prices in the domestic market. Statistics show that the governmental subsidies for food and oil were JD 796.5 million (approximately US$ 1125 million) and JD 883.6 million (approximately US$ 1248 million) which comprised approximately 12% and 13% of the government total expenditures in 2011 and 2012 respectively, see CBJ, General Government Finance Bulletin, Vol. 15, no (4), May 2013, 16, Finance Ministry <www.mof.gov.jo> (31 July 2013). For more information about the increase in the price of oil, see History of Illinois Basin Posted Crude Oil Prices <http://www.ioga.com/Special/crudeoil_Hist.htm> (15 July 2013).
247 The foreign grants to Jordan have decreased sharply in the past few years. For more information about the foreign grants see the General Government Finance Bulletin, above n 246, 12.
248 Dependence on the oil instead of the gas by the National Electric Power Company, which is owned totally by the government, to run its operation has increased its debts to approximately JD 3.5 billion (approximately US$ 4.94 billion), see Rham Zedan, 'Expected loses of the National Electric Power Company by the end of 2013', Alghad Newspaper (online), Sunday 30 June 2013 <http://www.alghad.com> (15 July 2013) (Translated from Arabic). It is to be noted that the gap between the oil prices and the natural gas prices and the government policy to remain the electric power prices during the last two years have caused the mentioned above loses.
and the deficit in the government annual budget increased from JD 341.4 million in 2008 to JD 1132.7 million, JD 542.1 million and JD 852.9 million in 2009, 2010 and 2011 respectively.

Figure 4.1: Jordanian Government Debts (Million Jordanian Dinars) during 2000-2013.

Figure 4.2: Jordanian Government Domestic Debts (Million Jordanian Dinars) during 2001-2013.

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251 Public Debt Bulletin, above n 249. Information for the year 2013 until the end of September.

The government has adopted many procedures to reduce the deficit in the annual budget and decrease the public expenditures such as cancelling the oil subsidies in November 2012. This section is concerned with the government procedures against the independent public institutions which affect the administrative and financial autonomy of the ASE as a non-official public institution with administrative and financial independence.253

The government adopted many financial procedures against the non-official public institutions in order to enhance its revenues, reduce its expenditures and subsequently reduce its debts and the deficit in its annual budget. The measures included the enactment of the Financial Surpluses Law 2007 no. (30).254 According to the Surpluses Law, the ASE was required to transfer to the state treasury any financial surplus in its annual budget, any accumulated financial surplus and cannot retain the surplus.255 As a result for this the ASE transferred to the state public treasury JD 61.25 million (approximately US $ 86.51) million between 2007 and 2011.

Table 4.1: Surpluses Transferred by the ASE to the State Public Treasury during 2007-2011:-256

<table>
<thead>
<tr>
<th>Year</th>
<th>JD in millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>15</td>
</tr>
<tr>
<td>2008</td>
<td>16.6</td>
</tr>
<tr>
<td>2009</td>
<td>22.4</td>
</tr>
<tr>
<td>2010</td>
<td>5.25</td>
</tr>
<tr>
<td>2011</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>61.25</td>
</tr>
</tbody>
</table>

The Surpluses Law also provided that the ASE should, within the first half of November every year, prepare a draft of its annual budget and provide it to the Public Budget Department in the Finance Ministry to study the draft and recommend to the

253 The government justified its actions against the independent public institutions by the obvious increase in their debts as well as the deficit in their annual budgets which formed important portions of the government budgets in the past few years. For instance in 2010 the governmental units annual budget was JD 1,914 billion (approximately US$ 2703 billion) and comprised 35% of the government annual budget which was JD 5,460 billion (approximately US$ 7,711 billion). In the same year the deficit in the governmental units annual budget was to JD 354 million (approximately US$ 500 million) and comprised 51.8% of the deficit in the government annual budget which was JD 685 million (approximately US$ 967 million). It is to be noted that these numbers depend on General Budget Law (No 30) 2010 art 2.2-3 and Governmental Units Budgets law (No 4) 2010 (Jordan) arts 3-4, 1 January 2010, Official Gazette, No 5014, 16 February 2010, 1072 (Governmental Units Budgets law 2010) (Translated from Arabic). Actually, the financial difficulties that face the National Electric Power Company as mentioned before are the main reasons for the increase in the independent public institutions' debts and deficit in their annual budgets. Statistics show that in the past few years the majority of the independent public institutions have provided the government with financial surpluses, see the General Government Finance Bulletin, above n 246, 28.

254 The Surpluses Law 2007 identifies the governmental unit in art 2 as any commission, official public institution, governmental department, public authority and company wholly owned by the government enjoys financial independence, and its budget does not enter within the state budget. Moreover, art 3 the law states expressly in an attached table the governmental units which should apply the legal provisions.

255 Surpluses Law 2007 arts 6, 8.

Council of Ministers for approval which in its return sends this draft to the Parliament for approval.\textsuperscript{257} The ASE was also required to provide the Public Budget Department with its final annual financial statements and a report showing its financial surpluses and the amounts transferred to the state public treasury within four months from the end of its fiscal year.\textsuperscript{258} The ASE has been listed in the \textit{Governmental Units Budgets laws} since 2008.\textsuperscript{259} As well, the ASE was brought into tighter control by the government by requiring its accounts to be audited by the Audit Bureau.\textsuperscript{260}

Applying the \textit{Financial Surpluses Law} affects the ASE financial independence. The ASE does not have enough cash liquidity to cover urgent expenditures during its fiscal year. Nor can the ASE plan for the future since its annual budget is restricted by Council of Ministers and the Parliament approvals as mentioned above. In this connection, the ASE was struggling to complete the National Financial Centre Project which was launched in 2007 with an estimated total cost of about JD 70 million (approximately US$ 98.8 million).\textsuperscript{261} The project which was expected to be finished by the end of 2009 has been frozen and its ownership was transferred to the Finance Ministry in March 2013.\textsuperscript{262}

It is notable that as a semi public institution controlled by the government, the ASE cannot compete in the region and lacks resources to expand its business. Thus, restructuring the ASE to the business model could be the best solution to remove the government control over the ASE financial independence and allow the ASE to be managed on a commercial basis, develop new products and services, and respond to changes in international business arena, see Chapter 9.3.2.

On 26 May 2011 the government embarked on a comprehensive program to restructure the public sector and governmental bodies.\textsuperscript{263} The purpose was to reduce the governmental units which perform the same duties; enhance the government authorities, powers and its supervisory role in all the governmental units; improve the

\begin{itemize}
\item \textsuperscript{257} \textit{Surpluses Law} 2007 at 4.
\item \textsuperscript{258} \textit{Surpluses Law} 2007 art 5.B.
\item \textsuperscript{259} For more information see the \textit{Governmental Units Budgets law} (No 44) 2008 (Jordan) 1 January 2008, \textit{Official Gazette}, No 4921, 31 July 2008, 3399 (\textit{Governmental Units Budgets law 2008}) (Translated from Arabic); \textit{Governmental Units Budgets law} (No 7) 2009 (Jordan) 1 January 2009, \textit{Official Gazette}, No 4952, 1 March 2009, 875 (\textit{Governmental Units Budgets law 2009}) (Translated from Arabic), \textit{Governmental Units Budgets law 2010}.
\item \textsuperscript{260} The Audit Bureau was established by virtue of the \textit{Audit Bureau law} (No 28) 1952 to monitor the state revenues and expenditures, and public properties. The Audit Bureau monitoring includes the ministries, governmental departments, official public institutions, public institutions, municipalities, companies which the government owns 50\% or more of its shares, and any agency its properties considered public properties and the Council of Ministers delegates the Audit Bureau to monitor its accounts. Moreover, according to the \textit{Audit Bureau law} all these agencies should provide the Audit Bureau with their financial statements within six months of the end of their fiscal year. In this connection, the head of the Audit Bureau should provide the Parliament with an annual report about its activities and send a copy of it to the Prime Minister and Finance Minister, see \textit{Audit Bureau Law} (No 28) 1952 (Jordan) arts 3, 4, 22, 16 May 1952, \textit{Official Gazette}, No 1105, 16 April 1952, 174 (\textit{Audit Bureau Law 1952}) (Translated from Arabic).
\item \textsuperscript{261} \textit{ASE Annual Report} (2007) 27.
\item \textsuperscript{262} The Council of Ministers decided on 3 October 2012 to transfer the ownership of the project to the Ministry of Finance as financial surpluses for the previous years, see the \textit{ASE Annual Report} (2012) 48.
\item \textsuperscript{263} \textit{Jordanian Constitution} 1952 art 120 empowers the government to issue the necessary regulations upon the King's approval in order to regulate the public sector and its employees.
\end{itemize}
public functions and services and also to decrease the public expenditures and costs.\textsuperscript{264} The program seeks, in a short time frame, to abolish many of the governmental units and transfer their responsibilities and duties to other units, as well as merge some of them with others.\textsuperscript{265} As a result for this program it is expected to reduce the number of governmental units by 17 units and abolish about 11 boards of directors and boards of commissioners amounting to 100 members.\textsuperscript{266}

The government has also adopted on 26 May 2011 a program to restructure the public-sector employees’ salaries. This program aims to achieve justice and equality between public-sector employees; enhance the salaries of the public-sector employees who are subject to the \textit{Civil Service Regulation} and decrease the salaries of the independent public institutions’ employees who are subject to their internal regulations.\textsuperscript{267} For this purpose \textit{Civil Service Regulation 2007 no. (30)} was amended\textsuperscript{268} to be applied on all the public-sector employees including the independent public institutions employees from the first of January 2012.\textsuperscript{269} According to the program, the new \textit{Civil Service Regulation} will consider the nature of the independent public institutions and their importance in the national economy, and grant privileges to their employees.\textsuperscript{270}

As a reaction to reduction in salaries and loss of privileges, there has been a significant loss of the ASE staff.\textsuperscript{271} The ASE’s staff has become inadequate so that the ASE may no longer have the capacity to perform its statutory mandate as well as professional employees who resign are not replaced since the appointment of employees in all independent public institutions is connected with \textit{Civil Service Regulation}.\textsuperscript{272} There is no doubt that this loss of experience and knowledge from the ASE's staff seriously affects the ASE performance. It is worth adding that the administrative autonomy of the ASE has been affected, that ASE’s board of directors

\textsuperscript{264} Samira Aldosoqi, 'The Restructuring Program and its Results’, \textit{Alrai Newspaper} (Amman), Tuesday 31 May 2011, 7 (Translated from Arabic).

\textsuperscript{265} Aldosoqi, above n 264. Nowadays there is a debate about canceling the Insurance Commission and transferring its responsibilities to the Companies Control Department. There was also a suggestion to merge the SDC with the ASE, in this regard see ‘The Government Seeks to Merge the Securities Depository Centre with the Amman Stock Exchange’, \textit{Alarab Alyawm Newspaper} (online), Monday 15 August 2011, <http://www.alarabalyawm.net/pages.php?news_id=320357> (Translated from Arabic). This suggestion and its consequences will be discussed in-depth later in Chapter 8.5.

\textsuperscript{266} Aldosoqi, above n 264.

\textsuperscript{267} Ibid.

\textsuperscript{268} \textit{Civil Service Regulation} (No 52) 2011 (Jordan) Council of Ministers, 1 January 2012, \textit{Official Gazette}, No 5132, 18 December 2011 (\textit{Civil Service Regulation 2011}) (Translated from Arabic).

\textsuperscript{269} Aldosoqi, above n 264. For more information about the governmental administrative procedures against the independent public institutions see the transport and travel allowances case in Footnote 37.

\textsuperscript{270} Aldosoqi, above n 264.

\textsuperscript{271} 10 employees resigned from the ASE during 2011-2012, and it is expected that a lot of professional employees will leave the ASE.

\textsuperscript{272} In addition to the ASE's small staff (59 employees) there is a serious defect in the ASE’s personnel structure 49% of the staff, 7 board directors, 10 high executive management and 12 chiefs of divisions, are in supervisory positions; 20% of the employees, 1 technical 2 secretaries, 4 operators and 5 drivers, are in secondary positions; 0.05% of these employees, the head of Research and International Relations Department and two employees, are on leave and expected to resign. Further, two heads of departments work for the National Financial Centre Project (as at 31 July 2013).
lost its powers in the *Internal By-Law* to regulate the ASE personnel affairs and has started to apply the new *Civil Service Regulation*.273

As will be discussed in Chapter 9.3.2, restructuring the ASE from a non-official public institution to a listed public shareholding company would allow the ASE administrative independence, establish an appropriate governance structure and the ability to retain and attract professional employees.

Another factor which affects the ASE's efficiency is the control exercised by the JSC over the ASE.

### 4.4.5. Control by the JSC

As mentioned before the JSC is designated as the government watchdog for the capital market and empowered by the *Securities Law 2002* with wide authority to protect the capital market and investors in securities. These powers include regulating and supervising the ASE and the SDC.274 This section is concerned with the JSC control over the ASE administrative and financial issues which affect the administrative and financial autonomy of the ASE. It will not consider other issues which are not related directly to the ASE administrative and financial affairs such as the intersection between the ASE and JSC regulatory and supervisory roles in the capital market, which will be explained later in Chapter 6.

The *Securities Law 2002* reinforces the JSC control over the ASE. The JSC is authorised, upon the Council of Ministers approval, to restructure the ASE.275 The JSC is also authorised to suspend the ASE's activities for one week, and for more than one week upon the Council of Ministers approval.276 The ASE is managed by a board of directors and a full-time CEO appointed by the board upon the JSC's approval.277 The board of directors consists of seven members, there is significant level of control by government through the three appointments to the board by the JSC.278 While the term of the elected members is only three years and they cannot be elected for more than two successive sessions.279 The term of the appointed members is unlimited and they can be appointed many times. Further, the board of directors cannot dismiss any appointed member without the JSC approval.280

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273 *ASE Internal By-Law 2004* art 24.B.8-10 authorises the ASE's Board of Directors, upon the approval of the JSC's Board of Commissioners, to issue the required regulations and instructions for managing the ASE personnel affairs.

274 The role of the JSC in the Jordanian Capital Market will be discussed later in Chapter 6.4.

275 *Securities Law 2002* art 66.H.

276 Ibid art 75.

277 Ibid art 65.C. D. It is worthy to add that according to *ASE Internal By-Law 2004* art 25.A the ASE's Board of Directors cannot dismiss the CEO without the JSC's approval.

278 *ASE Internal By-Law 2004* art 17.B.

279 Ibid art 17.C.

280 Ibid art 22.A, B, the ASE board of directors can dismiss any of its members in any of the following cases:"1. If he/she occupies a ministerial post or any official public capacity in any governmental agency. 2. If he/she is absent from three successive meetings of the Board of Directors without a justifiable excuse accepted by the Board of Directors, or from five successive meetings for any reason. 3. If he/she looses his/her legal capacity or his/her capacity to work. 4. If his/her services are terminated by the member. 5. If he/she is convicted of a felony or a misdemeanour that constitutes a
Moreover, the chairman of the board and the deputy chairman should be elected by the board of directors from the members appointed by the JSC, and one of them at least should attend the board meetings to consider these meetings legally constituted.

This reinforcement of the JSC control extends to the ASE's financial management. The ASE cannot engage in profit-making activities and borrow, particularly to cover the deficit in its annual budget, without JSC's approval. Furthermore, according to its general authority to review the ASE's decisions to guarantee their compliance with Securities Law the JSC reviews all the ASE's financial decisions. This even extends to such matters as the review of the annual allowances of the ASE's employees. After the issuance of the Special Tribunal decision on 6 February 2012, which allows the ASE to regulate its management and personnel affairs by its internal by-laws, the JSC ordered the ASE to continue the implementation of the Civil Services Regulation 2007 no. (30).

All this weakens the decision making process and the power of decision makers in the ASE, and consequently affects the ASE administrative and financial autonomy, so the ASE is more like a department in JSC rather than an autonomous decision making body. Restructuring the ASE to a public shareholding company will assist the ASE to emerge as an independent body with real administrative and financial autonomy. One consequence is that the JSC will lose its control over the ASE management. As a public shareholding company the ASE will be managed by a board of directors elected by the shareholders in the company's general meeting according to the Companies Law 1997 as will explained later in Chapter 7. It also allows the ASE to be managed on commercial basis with the JSC's powers limited to review of the trading activities to guarantee their compliance with Securities Law and not the ASE's financial matters, see Chapter 9.3.2.

4.5. Summary and Conclusions

The Special Tribunal decision no. 1/2012 clarified the legal status of the ASE as a hybrid body, with some features of the non-official public institutions and some features of a private body. According to this decision the ASE is a non-official public institution does not enjoy the privileges and exemptions which other official public entities benefit from and its management and personnel affairs regulated as private bodies.

The ASE's hybrid legal status and institutional structure prevent the ASE from fulfilling its functions efficiently. The ASE institutional structure as non-official
public institution re-enforces the government's and JSC's control over the ASE. The implementation of the Financial Surpluses Law affects the ASE's financial position, liquidity and future plans. As well, the implementation of the governmental program to restructure the public employees' salaries impacts the ASE's staff and its performance. In addition, the JSC control over the ASE's management and financial issues weakens the decision making process and decision makers in the ASE, and consequently influence the ASE administrative and financial autonomy. The ASE also does not enjoy the privileges and exemptions that other public entities benefit from such as collecting its properties and rights against others in accordance with the Collection of Domanial Properties Law. So that some of the key benefits of being a public entity are not available to the ASE.

As will be discussed in Chapter 9 privatising the ASE into a publicly listed company is the natural progression for the ASE and is the potential solution for some problems relating to its institutional structure. The privatisation will assist the ASE to reinforce its financial and administrative independence by removing the government's and JSC's control. The business model will allow the ASE to be managed on commercial basis, develop new products and services, and respond to changes in international business arena. As well, it will provide the basis for a better governance structure (a board of directors elected by the shareholders) and the ability to retain and attract professional employees away from the Civil Service Regulation umbrella which limits the ASE's liberty in setting staff compensation. There is no doubt that the ASE which does not enjoy the key benefits of being a public institution will lose nothing from the conversion to a publicly listed company. In this connection, the legal basis for the judicial review of the ASE's decision after privatisation should be set in the Securities Law to protect the rights of the market participants and reinforce the local and foreign investors' confidence in the Jordanian system.

The following chapter (Chapter 5), discusses the ASE roles in both capital market and corporate governance. It examines the ASE's primary functions in regulating and monitoring, listing securities, trading in securities, fair disclosure and dissemination of information as well as the regulatory and supervisory functions. It will assess whether there are legal drawbacks and regulatory failures which impact the adequacy of the ASE performance.
Chapter 5

ASE: Listing, Trading and Disclosure

5.1. Introduction

This chapter examines the ASE’s role in ensuring an efficient securities market, and in protecting investors. In this connection, the chapter examines how the ASE regulates and manages the listing and trading of securities, trading operations supervision, disclosure of information and ensuring good corporate governance. The ASE’s functions are these normally expected of an exchange. This chapter examines the failures and shortcomings which impact the ASE performance in the listing, trading and disclosure fields.

The chapter is divided into seven sections. 5.2 examines the ASE statutory authority to issue internal by-laws and directives subject to supervision by the JSC. It also examines the ASE’s supervisory powers and its effectiveness. 5.3 evaluates the role of the ASE in regulating and managing the listing of securities, and in ensuring efficient securities markets. 5.4 explores the role of the ASE in providing necessary infrastructure for trading, and in regulating trading activities. 5.5 summarises the ASE’s contribution to corporate governance through its roles in regulating listing and trading in securities. 5.6 discusses the ASE mandatory disclosure and transparency policy, and explains the ASE role in disclosure and dissemination of information, and its role in corporate governance. 5.7 outlines the role of the ASE in disseminating the culture of investment and educating investors in securities. 5.8 provides a summary and conclusions.

5.2. The ASE's Regulatory Role in the Jordanian Capital Market

In all the Government-led Model jurisdictions, the central government has shaped the securities regulatory framework to maintain important channels of influence in the operation of market institutions. The allocation of regulatory powers in this pattern favors administrative agencies and central government officials over market infrastructure institutions.285 The character of stock exchanges rulemaking and enforcement actions in the Government-led Model is secondary to governmental agency functions, the regulatory mission of the stock exchanges largely consists of supplementing agency regulatory actions, rather than bringing concrete regulatory functions to the fore.286 In Jordan as other Government-led Model countries, the allocation of regulatory responsibility between the government agency and the stock

285 Gadinis et al, above n 31, 1258-1263.
286 Laws in this pattern tend to require greater involvement of central governments in certain key actions and regulatory measures. The regulatory powers of exchanges are specific, carefully defined, and relate to areas, such as the regulation of the trading process, where the involvement of market institutions is strictly necessary. Even in these limited areas, the exercise of regulatory powers by market institutions is often subject to approval by an administrative agency, see Gadinis, above n 31, 1258-1263.
exchange is issue-specific: statutes grant the ASE's specific tasks and powers in particular areas of activity and regulatory responsibility. The ASE derives its regulatory powers from a complex set of different provisions, rather than through a general authorisation. In contrast, the JSC, which upholds securities laws and formulate rules for their implementation, is the default regulator for the securities market.\footnote{See Gadinis et al, above n 31, 1258-61.}


Draft by-laws and instructions are subject to the approval of the JSC.\footnote{Securities Law 2002 art 73.A. In this connection, the JSC and the SDC may send to the ASE draft legislation relevant to its work to get its opinion, see ASE Internal By-Law 2004 art 5.J.} The ASE's internal by-laws and instructions authorise the ASE's Board of Directors, the CEO and in some cases both of them, to issue the necessary decisions to implement the provisions of the ASE's internal by-laws and instructions.\footnote{For example, the ASE’s Proceeds Internal By-Law 2004 delegates to the board of directors the right to issue the necessary decisions to enforce the provisions of this by-law. ASE Listing Directives 2012 and Directives for Trading in Securities on ASE 2004 delegate to both the board of directors and the CEO the right to make the necessary decisions to implement these directives.} The ASE's internal by-laws and instructions are binding upon the ASE members and their clients by virtue of the \textit{Securities Law 2002} and all the ASE members are required to sign a written commitment to abide by the ASE’s legislation and decisions.\footnote{Securities Law 2002 art 71, ASE Internal By-Law 2004 art 30.C.}

Another role the ASE plays in the capital market is the supervisory role and its responsibility for its internal by-laws, instructions and enforcement of its decisions. The \textit{Securities Law} grants the ASE the authority to carry out, by itself or through the JSC, any investigation, inspection and auditing to monitor trading operations and its members, the Financial Brokers and the Dealers, compliance with its by-laws, instructions and decisions, and the \textit{Securities law} and related regulations.\footnote{Securities Law 2002 art 68.A, ASE Internal By-Law 2004 art 34.A.} Furthermore, the \textit{Securities Law} requires the member's permission for the ASE to audit, inspect, and make copies of the documents, records and registers that belong to the member, or keep the originals thereof against signature of receipt, as a condition for the membership in the ASE.\footnote{Securities Law 2002 art 68.B.2, ASE Internal By-Law 2004 art 34.C.}

In order to enable the ASE to perform its supervisory role, the \textit{Securities Law} authorises the ASE through its \textit{Internal By-Law} and \textit{Listing Directives}, to undertake disciplinary actions and sanctions against its members and persons associated therewith and listed issuers on the ASE respectively. The \textit{Internal By-Law} empowers the CEO to admonish and/or warn the members and associated persons who breach, or take preparatory measures to breach, the ASE's by-laws, instructions and decisions.
and the Securities Law and related regulations. The ASE's Board of Directors is authorised to impose one or more of the following disciplinary actions: a monetary fine not less than JD 100 (approximately US$ 141) and not more than JD 10 000 (approximately US$ 14 124); restricting the member's activities or the activities of any of the persons associated therewith for a specific period; suspension the member or any of the persons associated therewith for a specific period and revoking the membership. In this connection, the ASE may also request its members and persons associated therewith to remedy the breach and rectify within a certain period of time.

In addition to the mentioned above disciplinary actions, the ASE can, after notifying the JSC, impose one of the following precautionary actions: cessation, suspension and restricting the services that it offers to any member who is facing financial and/or administrative problems endanger the interests of the market, investors and other members. Further, the ASE may, for good reasons, request the JSC to suspend any securities or member for a specific period.

An aggrieved member can appeal disciplinary sanctions to the JSC's Board of Commissioners and the precautionary actions to the ASE's board of directors. In order to protect the rights of members during the inspection and investigation procedures the Securities Law and the ASE Internal By-Law require the ASE to establish instructions to regulate the inspection and investigation procedures with its members; allow the member to respond orally or written on the alleged breaches before imposing the sanction; specify in the imposed sanctions the committed breaches, violated legislation, investigation findings, sanctions and reasons for the disciplinary action.

The ASE's board of directors, as deems appropriate, may disclose the ASE's members' violations and sanctions imposed against them to encourage compliance positive outcomes. It is notable that disclosing the details of the enforcement actions is a standard practice of an exchange. In Australia, for example, ASX which is a publicly listed company may publish the details of the enforcement action and upon an order by the Appeal Tribunal may publish an appeal determination, see 8.7.

The Surveillance and Inspection Department plays the main role in performing the ASE supervisory functions through the Inspection Division and Trading Surveillance Division. The Inspection Division is responsible for inspecting the ASE members to

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294 ASE Internal By-Law 2004 arts 36.A, 37.A.  
295 Ibid art 36.A, 37.B.  
296 Securities Law 2002 art 74.B, C authorises the ASE to impose monetary fines in accordance with its by-laws and instructions.  
297 ASE Internal By-Law 2004 art 38.  
299 Securities Law 2002 art 68.D.  
301 Securities Law 2002 art 68.A.  
302 ASE Internal By-Law 2004 art 39.A.  
304 ASE Disclosure Directives 2004 (Jordan) art 4.B, C, D, JSC, 1 September 2004, ASE <http://www.ase.com.jo/en/disclosure-directives> (3 September 2013). In this connection Securities Law 2002 art 68.C and ASE Internal By-Law 2004 art 34.E state that the information which the ASE management, staff and consultants attain through inspection; investigation, should be deemed confidential, and may not be disclosed without the JSC approval.
ensure their compliance with legislation in force and financial solvency standards. The Trading Surveillance Division supervises and monitors trading operations on the ASE to ensure their compliance with legislation in force.\textsuperscript{305}

Since its establishment, the ASE has not exercised its enforcement powers under the Internal By-Law and Listing Directives effectively. The ASE exercises only monitoring activities such as inspection and investigation in limited cases without imposing any disciplinary actions against its members.\textsuperscript{307} In all these cases the ASE submitted the investigations’ findings to the JSC to continue the investigation procedures and carry out necessary actions. The Surveillance and Inspection Department in the ASE is authorised according to art 4.B.4 of the ASE Administrative By-law 2004 to receive and examine investor complaints against the brokerage firms and listed issuers on the ASE who breach the related legislation in force particularly the Securities Law and ASE's internal by-laws and directives. However, in the past few years the Department has not accepted any complaints from investors. The ASE also has a limited role in following the listed companies' disclosures discussed further in 5.6.4. The ASE exercised its enforcement powers in the Listing Directives only against listed companies which did not provide the ASE with their quarterly reports through imposing warnings and monetary fines.

There are three serious problems which prevent the ASE from fulfilling its supervisory role. The first is lack of resources. The Surveillance and Inspection Department does not have sufficient resources to perform the ASE supervisory role.\textsuperscript{308} Second, the inspection and investigation procedures in the ASE legislation are poorly regulated. The ASX rules may provide a model for monitoring and enforcement which would be adopted for the ASE, see Chapter 8.7. A further problem is the overlap between the ASE and JSC supervisory functions which effectively deprives the ASE of any meaningful role in supervision. This is examined in detail in Chapter 6. Effectively the JSC exercises this role exclusively. The ASE does not receive or act on investor complaints, with the ASE submitting the investigations’ findings to the JSC to continue the investigations procedures and carry out necessary actions. As a result for all this, the ASE does not have an effective supervisory role. The ASE does not attain international standards as an organised exchange since it fails to conduct trading surveillance to ensure the orderly market and detect potential market abuse.

\textsuperscript{305} ASE Administrative By-law 2004 art 4.B.2, 3.
\textsuperscript{306} Ibid art 4.B.1. In 2004 the ASE developed the Stock Market Replay Tools Program (SMART) to replay previous trading sessions in order to obtain the required information from that session and monitor each transaction. In the same year the ASE also created a new surveillance tool called Market Analysis Software (MAS) to monitor the performance of the market online. Furthermore, the ASE launched in 2005 and 2008 the new edition of the Market Surveillance Program and the Grouping System respectively. The Grouping System is a new monitoring system follows the investors' transactions which affect trading and securities' prices, see the ASE Annual Reports (2004) 35, (2005) 32, (2008) 30, (2009) 34.
\textsuperscript{307} According to art 13.A.2 of the Internal By-Law of Settlement Guarantee Fund 2004 the ASE in few cases, upon a notice by the SDC, suspended from trading as cautionary actions the brokers who did not pay the due cash amounts to the settlement account within the period specified on settlement date.
\textsuperscript{308} There are only four employees in the department including the head of the department, who is responsible with another employee to manage the Internal Audit Bureau, as well as one of employees is in a leave for four years since 2009.
Chapters 8 and 9 question whether these deficits in the supervisory role of the ASE could be remedied by the ASE's transfer to a publicly listed company. That would of course new raise relating to the appropriate supervisory role of the ASE. In particular whether, commercial pressures may lead the ASE to focus on earnings growth and ignore the market interests as well as the potential misuse of regulatory powers for commercial purposes and conflicts of interest due to self-listing.

The first key function of the ASE is its role in listing securities.

5.3. The ASE’s Role in Listing Securities

According to art 2 of the Directives for Listing Securities on the ASE 2012 listing securities means “Registering a security on the ASE records so that it becomes tradable”.

Since 1999 the ASE has listed the following types of securities: public shareholding companies shares, bonds, and subscription rights, treasury bonds and bills, and public entities bonds and bills.

309 In Jordan the term ‘share warrants’ known as ‘Subscription Rights’, both terms will be used interchangeably throughout the thesis. Instructions of Dealing with Subscription Rights 2006 (Jordan) JSC, 1 April 2006 <http://www.jsc.gov.jo/Public/english.aspx?site_id=1&Lang=3&Page_Id=2360&Menu_ID2=198> (31 July 2013). Art 2 of these instructions defines the subscription right as "The right of the issuing company’s shareholders to subscribe in capital-increase shares intended to be issued by the company and allocated for its shareholders”. The subscription right enables the company's shareholders who do not wish to subscribe in the capital-increase shares to sell their subscription right at the ASE. Moreover, these instructions authorise the issuing company to sell the unsubscribed shares through the ASE and record the net revenue for the shareholders who did not subscribe in the capital-increase shares. In this connection, it is notable that the number of subscription rights shall be equivalent to the number of capital-increase shares and the prospectus of capital-increase shares considered as prospectus of subscription rights.
Table 5.1: Listed Securities on the ASE (as at 31 December 2013)

<table>
<thead>
<tr>
<th>Securities</th>
<th>Number of Issuances</th>
<th>Value of Issuances (JD in million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies Shares</td>
<td>240</td>
<td>18 233</td>
</tr>
<tr>
<td>Companies Bonds</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Treasury Bonds</td>
<td>160</td>
<td>9583</td>
</tr>
<tr>
<td>Treasury Bills</td>
<td>8</td>
<td>515</td>
</tr>
<tr>
<td>Public Entities Bonds</td>
<td>10</td>
<td>301</td>
</tr>
<tr>
<td>Public Entities Bills</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>419</td>
<td>28 642</td>
</tr>
</tbody>
</table>

Although, the Securities Law provides legal authority for the introduction of new and varied financial instruments by adopting a wide definition for securities in art 2 of the Securities Law 2002, there are only four types of securities listed on the ASE: companies’ shares, bonds and subscription rights, and treasury bonds and bills. Since its establishment in 1999, the ASE has listed only one new financial instrument companies’ subscription rights in April 2006. As seen in Figure 5.1 below the ASE is essentially a sharemarket.

310 The information has been collected from the ASE. The table does not show listed subscription rights since according to arts 6.A, 8.B, 12.A of the Instructions of Dealing with Subscription Rights 2006, the subscription rights should be de-listed after being listed and traded at the ASE for only five business days following the registration of the capital increase shares allocated for the company’s shareholders.

311 The share represents a portion in the ownership of the company. The typically rights of the shareholder are; gaining the declared dividends, voting in the general meetings and obtaining the remained assets of the company after liquidation. Shares are divided into two types; ordinary shares and preference shares. Only ordinary shares are listed in the ASE.

312 By the end of 2012 there are 62 listed companies at the First Market, 139 listed companies at the Second Market and 39 listed companies at the Third Market, see the ASE Annual Report (2013) 26.

313 In Jordan the term ‘Debentures’ known as ‘Corporate Bonds’. A corporate bond is a fixed income debt security grants its holder the right to receive interest from the company, and has a fixed life that the company must repay the debt amount to the holder by the date of maturity. It is worth mentioning that convertible bonds are regulated in the Companies Law (No 22) 1997 and used in Jordan.

314 Treasury bond is a fixed income debt security entitles its holder to receive interest from the government, and has a fixed life that the government must repay the debt amount to the holder by the date of maturity. Similarly, the bonds issued by the public entities which may also be secured debts by the government.

315 Securities Law 2002 art 2 defines securities as:

“A- The term “Securities” shall mean any ownership, rights or any evidences local or foreign that are commonly recognized as securities and considered as such by the Board of Commissioners. B- In particular, the term “Securities” shall include the following:
1- Tradable companies 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. 8- Put and call option contracts.
9- Any right to acquire any of the aforementioned in Subparagraphs (1)-(8) of this Paragraph, subject to the Board approval”.

The lack of variation on the financial instruments listed on the ASE is considered a major problem that hinders the ASE's efforts to respond to the market needs for raising capital and attract domestic and foreign listings and investments.

Figure 5.1: Trading Volumes on the ASE Sharemarket during 2000-2012: 317

One of the obstacles to the establishment of new financial instruments is the delay in the JSC approval. As a consequence of the failure by the JSC to issue the required instructions for investments funds (see 6.8.1) investors could not establish new funds in the securities market from 2002 onwards.

As will be seen in Figure 5.2 the market value of the listed bonds and bills on the ASE by the end of December 2013 is JD 10.4 billion (approximately US$ 14.6 billion). 318 As Figure 5.3 indicates that trading volumes on the Bonds Market by the end of December 2013 were very small JD 2 million (approximately US$ 2.82 million). 319 This is a consequence of the small numbers of listed corporate bonds and the infrequent trade in treasury bonds and bills. 320

318 Information has been taken from Table 5.1.
320 By the end of December 2013 there was only one listed companies bonds on the ASE, see ASE <http://www.ase.com.jo/en/bonds_table/corporate_bonds> (16 February 2014).
Although three types of companies are able to be listed in the ASE. These are the Limited Partnership in Shares Company, the Private Shareholding Company, and the Public Shares Company. Actually the increase in the value of debt instruments issues in the past few years came as a result of the increase in the government domestic debt.
particularly the Public Shareholding Company. The latter is the only type of company which is listed and its instruments tradable on the ASE.\textsuperscript{324} It is to be noted that, the \textit{Securities Law 2002} and the \textit{Companies Law no. (22) 1997} oblige public shareholding companies to list their securities on a stock exchange in Jordan,\textsuperscript{325} but the private shareholding companies are not obligated to list their securities in a stock exchange and they may do that as they deem appropriate (see \textit{Companies Law 1997 art 66.C.bis}). Exceptionally the \textit{Companies law} allows the private shareholding company to issue shares, bonds and other securities through a public offer in accordance with the regulations issued by the JSC.\textsuperscript{326} There has been a significant increase in the number of registered Private Shareholding Companies with the CCD (981 companies) as can be seen from as seen in Table 5.2 below. Despite the capacity of private companies to make public share offers, the JSC has rejected all applications submitted by private shareholding companies to register their issuance of securities with the JSC in order to list them on the ASE. The JSC justified its rejection as necessary to protect investors in securities from the complicated legal system of private shareholding company which allows to the company to issue various types and categories of shares differ in their nominal value, voting force, priority regarding profit distribution and upon liquidation, and ability to be converted into other types of shares.\textsuperscript{327} More broadly, this refusal is consistent with standard practice not to allow private companies to make public share offers or to register with the stock exchanges.

Table 5.2: Registered Companies in Jordan during 1921-2013\textsuperscript{328}

<table>
<thead>
<tr>
<th>Type</th>
<th>Number*</th>
<th>Capital (JD in billion)**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Shareholding Company</td>
<td>466</td>
<td>3.732</td>
</tr>
<tr>
<td>Private Shareholding Company</td>
<td>981</td>
<td>2.132</td>
</tr>
<tr>
<td>Limited Partnership in Shares Company</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

* The number of registered companies includes all current registered companies and liquidated registered companies.
** The capital of registered companies in nominal value (One Jordanian Dinar).

The ASE has not been able to attract listings from foreign corporations. All the listed companies on the ASE are Jordanian companies. Although the ASE signed in April 2006 two Cross Listing Agreements with Abu Dhabi Securities Market and Dubai Financial Market in United Arab Emirates to facilitate companies cross listing between two countries, there are no foreign companies listed on the ASE.\textsuperscript{330}

\textsuperscript{324} There are 240 Public Shareholding Companies listed on the ASE until the end of December 2013, ASE <http://www.ase.com.jo/en/date> (16 February 2014).
\textsuperscript{325} \textit{Securities Law 2002 art 72.B, Companies Law 1997 art 98.C.}
\textsuperscript{326} \textit{Companies Law 1997 art 66.C.bis.}
\textsuperscript{327} \textit{Companies Law 1997 art 68.A bis. For more information about the legal system of the private shareholding company see Companies Law 1997 pt 5 bis.}
\textsuperscript{328} \textit{CCD <http://www.ccd.gov.jo:7777/ccd_gov_jo_2/CompanyStatistics/byTypeAction_en.do> (16 February 2014). The table shows the registered companies in Jordan since the establishment of the Transjordan Emirate in 1921 until the end of December 2013.}
\textsuperscript{329} It is worth mentioning that the Private Shareholding Company was created in 2002 as a part of the amendments to the \textit{Companies law.}
The lack of diversity on the financial instruments listed on the ASE alongside the absence of the mutual funds may be a partial explanation as to why the ASE has been unable to attract listings of foreign companies.\textsuperscript{331} The inability to offer a broader range of instruments may affect liquidity, market depth, trading volumes, institutional investment in the ASE and consequently long term investments, stability in the market and good corporate governance.\textsuperscript{332}

To reinforce market’s depth and liquidity, and attract more listing and investments, this requires the creation of new financial instruments and the co-operation of the ASE with the JSC. At a minimum, this would require the JSC to establish the legal structures to facilitate the establishment of mutual funds and derivatives, and register the issuance of securities of the private shareholding company through a public offer and Islamic Sukuk.\textsuperscript{333} It would also require the ASE to amend the Listing Directives to regulate listing requirements for the private shareholding companies which number has increased significantly in the last decade as mentioned above.\textsuperscript{334} A more active capital market can be enhanced by signing Cross Listing Agreements with other stock exchanges in the Arab World and the Middle East to encourage cross listing and attract foreign listings.

As will be explained later in Chapter 9, the ASE’s restructure as a publicly listed company may assist the ASE to develop new products and attract a higher volume of listings, and consequently attract more domestic and foreign investments. The ASE may look to the ASX in Australia as a model for its future role. ASX operates two trading platforms; ASX Trade and ASX Trade 24, with a wide range of listed products including almost 2200 listed companies with different types of shares as well as investment funds, futures, options, warrants, interest rate securities, indices and contracts for difference (CFDs), see Chapter 8.4. In Australia the significant diversity on the financial instruments has played an important in enhancing the financial services industry and Australian capital market, see Chapter 8.1.\textsuperscript{335}

The ASE’s primary role is in regulating and managing the listing of securities. The Securities Law obligates all public shareholding companies established in Jordan and

\textsuperscript{331} There are only three opened end investment funds registered with the JSC, and these funds are not able to be listed on the ASE, see the JSC Annual Report (2011) 28. JSC <http://www.jsc.gov.jo/Public/Arabic.aspx?site_id=2&Lang=1&Page_Id=1302&Menu_ID=142&M enu_ID2=135 > (25 July 2013) (Translated from Arabic).

\textsuperscript{332} Emerging Markets Committee of the International Organization of Securities Commissions, Development and Regulation of Institutional Investors in Emerging Markets (June 2012) 1, IOSCO <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD384.pdf> (31 July 2013) (‘Institutional Investors in Emerging Markets report’). The report points out that the institutional investors provide the market with; long term investment philosophy, enhanced corporate governance and high quality investment professionals.

\textsuperscript{333} The Jordanian Capital Market should benefit from the issuance of the Islamic Finance Sukuk Law (No 30) 2012 which provides different types of financial instruments. The sukuk are certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services (in the ownership of) the assets of particular projects or special investment activity. The types of sukuk based on four contracts: sale contract (Murabah, Salam, Istisna); lease contract (Ijarah, Ijarah Muntahiyah bi Tamlik, Ijarah Mawsufah fi Zimmah); partnership contract (Mudarabah, Musharakah); agency contract (Wakalah bi Istithmar).

\textsuperscript{334} The listing requirements for the private shareholding company on the ASE were regulated in art 16 of the repealed Listing Directives. Those requirements are not reflected in the current Listing Directives.

public issuers to apply for listing their securities on the ASE.336 But the ASE has the discretion to accept or reject the listing applications. The ASE examines the listing applications through verifying that the securities are registered and deposited with the JSC and SDC respectively, and transferable without restrictions on them.337 It also verifies that the issuer of securities has filed the listing application for the entire subscribed shares, established an audit committee in accordance with the Securities law,338 and signed the Listing Agreement with the ASE.339 It must also be shown the company has obtained for a full year at least the right to commence its operations from the CCD where the issuer is a public shareholding company.340 

There are no restrictions in the listing rules on the ASE accepting or rejecting listing applications. Nor is there a set period for making the determination and the ASE is not required to give reasons for rejection. 

The ASE monitors different on-going requirements for listed company’s capital, operating results (profits), number of shareholders and level of spread of security holdings. But, unlike ASX (see 8.4) the ASE does not require for admission a profit test341 or an asset test342 or conditions concerning the issuer’s structure and number of shareholders, or requirements for corresponding with the ASE such as establishing an electronic infrastructure and appointing a compliance officer. It will be argued in Chapter 8.4 that these features should be required for the effective operation of the ASE. In this connection, enhancing the effectiveness of the ASE include changes to the listing rules such as requiring for admission a profit test, an assets test, and some other conditions concern the issuer’s structure and number of shareholders. A modern ASE needs appropriate electronic infrastructure and a compliance officer to enhance disclosure mechanism and the listed issuers’ compliance with the Listing Directives.

336 Securities Law 2002 art 72.B.  
337 ASE Listing Directives 2012 art 3.1-3.  
338 Article 45 of the Securities Law 2002 obligates the issuer's board of directors to establish an Auditing Committee comprises of three non-executive members of the board. In this connection, the Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004 (Jordan) JSC 1 March 2004 <http://www.jsc.gov.jo/Public/english.aspx?site_id=1&Lang=3&Page_Id=2360&Menu_ID2=198> (31 July 2013) (Instructions of Issuing Companies Disclosure 2004) specify the functions, authorities, and term of service of the Auditing Committee. For more information see Chapter 7.3.4.  
339 ASE Listing Directives 2012 arts 3, 4.  
340 ASE Listing Directives 2012 art 6.A. In this connection, if the issuer is an Investment Fund, the ASE should verify that the fund has obtained a registration certificate from the JSC and completed all procedures, see ASE Listing Directives 2012 art 21.A.  
341 The profit test is usually applied where the company to be listed has been operating successfully for a number of years. To satisfy the profit test, the company must: Be a going concern or a successor of a going concern; have conducted the same main business for the past three full financial years; provide to ASX audited financial statements for the last three full financial years; have aggregated profit from continuing activities over the past three full financial years of at least A $1 million; and provide confirmation by the directors that consolidated profit from continuing operations for the 12 months ending two months prior to applying for admission exceeds A $ 400,000 (ASX, Listing Rules (at 1 May 2013 ) r 1.2).  
342 The asset test is applied where the company is a start-up or a newly established fund. To satisfy the asset test, the company must: Have, at the time of admission, net tangible assets of at least A $2 million after deducting the costs of the float or a market capitalisation of at least A $10 million; confirm that it has enough working capital to carry out its stated objectives; have working capital of at least A $ 1.5 million; have less than half the company's total tangible assets (after raising any funds from float) in cash or if half or more of the company's total tangible assets are in cash, have commitments to spend at least half of its cash in a way that is consistent with its business objectives (ASX, Listing Rules r 1.3).
The ASE also is responsible for listing the capital-increase shares of listed companies. The public shareholding company may increase its capital by a decision of its extraordinary general assembly. The capital-increase procedures begin in the CCD. The company has to obtain the approval of the Minister of Industry and Trade, and then apply to JSC for the registration of the securities within a period not exceeding five working days from the date of the Minister’s approval. In this connection, the capital-increase shares issued through addition of voluntary reserve, accrued retained earnings and/or issue premium, should be distributed to shareholders pro rata with their individual shareholdings in the capital, as at the end of the 15th day from the date of registration of the securities with the JSC. Later on whilst, the ASE lists automatically capital-increase shares resulting from addition of voluntary reserve, accrued retained earnings and/or issue premium after the completion of the issuance procedures and distributing the shares to their owners as above-mentioned. Listed companies on the ASE, which wish to list the capital-increase shares resulting from public or private subscription, debt capitalization or convertible bonds, have to submit to the ASE an application to list these shares within five working days from the date of the Minister’s approval.

In this connection, the capital-increase shares issued through addition of voluntary reserve, accrued retained earnings and/or issue premium, should be distributed to shareholders pro rata with their individual shareholdings in the capital, as at the end of the 15th day from the date of registration of the securities with the JSC. Later on whilst, the ASE lists automatically capital-increase shares resulting from public or private subscription, debt capitalization or convertible bonds, have to submit to the ASE an application to list these shares within five working days from the date of the Minister’s approval.

It is noted that, the capital-increase procedures and the listing of capital-increase shares on the ASE is good example for cooperation between the regulatory bodies in the capital market and consistency between the Issuance and Registration Instructions and Listing Directives.

The ASE also has an important role in monitoring the public issuers compliance with disclosure requirements in the Listing Directives through following their periodic and continuous disclosures as will be explained in 5.6.4.

A further responsibility of the ASE is transfer of the listed companies’ shares between three market segments. The First Market, Second Market and Third Market are parts of the Secondary Market in the ASE that are governed by special listing requirements in each one. Shareholding companies’ shares, which listed for the first time on the ASE, list on the Second Market. The company’s shares transferred to the First Market after being listed for a full one year on the Second Market subject to certain conditions being satisfied. Similarly, the company’s shares transferred to the Second Market after being listed for a full one year on the Third Market subject to


344 Ibid art 9.B.

345 Ibid art 12.A.


347 Ibid art 2.

348 According to art 9 of the ASE Listing Directives 2012 the company’s shares transferred to the First Market after being listed for a full one year on the Second Market if the following conditions are satisfied: “B- The Company's Net Shareholders' Equity must not be less than 100% of the paid up capital. C- The company must make net pre-tax profits for at least two fiscal years out of the last three years preceding the transfer of listing. Provided that the average of net pre-tax profits for the last three years must not be less than 5% of the paid up capital. D- The company’s (Free Float) to the subscribed shares ratio by the end of its fiscal year must not be less than 10% if its paid-in capital is less than 50 million Jordanian Dinars (approximately US$ 70.6 million), while companies which their paid-in capital is 50 million Jordanian Dinars or more are excluded. E- The number of company shareholders must not be less than 100 by the end of its fiscal year. F- The company's paid-in capital must not be less than 5 million Jordanian Dinars (approximately US$ 7.06 million).”
certain conditions being satisfied. Failure to satisfy the required conditions may result in a company’s shares being transferred from the First Market to the Second Market or Third Market, and from the Second Market to the Third.

The classification of the listed companies into three market segments satisfies the needs of a modern exchange by helping investors to recognise the current status of the listed companies. The listing requirements on the First Market are higher than those in the Second Market and Third Market, and there is no doubt that being listed on the First Market impacts positively on the listed company, which fulfills listing requirements, through attracting new investors in securities and reinforcing the shareholders confidence. In this connection, the ASE’s ability to transfer listed companies’ shares between the market segments would be employed as an effective method to impose corporate governance requirements on listed companies. For example, requiring the compliance with corporate governance code as a listing condition for listed companies in the First Market on the ASE assists the investors to recognise the extent of compliance with the corporate governance standards. Although, the ASE role in transferring between markets is limited and does not exceed implementing the provisions of the Listing Directives, the ASE has the discretion to list the following types of companies for the first time on the ASE First Market even where they do not meet the listing requirements of the First Market. These are non-Jordanian public shareholding companies, converted public shareholding companies from limited liability companies, limited partnerships in shares or private shareholding companies; privatised public shareholding companies. Thus, this facility may encourage foreign listings on the ASE.

The ASE also has an important role in suspending securities. According to art 14 of the Listing Directives listed companies’ shares on the ASE should be suspended if there is a reduction in the company's capital, merger of the companies, the general assembly decision to liquidate the company, filing a case in the court to liquidate the company and on the date of the general assembly meeting. Article 14 of the Listing Directives also gives authority to the ASE’s board of directors to suspend the company's shares, for the period it deems appropriate in emergency situations which influence trading activities in the market, the financial position of the listed companies and the interests of investors in securities. It can also suspend upon

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349 According to art 9 of the ASE Listing Directives 2012 the company’s shares transferred to the Second Market after being listed for a full one year on the Third Market if the following conditions are satisfied: “B- The Company's Net Shareholders' Equity must not be less than 50% of the paid-in capital. C- The company's (Free Float) to the subscribed shares ratio by the end of its fiscal year must not be less than 5% if its paid-in capital is less than 10 million Jordanian Dinars (approximately US$ 14.12 million), while companies which their paid-in capital is 10 million Jordanian Dinars or more are excluded.”

350 ASE Listing Directives 2012 art 11.

351 It is worth mentioning that the JSC proposed on 25 March 2013 to enforce some rules of the corporate governance code as listing conditions for listed companies in the First Market on the ASE, such as splitting the role of the chairman of the board from any executive position in the company, establishment of the permanent Nominations and Remunerations Committee, and prohibiting the company’s external auditor from performing any additional services to the company - administrative and technical consultations, but the proposal has not applied yet, see JSC <http://www.jsc.gov.jo/News/News_NewsList.aspx?Type=P&lang=1&Site_ID=2&menu_id2=135&catID=20#13> (31 May 2013) (Translated from Arabic).

352 ASE Listing Directives 2012 art 25.

353 Ibid art 14.B.1, 2, 6, 7, C.
justified request by the listed company, or interruption of the listed company’s business for a period exceeding three months without justification or if the listed company has not submitted to the ASE its financial statements for two consecutive fiscal years.

In this connection, art 14.B.3 of the Listing Directives explicitly authorises the CEO to suspend the companies’ shares in emergency situations for the mentioned above reasons for only two days. Further, the CEO is empowered implicitly to suspend other securities upon justified request by the listed issuer and in emergency cases to protect the investors in securities by art 14.G and art 29 of the Listing Directives which delegates the CEO to take all the necessary decisions to apply the provisions of Listing Directives, unless otherwise stipulated for.

Another important role of the ASE is the de-listing of securities. The ASE’s board of directors decides to de–list the shares of any listed company in the event that: the company’s status changes, a court decision or the companies’ extraordinary general assembly resolution to liquidate the company or the company has been suspended from trading for a period exceeding two years. The ASE’s powers in this regard are limited to implementing the provisions of the Listing Directives.

Moreover, to reinforce the ASE ability to enforce the Listing Directives, the directives also include the power to impose one or more of the following sanctions against the listed issuers on the ASE, such as the public shareholding companies, who breach the Listing Directives and related decisions: Warning, fines, transferring the listed shares from the First Market to the Second Market or the Third Market and from the Second Market to the Third Market, suspension of securities or de-listing of securities. As mentioned above in Section 5.2 the ASE has not exercised these enforcement powers effectively, only warnings and monetary fines have been imposed by the ASE against listed companies which did not provide the ASE with their quarterly reports.

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354 According to art 14.G of the ASE Listing Directives 2012 the ASE used to suspend the treasury bonds one month earlier to their maturity date, in some cases, upon the request of the issuer in the prospectus.

355 ASE Listing Directives 2012 art 14.B.3, 4, 5, D.

356 The JSC’s Board of Commissioners has wide authority including the suspension or cessation of dealing in any security for the period it deems appropriate. The JSC may carry out this action as a precautionary action to protect investors in securities, and as a sanction against who breaches Securities Law and related regulations, see Securities Law 2002 arts 12.E, 19.A.1, 21.B.4. Article 14.G of the ASE Listing Directives 2012 states that “Any security on the ASE can be suspended if so required under the legislation in force …” After reviewing the capital market legislation, except the mentioned above cases there is no legislation in force requires the ASE to suspend listed securities in certain cases.

357 ASE Listing Directives 2012 art 16. While the Investment Fund should be de-listed in the event that a decision of liquidation is passed, its term expires, or its status changes (ASE Listing Directives 2012 art 21.D). The listed bonds on the ASE should be de-listed on the date of their maturity or redemption, or prior to that, in accordance with any legislation in force (ASE Listing Directives 2012 art 20).

358 Ibid art 24.

359 a monetary fine of not less than JD 100 (approximately US$ 141) and not more than JD 5000 (approximately US$ 7062),
Although, the ASE exercises discretionary powers concerning admission, the ASE does not have absolute discretion in relation to transfer between markets, or to suspend and de-list the listed issuers’ securities. The ASE's powers are limited to implementing the provisions of the Listing Directives. The ASE discretionary powers in relation to suspending issuers’ securities are restricted by the situations determined in art 14 of the Listing Directives as mentioned before. Further, in spite of the ASE's powers impact on the listed companies business and investors in securities, the appellate processes against the ASE's decisions in the Listing Directives are not regulated, the aggrieved parties are uncertain as to whether they can appeal or not, if so to whom, and the period of time within which the appeal must be made. The ASE can operate more effectively if there are defined procedures for appeal (see Chapter 8.7). But restructuring the ASE's relationship with the listed issuers on a contractual basis after the ASE conversion to a publicly listed company would raise the debate whether the ASE's decisions are amenable to judicial review by the High Court of Justice, see 9.3.2.

The efficiency of the ASE’s powers to administer the Listing Directives, particularly in relation to the on-going requirements, suspension and de-listing the listed issuers’ securities, should be reviewed and extended to empower the ASE to suspend and remove the listed issuer explicitly in some situations such as failing to pay annual listing fees within the time frames in the Listing Directives. In Australia, (see 8.4), ASX has a wide discretion in relation to suspend and de-list the listed entities’ securities. There are, however, appellate procedures set out clearly in the ASX Enforcement and Appeal Rulebook.

There are difficulties with the ASE Listing Directives. The first problem is art 16 of the current Listing Directives 2012. Article 16 of the Listing Directives states that company shares are to be de-listed by the board of directors' decision where the ASE has been notified of the court resolution to compulsorily liquidate the company or the ASE has been advised that the Extraordinary General Assembly of the company has resolved to go into voluntary liquidation. This contrasts with the earlier, now repealed art 14 which stated that the listed shares of a company were to be de-listed only where "a final decision is passed to liquidate and wind up the Company or ...".

The current provision causes difficulty in the light of the provisions of the Companies Law 1997. According to art 252.A of the Companies Law the company should not be dissolved until the completion of the liquidation procedures. Art 254.B provides that the legal personality of the company should continue to exist until its dissolution after finalising the liquidation. The compulsory and voluntary liquidation procedures may be stopped upon a request by the Minister of Trade and Finance to the General Controller or the Attorney General if the company corrects its position before the completion of the procedures. Similarly, if the liquidator requests the general assembly of the company to stop the voluntary liquidation procedures.

360 For more details about the ASE discretionary powers in Listing Directives see Chapter 4.4.2.
361 ASX, Listing Rules rr 17.6, 17.15 empower the ASX to suspend and remove the listed entity which fails to pay annual listing fees within the time frames in these rules.
363 Ibid art 264.A.
It is noticed that de-listing companies under liquidation by the ASE according to art 16 of the *Listing Directives* causes serious problems for these companies, since the voluntary and compulsory liquidation procedures may be stopped and the de-listed companies are required to re-list its securities on the ASE again. Article 14 before amendment avoids this problem through stating explicitly that “Listed shares of a Company shall be de-listed in the event a final decision is passed to liquidate and wind up the Company”.

The listing requirements for the private shareholding company on the ASE were regulated in art 16 of the repealed *Listing Directives*. Those requirements are not reflected in the current *Listing Directives*. Furthermore, art 2 of the current *Listing Directives* defines the company as the Public Shareholding Company, which reflects the legislator's desire to list the public shareholding companies only and prevents the ASE from listing new types of companies.\(^{364}\)

### 5.4. The ASE's Role in Trading in Securities

The exchange sets rules for the admission of members, the admission of products to trading and the trading process itself.\(^{365}\) The core responsibility of the exchange, and the reason for its establishment, is to ensure fair, orderly and efficient trading.\(^{366}\) In this regard, the ASE's central functions are to provide the necessary infrastructure for trading, quotation of listed securities, and regulating the interrelationship with its members (brokerage firms) and the brokerage firms relationship with their clients. The licence which the *Securities Law 2002* grants to ASE's members to trade exclusively in listed securities on the ASE for their accounts and their clients' accounts, highlights the importance of the ASE role in regulating the trading activities.

#### 5.4.1. The ASE Infrastructure for Trading

The ASE has implemented and enhanced the Electronic Trading System (ETS). The ETS, which was launched on 26 March 2000, forms the cornerstone of the ASE's trading infrastructure. The ETS allows the selling and buying orders to be matched by a computerised system. The ETS performs two main functions which are confirming the trading transactions on the ASE's records electronically,\(^{367}\) and verifying the sufficiency of the securities in the clients' balances before entering the selling orders to the ETS.\(^{368}\)

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\(^{364}\) Listing the public shareholding companies on the ASE without the private shareholding companies was a suggestion by the JSC's Board of Commissioners.  
\(^{365}\) *Exchange Evolution report*, above n 31, 15-18.  
\(^{366}\) Gadinis et al, above n 31, 1243-1244.  
\(^{368}\) The ASE Annual Report (2009) 30. According to art 12.A of the *Directives for Internet Trading on the ASE 2009* the Internet Trading Program verifies the sufficiency of both the cash and securities in the clients' balances before entering the orders to the ETS.
The ETS enhances the market transparency, lowers operating costs, accelerates the process of order matching and execution, reduces the problems associated with human errors in processing transactions, improves the ability to attract new pools of liquidity by providing remote access for investors, and maintains unexecuted orders in a consolidation order book for possible matching with future orders. The ASE shifting to the ETS and applying the remote trading assist in monitoring the trading operations, disseminates live trading information and gives the brokers flexibility and information which enable them to trade from anyplace in Jordan and to perform their tasks efficiently. As a result of this, the trading operations have developed, are more efficient, the transparency has been reinforced, the trading volumes have risen significantly (see Figure 5.1 above at 5.3) and the market's depth and liquidity have increased. Al-Khouri et al examined the impact of transfer to automation on liquidity and volatility on the ASE before and after the implementation of the ETS in March 2000 by using daily closing prices and trading volumes on a sample of 34 companies for the period from 2 January 1996 to 2 January 2004. They found that the adoption of the ETS has improved the liquidity level of the ASE and reduced the volatility. It is to be noted that the results are similar to research findings in relation to other exchanges. On the other hand, Maghyereh and Omet found that the ASE’s move to the ETS had no impact on the pricing efficiency on the Jordanian Capital Market. They suggest that the automation in itself is not expected to improve the pricing efficiency without a concomitant improvement in the quality and speed of financial analysis by brokerage firms and investment managers who should analyse the impact of information on stock prices and advice their clients to act accordingly.

This system was implemented in four main stages: **Stage One**, this stage has two main features: Firstly, shifting from Manual Trading System to the ETS. Secondly, implementing remote trading. **Stage Two**, activation of the new edition of ETS (NSC V2+) in 2006. This edition reinforces the ETS's capacity to deal with the increase in daily trading volumes and numbers of executed transactions. **Stage Three**, in March 2009 the new edition of the ETS (NSC V900) was launched as a part of the new project of the Capital Market Infrastructure which includes surveillance

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369 Al-Khouri et al, above n 85, 223, 226; Maghyereh et al, above 41, 4.
371 ASE Annual Report (2000) 43; Al-Khouri et al, above n 85, 224, 226; El-Nader et al, above n 127, 204; Ajlouni et al, above n 153, 28; Al-Zoubi et al, above n 10, 491. Shifting from Manual Trading System to Remote Electronic Trading System was one of the main reforms in the Jordanian Capital Market alongside some other reasons - as mentioned before in Chapter 3.3 - that contributed strongly in the significant improvements which the ASE witnessed in all market indicators particularly the trading value during 2005–2008.
373 Maghyereh et al, above n 41, 1, 4, 6, 16-18. Maghyereh et al examined the impact of transfer to automation on market efficiency in the ASE before and after the implementation of the ETS in March 2000 by using daily closing price index for the period from 1 January 1999 to 30 August 2002.
374 Ibid 5, 18-19.
375 The ETS started on 26 March 2000 with 10 public shareholding companies' shares; on 15 June 2000 the ASE shifted all the public shareholding companies' shares, and finally bonds and investment units, see ASE Annual Report (2000) 41-42.
376 The remote electronic trading started in October 2000 with 6 brokerage firms and was completed for all firms by the end of the year, see ASE Annual Report (2000) 43.
system in the JSC and depository system in the SDC.\textsuperscript{378} This edition has many features such as Random Opening and Random Closing to limit the behaviors which intend to influence the prices of securities in the opening and closing phases; and Central Control Module (CCM) that decreases the trading risks and errors by verifying that the entered buy and sell orders to ETS meet the required conditions before execution.\textsuperscript{379} \textbf{Stage Four}, implementing the Internet Trading Service (ITS). In order to improve trading methods and increase the number of traders in securities, the ASE launched in July 2010 the ITS which allows to the brokers’ clients in any place in the world to enter buying and selling orders to the ETS and follow them by themselves, by using the Internet through a special program used for this purpose.\textsuperscript{380}

Moreover, to guarantee continuous trading in the emergency situation such as the ETS failure, the ASE established a Disaster Recovery Site and Trading Hall. In 2001 the Trading Hall was established in the ASE's headquarter and was provided with the necessary technical equipment and facilities to serve brokers who cannot trade through remote trading.\textsuperscript{381} Beside the Trading Hall, the ASE established two Disaster Recovery Sites in 2002 and 2008 on the fifth floor at Housing Bank Complex in Amman city and in Irbid city respectively.\textsuperscript{382} These sites can operate the ETS if there is an emergency situation in the headquarter.

Another important achievement to the ASE in the trading area is the creation of Management Information System (MIS). The MIS was created in 2001 to provide the ASE's departments and members with necessary historical trading information, such as trading bulletins, special reports indicating trading per broker and per company, to perform their works.\textsuperscript{383}

It is to be noted that during the last 14 years the ASE has built an effective modern infrastructure for trading. This has allowed the ASE to meet the significant increase in the trading volumes in particular during 2005-2009, see Figure 5.1 above at 5.3. It also enables the ASE to compete with other securities markets in the region and meet the needs of a modern market after conversion into a publicly listed exchange in the future, provided that the ASE continues its strategy to update and maintain its infrastructure as it did in the last decade. In short the ASE is well positioned for restructuring as a publicly listed exchange which is recommended in chapter 9.3.2.

\textsuperscript{378} ASE Annual Report (2009) 29-30. The ETS (NSC V900) is connected to the JSC's monitoring system, the SDC's systems, surveillance and information dissemination systems in the ASE, in order to increase the ETS's capacity, speed and efficiency; develop trading operations and surveillance ability; develop the instant analysis of market information.
\textsuperscript{379} This edition also has new trading phases (Pre-Closing Phase/Trading at Closing Price Phase); new types of buy and sell orders (Stop Limit Order).
\textsuperscript{381} Ibid (2001) 29.
5.4.2. Quotation of Listed Securities

Listed securities on the ASE are traded, on the basis of one security and its denominations, through the Continuous Pricing Session. Almost all the listed securities on the ASE are priced in Jordanian Dinar and traded on the basis of 10 Filles (approximately US$ 0.0141) and its denominations for each security. A few companies bonds were listed on the Bonds Market on the ASE in US Dollars and traded on the basis of one cent and its denominations, such as the bonds of the Cairo Amman Bank and Arab Engineering Industries Company which were listed in 2004 with a value of US$6 million and US$10.55 million respectively. Pricing either in Jordanian dinar or other currencies assists the ASE to attract foreign listings.

As a part of the exchange's major responsibilities to ensure fair, orderly and efficient trading, the ASE board of directors uses three methods to calculate the opening price of the listed companies' shares. The ASE floats the opening price of the listed company's shares following restructuring the capital of the company (reduction the capital of the company then increasing it); merger of the companies; listing the company's shares for the first time on the ASE; suspension of the company's shares for a period exceeding six months for any reason; interruption of trading in the company's shares for a period exceeding six months.

The ASE calculates an opening price of the listed company's shares in accordance with the following formula - the market value of the company’s shares before the mentioned below procedure equals to the market value of the company’s shares after the procedure – where there is reduction the subscribed capital; where the capital is increased by adding reserves and accrued earnings and where there is a reduction of the nominal value of the company’s shares.

The ASE calculates an opening price of the listed company's shares when the company increases its capital by a private subscription to its shareholders in accordance with the following formula:

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384 ASE Trading Directives 2004 art 29 states that "Trading shall be on the basis of one security and its denominations, unless the Board of Directors decides otherwise". In this connection, only the Arab Bank's shares traded on the basis of 15 shares and their denominations, see the ASE, Announcement No 76, 28 April 2008, ASE <http://www.ase.com.jo/en/circulars> (27 July 2013) (Translated from Arabic).


386 Article 32 of the ASE Trading Directives 2004 states that "A. Securities can be priced either in Jordanian dinars or in any other currency. B. Securities priced in Jordanian currency shall have the Ten Filles denominations, and the Board of Directors shall determine the denominations of other currencies used in the pricing of securities".


391 ASE, Announcement No 389, 23 November 2005. Before adopting this formula there was no formula to calculate the opening price for the listed company which increases its capital by a private subscription to its shareholders. The shareholders who gained the right to subscribe in the private
Market Value of the company’s shares before the increase + Issuance Value  
Company’s New Capital

In this connection, the ASE has calculated an opening price for the listed subscription right by deducting the issuance value from the opening price of the share which calculated according to the method above.392

To avoid excessive volatility in securities prices and ensure stability of the capital market,393 the ASE imposes a 7.5% price fluctuation band on shares and related subscription rights traded in the First Market, and a 5% price fluctuation band on shares and related subscription rights traded in the Second Market and Third Market.394 The price fluctuation band to bonds and bills traded in the Bonds Market is a 5%.395 While the opening price for the listed companies' shares and subscription rights has been calculated as above, there is no clear mechanism to price the bonds and bills which are listed in the ASE for the first time.396 Listed bonds and bills traded within a 5% price fluctuation band. This price fluctuation band prevents the price from reflecting the actual price of these bonds and bills. Enhancing the trading activities in the bonds market requires adopting clear and fair mechanisms to price bonds and bills listed for the first time on the ASE and price continuously the traded bonds on the ASE depending on the available interest in the market, coupon rate, coupon payments and time to maturity. As well as, extending the trading hours in the Bonds Market particularly the Continuous Trading Phase which is very short (only 20 minutes), in Australia for example, trading activities on the Normal Trading phase in ASX Trade Platform are available for 6 hours. In this regard, the Central Bank of Jordan (CBJ) should review its policy and allow retail investors to subscribe efficiently to the public debt issuances (governmental treasury bonds and bills).397 The
retail trading of government securities and the development of a deep and liquid retail bond market will facilitate the companies' finance growth at lower costs and provide retail investors with a greater choice of diversified investments and more alternatives for fixed income.398 Surprisingly, Australian Commonwealth bonds began retail trading only in May 2013.399

5.4.3. Regulating the ASE Interrelationship with its Members

The ASE's membership consists of Financial Brokers and Dealers,400 who are exclusively authorised to use the ASE's facilities and trade in listed securities on the ASE for their accounts and their clients' accounts.401 The aim of members regulation is to ensure that all the members are reliable trading partners. This is achieved by requiring members to meet eligibility criteria and then continuous oversight after admission to maintain high-quality standards for trading participants.402

According to the ASE Internal By-Law the brokerage firm which wishes to become a member in the ASE must have during the term of membership a valid brokerage licence from the JSC.403 The applicant must have the necessary IT infrastructure to

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399 See Michael West, 'Market Monopoly Delivered to the ASX on a Platter', The Sunday Morning Herald (Sydney), Monday 20 May 2013, 30; Cornell, above n 398.
400 Securities Law 2002 art 65.B, ASE Internal By-Law 2004 art 7. The brokerage activities include Financial Brokers and Dealers. Article 2 of the Securities Law defines the Financial Broker as "Any person engaged in the business of buying and selling securities for the account of others", and the Dealer as "Any person engaged in the business of buying and selling securities directly for his own account through the Market".
402 Gadinis et al, above n 31, 1244.
403 ASE Internal By-Law 2004 art 8.A.1. According to the Instructions of Financial Services Licensing and Registration 2005 any legal person wishes to exercise the brokerage activities should meet licensing requirements. Being a public shareholding company, a private shareholding company, a limited liability company or a bank. If the legal person is a bank the brokerage activities should be exercised through a subsidiary, affiliate, or a wholly-owned company thereof. Its main objectives should be restricted to financial services and custodial activities. In this regard art 47.A of the Securities Law specifies the financial services "1- Brokerage: A-Financial Broker. B- Dealer. 2- Investment Trusteeship. 3- Investment Management. 4- Financial Advisory. 5- Issuance Management. 6- Margin Finance. 7- Issuance Trusteeship. 8- Safe Custody. 9- Any other activities specified by the Board of Commissioners": Its paid capital should not be less than JD 750 000 (approximately US$ 1 059 322) and JD 500 000 (approximately US$ 706 214) to practice the financial broker and dealer activities respectively, and JD 1 250 000 (approximately US$ 1 765 536) to practice both activities. Its net equity should not become less than 75% of its paid capital. The applicant must also submit to the JSC an unconditional bank guarantee, provided that the guarantee's amount should not be more than JD 150 000 (approximately US$ 211 864). The issue of the licence is subject also to the requirement that the applicant has qualified management with good reputation. It is notable that the licensed brokerage firm must meet the mentioned above licensing requirements during the whole term of membership, see Instructions of Financial Services Licensing and Registration 2005 (Jordan) arts 4-6, JSC, 4 October 2005 <http://www.jsc.gov.jo/Public/english.aspx?site_id=1&Lang=3&Page_Id=2360&Menu_ID2=198> (28 July 2013).
execute the trading activities efficiently. For this purpose, before accepting a membership application or granting the written approval to offer the ITS, the ASE examines the brokerage firm's IT infrastructure, programs and communication systems and their stability to the ASE technical and operational requirements to ensure execution the trading operations in a correct and uninterrupted manner. The applicant must also have a sufficient and qualified staff. At least two registered natural persons to practice technical brokerage activities should work for the brokerage firm which is licensed as a financial broker, and only one registered person if the firm obtained a dealer license only. Within 30 days of filing the complete membership application, the ASE board of directors has to accept or reject the application and inform the applicant of the reasons for rejection (if reject). In the case of acceptance the board of directors should specify a date for the member to commence its business or delegates the CEO to do that. Further, the board has the right to revoke the broker membership if its application includes misleading or incorrect information, or if the broker has not begun its business within six months of board's acceptance for the membership.

5.4.4. Regulating the Brokerage Firms Interrelationship with their Clients


Brokerage firms must verify the client's identity where there is a request to open a trading in securities account. The next step relates to the trading in securities agreement. The brokerage firm enters into an agreement with the client which sets out both parties' rights and obligations, the information and conditions required by the legislation in force, particularly both parties' names and addresses. It must also include the services offered by the broker to its client; the collected fees by the broker from its client against its services; authorisations which the client issues to the broker to perform its selling and buying orders. The Trading Directives indicate that the

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407 Instructions of Financial Services Licensing and Registration 2005 art 45.B requires to obtain the registration from the JSC that the broker should be of good fame and character, hold the necessary academic qualification (Bachelor Degree at least in Economy or Administrative and Financial Sciences) and pass successfully the courses and exams organised by the JSC.
408 ASE Internal By-Law 2004 art 10.A, C.
409 ASE Internal By-Law 2004 art 10.B.
410 Ibid art 11, 12.B.
411 Internet Trading Directives 2009 art 10.B.
412 According to art 5.C of the ASE Trading Directives 2004 trading in securities agreement must fall under the ASE supervision.
broker should not limit or exempt the broker from liability under the applicable legislation.\textsuperscript{414}

Brokers are required to keep authorisations issued from its clients to execute their selling and buying orders of securities on their behalf.\textsuperscript{415} According to the Trading Directives, the client may issue to the broker a written, a telephone or an electronic message authorisation, provided that, the authorisation includes the following information; name of client, name of the issuer, number of securities, type of order (selling or buying), the price, date, time and validity of the authorisation.\textsuperscript{416} In this connection, brokers who wish to execute a block trade must provide the ASE before the execution with:\textsuperscript{417} a written authorisation of the client,\textsuperscript{418} and a statement, issued by the SDC on the same day of the block trade execution, shows the seller client's free securities to ensure that there are no restrictions on which may prevent the execution.\textsuperscript{419} Furthermore, to enter selling and buying orders on the ETS in sequence the brokerage firm should when it receives the authorisations confirm their dates and times, and the information related to telephone authorisations on the form approved by it for written authorisations.\textsuperscript{420}

In this connection, it is notable that the telephone authorisation is not well regulated in the Trading Directives. While the Securities Law accepts only written authorisations,\textsuperscript{421} the Trading Directives accept both written and telephone authorisations.\textsuperscript{422} The law has the priority if there is a conflict between the law and

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\textsuperscript{415} ASE Trading Directives 2004 art 6.A. According to art 9 ASE Trading Directives 2004 selling and buying authorisations must fall under the ASE supervision. Article 2 of the ASE Trading Directives 2004 defines the authorisation as "A request presented by the client to the Broker, requesting and authorising it to execute a selling/buying transaction of a security, according to specific conditions laid down by the client in accordance with these Directives". 
\textsuperscript{416} ASE Trading Directives 2004 art 6. Authorisations must be retained for 10 years, see the ASE's Board of Directors, Decision No 34/2004, 30 June 2004.
\textsuperscript{417} Article 2 ASE Trading Directives 2004 identifies the block trade as "Trading between two Brokers or through one Broker to buy and sell a security in one lot, upon the written authorization of the client, provided that the market value of the single contract does not fall short of the minimum set by the Board of Directors for such security". The ASE's Board of Directors determined the market value of the block trade by JD500 000 (approximately US$ 706 214), see the ASE, Announcement No 157, 10 July 2008.
\textsuperscript{418} ASE Trading Directives 2004 art 2.
\textsuperscript{419} ASE, Announcement No 147, 19 July 2007.
\textsuperscript{420} ASE Trading Directives 2004 art 7.
\textsuperscript{421} Article 63.C of the Securities Law 2002 points out that "Any Licensed or Registered Person that sells or disposes of any securities without a written authorisation from its owner …… shall be deemed to have committed forgery and fraud".
\textsuperscript{422} Article 6 of the Trading Directives states that: "A. A Broker must obtain a written or a telephone authorization from its clients to empower it to dispose of their securities on their behalf; and said authorisations shall be binding to it. B. The client may give an authorization to the Broker to buy or sell a security by way of an electronic message, according to the meaning set in the applicable Law on Electronic Transactions".
by-laws, directives and decisions. As a result for this, the brokerage firm should accept only written authorisations and reject telephone authorizations. This limits the trading activities on the ASE particularly the trading flexibility, trading volumes and market liquidity.

There is also conflict between the ASE announcement no. (106/2004) which requires brokerage firms to keep the executed authorisations for at least 10 years,\textsuperscript{423} and the JSC Board of Commissioners' decision no. (480/2010) which states that the brokerage firms should keep taped telephone conversations for two years at least.\textsuperscript{424} The weak regulation of the telephone authorisation in the \textit{ASE Trading Directives} encouraged the JSC to regulate by itself the brokerage firms' mechanism to keep the taped telephone conversations, but the lack of cooperation between the JSC and the ASE led to a conflict between the period to keep the executed authorisations and the period to keep the taped telephone conversations.

A final observation is that the \textit{ASE Trading Directives 2004} do not specify - for the brokerage firms - a clear method to verify the identity of clients who request to sell or buy securities via telephone. In this connection, art 1.C.1 of the JSC Board of Commissioners' decision no. (480/2010) indicates that the brokerage firm should take all the necessary procedures to verify the identity of a client before entering its selling and buying orders to the ETS, but without specifying these procedures. The mechanism followed by brokerage firms in the \textit{Trading Directives} is to confirm the telephone authorisations in writing, and to enter selling and buying orders to the ETS in sequence. This procedure is not followed during high volume trading.\textsuperscript{425}

Reviewing and amending the legislation related to the telephone authorisations is required to achieve consistency between the \textit{Securities Law, Trading Directives} and both the ASE and JSC decisions in this regard and accordingly enhance the effectiveness of the telephone authorisations mechanism which plays a crucial role in facilitating the trading activities.

In relation to organising the interrelationship between the ASE's members and their clients again, the brokerage firm must also notify its clients of their executed and unexecuted selling and buying orders of securities immediately upon execution and expiration of the issued authorisations respectively, and if the brokerage firm or any person associated with participate in the executed transactions.\textsuperscript{426} In case the broker or any person associated with has an interest in the executed transaction or there is a conflict of interests with the client, the brokerage firm should carry out the necessary procedures to protect the client's interest; otherwise it should not perform the said transaction.\textsuperscript{427}

\textsuperscript{423} ASE, Announcement No 106, 11 July 2004, art 2. Article 10.A of the \textit{ASE Trading Directives 2004} states that "A Broker must keep authorisations for a period fixed by the ASE Board of Directors".

\textsuperscript{424} JSC Board of Commissioners, Decision No 480/2010, 25 August 2010, art 1.A.5 (Translated from Arabic) the decision has been collected from the JSC.

\textsuperscript{425} According to art 1.A.3 of the JSC's Board of Commissioners, Decision No 480/2010, 25 August 2010 the dates and times of the clients' telephone calls should be kept automatically by the system to enter selling and buying orders to the ETS in sequence, further the dates and times of the calls must not be able to be changed.


\textsuperscript{427} \textit{ASE Trading Directives 2004} art 13, \textit{ASE Code of Ethics} art 10.
The ASE forbids brokerage firms from disclosing their clients' confidential information;\(^{428}\) collecting from its clients trading commissions exceeding the limits determined in the legislation in force;\(^{429}\) moving (sell/buy) its clients' trading accounts to gain commissions only;\(^{430}\) using its clients' securities in their trading accounts or in the safe-custody to gain private benefits.\(^{431}\) As well, the brokerage firms should immediately inform the ASE of their clients' violations of the legislation in force.\(^{432}\)

In this connection, the Trading Directives impose obligations upon the brokerage firms licensed as investment managers towards their clients whom they manage their investments. Brokerage firms must trade for their clients' accounts in accordance with the Investment Management Agreement which determined the client's investment policy;\(^{433}\) provide their clients - once a month at least - with statements show executed transactions and balances of securities.\(^{434}\) Brokerage firms are prohibited from trading in a certain security for their clients' accounts before publishing to the public the financial consultancy that they prepared in relation to this security.\(^{435}\)

In order to ensure that the market is fair, orderly and transparent, the ASE has powers to carry out any investigation,\(^{436}\) and impose sanctions against the brokerage firms who breach the Trading Directives and Internet Trading Directives.\(^{437}\) Both directives authorise the ASE to take the necessary actions such as cancelling the buying and selling orders which entered to the ETS to hinder trading in certain securities;\(^{438}\)


\(^{429}\) ASE Internal By-Law 2004 art 30.A.4. ASE Code of Ethics art 3.A.5. According to the JSC Board of Commissioners' decisions in 4 July 1999, 8 June 2000, 12 November 2003 (Translated from Arabic) the brokerage firms collect the following trading commissions from each trader in securities: 1- Between JD 4-6 per 1000 of the market value of traded shares. In case the market value of the sold or bought shares (one certain security - in one day - for one client) exceeds JD 100 000 (approximately US$ 141 242) the brokerage firm may collect less to JD 2 per 1000. 2- Between JD 3-8 per 10 000 of the market value of traded bonds and bills. 3- Between JD 6-8 per 10 000 of the market value of traded units of the investment funds. For more information see the JSC, Announcement No 6/2003. 19 November 2003; the ASE, Announcements No 38, 15 July 1999; No 71. 20 June 2000. The decisions have been collected from the JSC.


\(^{433}\) ASE Trading Directives 2004 art 11.

\(^{434}\) Ibid art 12.B.

\(^{435}\) Article 14 of the ASE Trading Directives 2004 points out that the brokerage firms can trade after a full working day following the publication of financial consultancy, and if the financial consultancy is prepared for the brokerage firms special needs and not to be published.

\(^{436}\) The ASE can request the necessary documents to ensure the efficient trading in securities, and carry out any investigation, inspection and auditing to monitor trading operations compliance with the ASE's internal by-laws and instructions and the Securities law and related regulations, see Securities Law 2002 art 68.A. ASE Trading Directives 2004 art 22.

\(^{437}\) The ASE can impose sanctions against those who breach the Trading Directives in accordance with the provisions of the Securities Law. In this connection, as explained before in 5.2 the ASE, according to its powers in the ASE Internal By-Law, undertakes disciplinary actions against its members and persons associated therewith who breach or take preparatory measures to breach the ASE's by-laws, instructions and decisions, see Securities Law 2002 art 68.A. ASE Internal By-Law 2004 arts 36.A, 37.A. The ASE can also cancel the executed trading transactions which breach the legislation in force, see ASE Trading Directives 2004 art 42.

\(^{438}\) ASE Trading Directives 2004 art 17. The ASE can also cancel the trading transactions which executed during the trading session phases in two cases:- First case, if a technical failure occurs, provided that the ASE should inform the concerned brokers immediately. Second case, upon a request by the broker within 10 minutes of the execution and before the closing phase if the buying
amending the closing price if the last trading transaction was executed to influence the closing price of a certain security;\footnote{ASE Trading Directives 2004 art 18. The ASE can also amend reference numbers in executed transactions upon a justified request by the brokers, see ASE Trading Directives 2004 art 23. In this regard, art 2 of the ASE Trading Directives 2004 defines the reference number as “The number that the Broker assigns to its client for the purposes of trading, and it shall be previously identified at the Securities Depository Centre”.} regulate the trading issues such as changing the time schedule of the trading hours\footnote{Ibid art 26.} and reorganising the ITS.\footnote{Internet Trading Directives 2009 art 21, in this regard the ASE can restrict, suspend or forbid the offering of the ITS in general or through any broker or to any client upon the JSC’s approval.}

It is to be noted that there are some deficits which hinder the ASE role in regulating and managing trading activities. The appellate processes against the ASE’s decisions under the Trading Directives and Internet Trading Directives are not stipulated, the aggrieved parties do not know if they can appeal, to whom they can appeal or the time period for appeal. The ASE can operate more effectively if there are defined procedures for appeal, see Chapter 8.7. The ASE conversion to a publicly listed company and restructuring its relationship with the brokerage firms on a contractual basis would raise the debate whether the ASE’s decisions should subject to judicial review by the High Court of Justice, see 9.3.2.

There are many restrictions in the Internet Trading Directives imposed by the JSC upon the ASE role in offering and administering the ITS. For example, any broker who wishes to offer the ITS must obtain both the ASE’s written approval and the JSC’s authentication. The ASE, after approving the broker’s application, has to forward the application with all supporting documentation to the JSC to obtain its authentication.\footnote{Internet Trading Directives 2009 arts 3, 7, 8. As mentioned before in this section the ASE cannot restrict, suspend or forbid the offering of the ITS in general or through any broker or to any client upon the JSC’s approval.} There is no doubt that this requirement causes duplication and delay in obtaining the required approval to offer the ITS which affects negatively the operations in the market.

The Code of Ethics which issued in 1999 by virtue of the repealed Securities Law 1997 requires revision and updating to achieve consistency with the new provisions in the Securities Law 2002 and related regulations. For example, art 3.6 of the Code of Ethics forbids the ASE’s members from “Using securities deposited with it as safe-custody, or securities held in the name of clients, to achieve a private interest”. Article 55.A of the Securities Law states that “The Licensed Person shall segregate client’s moneys and securities that are considered a civil deposit therewith from its own moneys and securities, in accordance with the conditions specified by the Board which should be included in the agreements concluded with the clients”. In this regard art 15 of the Financial Services Instructions states that “A separate account shall be opened by the Financial Broker for each of his clients for the purpose of trading in securities”. Article 3.6 Code of Ethics is unnecessary as it conflicts with the Trading Directives, art 55.A Securities Law and art 15 Instructions of Licensing and Registration since the brokerage firm could not use securities in its clients’ accounts without authorisations from them as mentioned before, and as a result for the...
segregation of accounts if the brokerage firm uses securities in any account the benefits will belong to the owner of the account.

Similarly, art 3.7 of the Code of Ethics forbids the ASE' members from "Moving clients’ portfolios just to obtain commissions". According to the Trading Directives - as mentioned before - the brokerage firm should keep authorisations issued from its clients to execute their selling and buying orders of securities on their behalf. Thus, the brokerage firm is forbidden from selling or purchasing securities for its clients' accounts without obtaining authorisations from them. Otherwise, the ASE may undertake disciplinary actions against the members who breach the Trading Directives. It is noticed that again there is no need for this article with the existence of the Trading Directives that the brokerage firm cannot move any account by itself without permission from its owner. But if the brokerage firm manages its clients' investments as a licensed investment manager, there is a need for this article. In this case the article should be amended to avoid any misunderstanding and clarify that the brokerage firm as an investment manager must trade for its clients' accounts in accordance with the client's investment policy and should not move its client's account just to obtain commissions.

5.5. Summary of the ASE's Listing and Trading Roles in Jordanian Corporate Governance

The ASE contributes to Jordanian corporate governance, through its roles in listing and trading in securities, by reinforcing the following basic shareholders' rights; transferring securities and providing secure methods of ownership registration based on OECD Principles referred to in ch 2.\textsuperscript{443} In summary, the ASE's contribution to corporate governance is in setting the legal framework for listing and trading in securities through its Listing Directives 2012, Trading Directives 2004; and Internet Trading Directives 2009. It is also important as providing a modern, efficient, and secure infrastructure for trading in securities such as a developed Electronic Trading System (NSC V900) and the ITS. Its other functions include verifying that securities are transferable without restrictions, and following clients' identifications, trading in securities agreements and authorizations. It also performs a crucial role in ensuring that brokerage firm's staff and IT infrastructure are sufficient to ensure execution the trading operations in a correct and uninterrupted manner. Finally, enforcing the essential bases for transparent and fair trading through determining the cases for suspension and de-listing of securities, and different methods to calculate the opening price of the listed companies' shares and subscription rights.

The ASE's role in ensuring the existence of an efficient market in securities by regulating and managing the listing and trading in securities is the usual role of an exchange and is consistent with international practices except in some situations as mentioned above such as the absence of the listing requirements for admission, in other words the absence of the profit test or assets test for admission in the ASE official lists. Likely, all these functions will continue after privatising the ASE into a publicly listed for-profit company as will be discussed later in Chapter 9. But the privatisation will not solve automatically the failures and shortcomings which impact

\textsuperscript{443} OECD Principles ch 2.A.1. 2.
of the ASE performance in the listing and trading fields. The ASE must face its problems now to facilitate the converting to the new model in the future. One of the serious factors which should be considered is the diversification of the listed instruments and the ASE's record in creating new products.

The ASE also has an important function to fulfill in the disclosure and dissemination of information.

5.6. The ASE's Role in Disclosure and Dissemination of Information

Disclosure and transparency are the essence of efficient capital markets. This is recognised by the ASE in reinforcing corporate governance by providing the investors with necessary information to make investment decisions. For this purpose the ASE has adopted a mandatory disclosure and transparency policy. The ASE Disclosure Directives 2004 require the ASE to disclose trading information, and information which affects trading in the ASE and securities' prices. In this regard, the directives allow the public to get copies of all the information mentioned above. This section discusses the ASE's responsibilities to regulate the disclosure in the listing of securities phase, disclose the trading information and the information that the ASE receives which affects trading and securities' prices. It also introduces the ASE's infrastructure for the disclosure and dissemination of information, and examines the ASE's disclosure mechanism.

5.6.1. The ASE Infrastructure for Disclosure and Dissemination of Information

The ASE has spent significant effort in building the necessary infrastructure for the disclosure and dissemination of information since its establishment. The ASE greatest contribution in the disclosure field appears in its website (www.ase.com.jo/www.exchange.jo) and Intranet.

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444 ASE Disclosure Directives 2004 art 3.A. This article obligates the ASE to disclose the following information: "1- Names of issuers of securities listed on the ASE. 2- Names of issuers of securities suspended from trading. 3- Names and addresses of Members. 4- Names of Members suspended from practice. 5- Names of financial professionals certified to practice as brokers at the ASE. 6- Names of financial professionals suspended from practicing as brokers at the ASE. 7- Daily, weekly, monthly and yearly statements that include trading per company, sector movement in terms of number of traded shares, volume of trading, number of contracts, indices, and main financial indicators. 8- Financial statements of Members."

445 Ibid art 3.B.

446 Ibid art 3.C. The Disclosure Directives consider the following information confidential and allow the ASE's authorised personnel only to have access: Information related to entries on the ETS, information related to the names of dealers in securities such as their trading volume, information related to the names of owners of securities such as their ownership volume, information that the ASE obtains through inspection, investigation and dispute settlement, information which the ASE obtains from governmental institutions such as the JSC, and the meetings of ASE's board of directors, see ASE Disclosure Directives 2004 art 4.A.

447 ASE Annual Reports (2000) 44, (2006) 32 show that the number of the ASE's website visitors increased sharply from approximately 1.2 million hits during December 2000 to 120 million hits per month in 2006.
The ASE's website was established in 1999 to provide information and data in Arabic and English to investors, researchers and concerned parties,448 and during the last 14 years it was developed and updated many times.449 The ASE's website includes:450 general information about the ASE, relevant legislation and publications;451 companies data, such as the Public Shareholding Companies Guide,452 listed companies' disclosures (periodic disclosures and continuous disclosures), and corporate actions; ASE members data, such as brokerage firms' disclosures; and historical trading data.453 The ASE also publishes via its website the live trading information without payment through two online services. The first service, Market Watch Live Program which was launched in 2007 as an integrated system to display live trading information on the Internet to enable investors to follow up their investments live day to day.454 The second service, Ticker Tape Program shows the codes, last executed price and price variation percentage for all traded companies.455

In order to reinforce the disclosure and transparency in the ASE, in 2006 the ASE has developed a new index calculated according to the market capitalization of free-float shares in 100 listed companies from all sectors. This is instead of the total number of listed shares for each company.456 In 2008 the ASE replaced the old index weighted by market capitalization with the new index weighted by free float shares on its ETS, all the dissemination of information methods and publications.457 In 2008 the ASE has launched in cooperation with Dow Jones (Dow Jones ASE-100 Index) to calculate the

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449 For example, in 2005 the ASE renewed its website, in 2006 the ASE transferred the website host from the USA to a website host in Jordan (Hashem 1 Satellite Earth Station) to obtain full control over the website to provide better services for the website users and to solve quickly any problems that may occur, and in 2010 has launched a new one based on a dynamic design and an advanced technology, see ASE Annual Report (2005) 32, (2006) 32, (2010) 35-36.
451 The general information such as comprehensive information about the Jordanian Capital Market, investment and privatization in Jordan, the ASE establishment; vision; mission; objectives; future plans; management and organizational structure, the ASE members; their profiles and contact information, listed securities on the ASE, market information; market segmentations; trading hours; trading commissions; clearance and settlement; indices; data venders, laws and legislation related to the ASE, the ASE's publications; annual reports; monthly newsletters; brochures; the milestone and circulars.
452 The ASE has been issuing in Arabic and English since 2000 Listed Public Shareholding Companies Guide on a laser CD every year includes about each company; 1- General information such as, address, board members, major shareholders, shareholders structure, external auditor, legal counsellor. 2- Financial data for the last four years, see ASE Annual Reports (2000) 44, (2010) 39.
453 Such as daily, weekly and monthly annual trading bulletins; historical quotes; daily summary and weekly summary for the trading session; times of trading transactions; daily statistics; monthly statistical bulletins; companies' board of directors and representatives trading; and companies' board of directors' and representatives' ownerships.
454 ASE Annual Report (2007) 29, ASE <http://www.ase.com.jo/en> (28 July 2013). The Market Watch Live Program provides the users with the ASE's live trading information for all the traded companies such as:- (1) A summary of the market performance: trading value; number of traded stocks, number of transactions, index value and graph shows changes in index value, number of gainers companies and best 10 gainers, number of losers companies and worst 10 losers, and the best 10 active companies. (2) Market Depth – best 5 buy and sell orders. (3) Executed orders – latest 20 orders and a graph shows changes in stock price. (4) Latest news. For more information about Market Watch Live Program see the ASE website.
455 ASE <http://www.ase.com.jo/en> (28 July 2013), for more information about Ticker Tape Program see the ASE website.
performance of the largest 100 listed companies in the ASE based on the market capitalization of free-float shares.\textsuperscript{458} Besides the ASE website on the Internet, the ASE created in 2003 an Intranet to serve its members and their clients and reinforce the disclosure and transparency in the market.\textsuperscript{459}

By 2010 the ASE had greatly improved and enhanced its website through offering the listed companies' historical disclosures, periodic disclosures and continuous disclosures from 2001 and allowing the investors to easily access these disclosures.\textsuperscript{460}

In order for the ASE to carry out its disclosure responsibilities efficiently and develop data distribution services in the future as a publicly listed exchange it needs a modern infrastructure for disclosure and dissemination of information. The ASE must develop an electronic disclosure mechanism to allow the listed companies to provide the ASE with their documents prepared for release to the market electronically. The ASE may learn from ASX experience in this field discussed in 8.6.

5.6.2. The ASE's Role in Disclosing Trading Information

One of the ASE's main functions in the regulating and managing the disclosure issues in the securities market is to disclose trading information. Article 3.A.7 of the Disclosure Directives requires the ASE to disclose historical trading information: "daily, weekly, monthly and yearly statements that include trading per company, sector movement in terms of number of traded shares, volume of trading, number of contracts, indices, and main financial indicators.” Although, art 3.A of the Disclosure Directives does not explicitly require the ASE to disclose its live trading information, the ASE does so alongside historical trading information and other general information related to trading.\textsuperscript{461} The ASE also has been publishing its live trading

\textsuperscript{459} The ASE Intranet depends on two systems in its work: Lotus Domino.Doc System and Same Time System. The Lotus Domino.Doc System is used to archive and save the ASE's documents such as; legislation, announcements, trading bulletins and brokers' work reports, disclosures and companies financial statements, and it allows to the ASE members to use them easily. Furthermore, to improve its archiving system the ASE implemented in 2006 a new archiving program Tivoli Storage Manager that archives the data and information during the working hours without stopping the ASE's systems and applications. In 2010 the ASE replaced the Lotus Domino.Doc System with EZ Publish System, this new system has wide capacity and makes the uploading, classification and searching for the ASE's documents easier and faster. The other system which the Intranet depends on to execute its missions is the Same Time System. This system allows online communication between the ASE and its members and the members themselves, through sending and receiving urgent and vital circulations. Moreover, in order to increase the disclosure efficiency through the ASE's website and Intranet. The Same Time System was developed in 2007 by adopting a new method to disclose material information which the ASE received during the trading session, through sending a message to the members and posting the information to the website and Lotus Domino.doc System at the same time, see the ASE Annual Reports (2004) 34, (2005) 32, (2006) 32-33, (2007) 30, (2010) 36.
\textsuperscript{460} Commentators writing prior to 2010 claimed that the use of electronic methods to file and disseminate companies' information was not widespread in Jordan, and shareholders had difficulties in obtaining information about their companies from the capital market institutions since their websites contain limited information and most information was not available electronically, see Zain Sharar, A Comparative Analysis of the Corporate Governance Legislative Frameworks in Australia and Jordan Measured against OECD Principles of Corporate Governance 2004 as an International Benchmark (Doctor of Legal Science, Bond University, 2006) 140,148.
information since the ETS was launched on 26 March 2000. The ASE started early to provide its members (brokerage firms) with this information in a wide range to help them in performing their tasks, during the last 14 years the ASE has been able to meet its members' increased demand on the Trading Screens and Information Display Screens (GL screens), this demand is a natural result for the significant increase in the trading activities, trading volumes and number of traders in the ASE in the peak trading periods. The ASE disseminates the live trading information via its website on the Internet (see 5.6.1). Live trading information can be viewed from the Investors Gallery established in May 2002. In addition the ASE signed agreements with the Jordanian Television in 2001 and some international companies in the field of broadcasting of trading information such as Reuters in 1999, CNBC station in 2001, CNBC Arabic station in 2002 and Bloomberg in 2006, to broadcast the ASE's live trading information. During the last nine years the ASE signed many information dissemination agreements with Information vendors inside and outside Jordan to distribute the ASE's live trading information by mobile phones and market watch screens, banks, financial institutions and public shareholding companies are provided directly with ASE's live trading information through Information Display Screens (GL Screens) and the ASE Ticker Tape.

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462 In the beginning the ASE allowed its members to get six Trading Screens and six Information Display Screens (GL screens), first two screens of each type were for free and any other Trading Screen was for JD 400 (approximately US$ 565) annually and any other Information Display Screen was for JD 200 (approximately US$ 282) annually. After that on 21 September 2005 the ASE has increased the number of Trading Screens to eight and the number of Information Display Screens to 10, and charged JD 400 and JD 200 annually for each screen respectively. Then in 1 January 2007 the ASE has allowed its members to get 16 Trading Screens (first four screens for JD 400 annually and any other screen for JD 150 (approximately US$ 212) monthly) and unlimited Information Display Screens (first four screens for JD 200 annually and any other screen for JD 100 (approximately US$ 141) monthly). Each time the ASE provided its members with extra Trading Screens and Information Display Screens the charges were increased. The ASE in each time caused the increase for the high cost for developing the ASE's infrastructure through purchasing modern programs and devices, and the need for extra employees in the ASE's staff to maintain these screens. See the ASE announcements No 43, 8 June 2003; No 311, 21 September 2005; ASE's Board of Directors, Internal Memo, 12 September 2006 (Translated from Arabic). The Internal Memo has been collected from the ASE. Both Trading Screens and Information Display Screens provide the spectator with the ASE live trading information for all traded companies: (1) A summary of the market performance: trading value; number of traded stocks, number of transactions, index value and graph shows changes in index value. (2) Market Depth – buy and sell orders. (3) Executed orders and a graph shows changes in stock price.

463 For more information about the increase in trading values at the ASE between 2000 and 2013 see Figure 5.4.

464 The ASE launched the Investors Gallery in the fifth floor at the Housing Bank Complex in Amman city, and provided it with necessary technical equipments, Information Display Screens (GL Screens), Ticker Tapes, and several facilities, see the ASE Annual Report (2002) 26.


466 The vendors in each agreement can select their own programs and determine their characteristics to exhibit the information, as well as the subscription fees against their services.
Table 5.3: Types of Information Dissemination Agreements in the ASE:

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Numbers of Signed Agreements</th>
<th>Subscription Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information Display Screen (GL Screens)</td>
<td>7</td>
<td>JD 6000 (approximately US$ 8474) annually for every Live Information Display Screen.</td>
</tr>
<tr>
<td>Market Watch Screen</td>
<td>37</td>
<td>US$ 5, or the equivalent thereof in the Jordanian Dinars monthly for every user (screen for using the real-time information).</td>
</tr>
<tr>
<td>Mobile Phone Service</td>
<td>5</td>
<td>20% of the total monthly revenues which are collected from the customers who receive the information.</td>
</tr>
<tr>
<td>Ticker Tape/websites</td>
<td>103</td>
<td>Free</td>
</tr>
<tr>
<td>Ticker Tape/satellite channels</td>
<td>6</td>
<td>Free</td>
</tr>
<tr>
<td>Total</td>
<td>158</td>
<td></td>
</tr>
</tbody>
</table>

The ASE has not adopted a clear policy to disseminate its live trading information during the last decade whether with its members (brokerage firms), information vendors or investors in securities. Inconsistently, the ASE charges high fees for live trading information. But it disseminates the live trading information without fee via its website on the Internet through the Market Watch Live Program which provides investors in securities with comprehensive and detailed live trading information, see 5.6.1.

468 As at 31 December 2013.
469 Live Trading Information Display Agreement art 3.A, B. The agreement has been collected from the ASE.
470 According to art 18 of the Internet Trading Directives 2009 "Any Broker wishes to offer the Internet Trading Service to its clients shall sign a data distribution agreement with the ASE ".
471 Information Distribution Agreement art 3.A. The agreement has been collected from the ASE.
472 Information Distribution Agreement-Mobile Phone Service art 3.A, C. The Agreement has been collected from the ASE.
473 Ticker Tape Agreement art 3.B. The agreement has been collected from the ASE.
474 Ibid.
475 In comparison with the reasonable annual fees which the ASE charges for its members JD 400 for each Trading Screen/first four screens and JD 200 for each Information Display Screen/first four screens. The ASE charges its members high annual fees for the extra screens of each type JD 1800 and JD 1200 for each screen respectively. Similarly, In comparison with the annual fee which the ASE charges for its members against providing them with Information Display Screens as mentioned above. The ASE provides the investors directly with live trading information through Information Display Screens against a high unreasonable annual fee JD 6000 for each screen. Further, the ASE does not regulate in the information dissemination agreements with the information vendors the limits of subscription fees which the vendors may collect from their clients, and grants the vendors the right to determine the subscription fees for their services without restrictions.
With the significant decrease in trading activities and market values at the ASE in the last four years, the ASE's members (brokerage firms) have decreased the number of Trading Screens and Information Display Screens to the minimum to cut costs and avoid high fees for the extra screens. Many of the information vendors suspended their activities since they could not compete with the Market Watch Live Program which has been offered to public on the ASE's website without fee. The use of Information Display Screens to disseminate the ASE's live trading information is not widespread. The ASE's revenues from disseminating of live trading information have consequently declined over the last three years.

The ASE must review its policy to disseminate live trading information to achieve balance between all the market participants the ASE, brokerage firms, information vendors and investors in securities. There is no doubt that the ASE conversion from the public model to the business model as will be discussed in Chapter 9.3.2 will increase the commercial pressure on the ASE to focus on earnings growth and to review its policy on commercial basis to enhance these revenues.

5.6.3. The ASE's Role in Regulating Disclosure in the Listing of Securities

Another vital function for the ASE in regulating and managing the disclosure issues in the market is to regulate the disclosure in the listing of securities phase. The importance of the ASE role in reinforcing the transparency in the market in this phase appears through supplying the investors with sufficient information about the companies' securities, which will trade for the first time on the ASE, to enable them to make investment decisions.

The Listing Directives obligate companies, which apply to list their shares on the ASE for the first time, to provide the ASE with the company's Articles of Association, Memorandum of Association and Prospectus (if any); the company's Annual Report for the last fiscal year (if any), including the board's report about the company's activities and financial statements reviewed by the company's external auditor; periodic financial statements reviewed by the company's external auditor for the period between the end of the company's fiscal year and the end of the last quarter before submission the listing application (if any); a report issued by the company's board of directors which includes the company foundation, main aims, relationship with other companies, issuances of securities, performance and achievements, the future plans for the next three years, significant occurrences, shareholders names and shares owned by themselves and percentage of non-Jordanian shareholding, names of persons who own 5% or more of the company’s shares and names of the board directors and top executive management members and securities owned by themselves or their relatives and their membership in other companies' boards.


\[^{477}\text{The ASE signed only 14 Information Display Screen Agreements during 2005-2013, 7 agreements were cancelled by other contracted parties to cut costs and avoid the high unreasonable annual fee.}\]


\[^{479}\text{ASE Listing Directives 2012 art 6.B.}\]
Furthermore, according to *Listing Directives* the company, which obtains the ASE approval to list its securities, has to publish in a local daily newspaper once at least within three days before the commencement of trading its annual and periodic financial statements and a summary of the board’s report mentioned above. After that the ASE in its turn publishes an announcement on its website and Intranet to determine the company’s commencement trading date and attaches with it the information mentioned above.

5.6.4. The ASE’s Role in Disclosing the Information that Affects Trading Activities and Securities’ Prices

Another vital function for the ASE in regulating and managing the disclosure issues in the capital market is to disclose the information which the ASE receives that affects trading activities and securities’ prices. According to the *Listing Directives* the listed companies have to provide the ASE with periodic disclosures and continuous disclosures including material information and the activities of the companies’ general assemblies. In relation to periodic disclosures, all the listed companies on the ASE have to prepare and provide the ASE with an annual report within three months of the end of its fiscal year, a semi-annual report within one month of the end of its bi-annual fiscal year, a quarterly report within one month of the end of the relevant quarter.

In this connection, some companies argue that with the existence of the annual reports, semi-annual reports and continuous disclosures, the quarterly reports are unnecessary and impose on the companies extra audit costs. On the contrary, the ASE keeps emphasising that the quarterly reports play a vital role in reinforcing the

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480 Ibid art 6.D.
481 The companies and investment funds which apply to list their bonds and shares/investment units respectively on the ASE are obligated to provide the ASE with almost all the documents mentioned above, but neither of them is obligated to publish any of these documents in local daily newspapers. It is only the ASE responsibility to publish an announcement on its website and Intranet to determine the commencement trading date and disclose the documents which were submitted for the listing purposes. For more details see *ASE Listing Directives* 2012 arts 19.B, 20.B.
482 *ASE Disclosure Directives* 2004 art 3.B.
483 *ASE Listing Directives* 2012 art 17.A. All the periodic disclosures should be reviewed by the company's external auditor. According to art 17.E of these directives all issuing companies of corporate bonds listed on the ASE should provide the ASE with all the mentioned above periodic and continuous disclosures. In this connection, art 21.C of these directives also obligates the listed Investment Funds to provide the ASE with the same information and statements that are submitted to the JSC in accordance with the legislation in force.
484 In this connection, all the ASE members have to provide the ASE with an annual report, including financial statements reviewed by the company's external auditor, within 90 days of the end of its fiscal year and a semi-annual report, including financial statements reviewed by the company's external auditor within 30 days of the end of its bi-annual fiscal year, see *ASE Internal By-Law* 2004 art 33.A, *ASE Disclosure Directives* 2004 art 3.A.8.
485 The annual report should include the board’s report about the company’s activities and financial statements.
486 The semi-annual report should include financial statements
487 *ASE Listing Directives* 2012 art 17.A.1, 2, 3.
disclosure and transparency in the market through providing the investors with necessary information to make their investment decisions. Quarterly reporting is consistent with international practices. In Australia, for example, listed entities must provide the ASX with a quarterly cash flow report within one month of the end of the relevant quarter, see Chapter 8.6.

In relation to continuous disclosures, all the listed companies on the ASE have to disclose the material information and decisions that might affect its securities’ prices upon their occurrence, and provide the ASE with the agenda for their general assembly meeting within a maximum period of seven days before the meeting, and their general assembly's decisions before the trading session on the following day.

Sharar points out that there are many parties who follow up the periodic disclosure and continuous disclosure in the Jordanian Capital Market and there is a need to review and reorganise their roles in order to achieve an efficient collaboration between them. One of the overlaps between the ASE’s and other regulatory bodies' disclosure functions appears in following up the periodic reports (annual, semi-annual and quarterly reports). Listed companies on the ASE must submit to the ASE, JSC, and CCD annual and semi-annual reports, and if the companies are banks or insurance companies they have to submit these reports to the Central Bank of Jordan (CBJ) and Insurance Commission (IC) respectively. Moreover, a quarterly report must be submitted to the ASE by listed companies, and insurance companies must submit this report to the IC.

In addition to the difficulty in submitting the periodic reports to many regulatory parties, there are differences in the time frames for the annual and semi-annual reports submission. While the quarterly reports have to be submitted to the ASE and IC at the same time within one month of the end of the relevant quarter. The annual report has to be submitted to: the ASE within three months, JSC within 90 days, CCD before 21 days of the general assembly meeting which usually should be held within four months of the company's fiscal year, CBJ and IC by the end of February. Moreover, the semi-annual report has to be submitted to: the ASE and IC within one month, JSC within 30 days, CCD and CBJ within 60 days, of the end of the

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489 In this connection, all the ASE members have to provide the ASE with the material information and decisions related to their financial position, management and membership application in the ASE such as liquidation, bankruptcy, election of the board of directors or CEO and changes in these compositions upon their occurrence, see ASE Internal By-Law 2004 art 33.B.


491 Ibid art 17.A.5, 6.

492 Sharar, above n 460, 128. This section is concerned with the direct intersection between the ASE and other regulatory bodies in following up the periodic and continuous disclosures. It will not consider the intersection between the regulatory bodies' disclosure functions in general as will be explained later in Chapter 6.8.3.


company's bi-annual fiscal year. This should be rectified to provide a consistent period for reporting.

Another intersection between the regulatory bodies' disclosure functions appears in following up the continuous disclosure. The listed companies’ material information which might affect the companies' securities prices must be submitted to the ASE and JSC.\textsuperscript{495}

The ASE should be the cornerstone for regulating and managing the companies periodic and continuous disclosures in the Jordanian Capital Market. Malkawi et al argue:

"One mechanism that can be relied upon for compelling disclosure is the ASE. It can impose disclosure requirements on issuers through its ability to condition the right to trade on compliance with certain requirements commonly referred to as listing standards. … All companies must adhere to minimum disclosure requirements or they lose the privilege of the floor. Thus, trading on the ASE is regarded as a privilege, not a right. Subjecting issuers to these minimum disclosure requirements serves also as a signal of investment quality and therefore can add to the protection of investors".\textsuperscript{496}

In reality, the ASE only follows up the quarterly reports for the listed companies and general assemblies activities.\textsuperscript{497} The JSC, according to its powers in the \textit{Securities law} and \textit{Issuing Companies Disclosure Instructions}, follows companies’ periodic disclosures (annual and semi-annual reports) and continuous disclosures (material information and decisions that might affect securities' prices). It then sends the companies disclosures to the ASE to publish them via its website and Intranet as will be explained later in section 5.6.5.

As a result there is an overlap between the regulatory bodies’ functions in following up the periodic disclosure and continuous disclosure. The listed companies might face difficulties in implementing their transparency and disclosure policies and cannot comply with the related legislation particularly the \textit{ASE Listing Directives}.\textsuperscript{498} Moreover, the ASE depends on other regulatory bodies in following up compliance with the disclosure requirements. This leads to insufficient and/or ineffective monitoring upon the companies and providing the participants in the market with poor quality of disclosures which impact negatively on the market efficiency and the investor’s confidence.

\textsuperscript{495} \textit{ASE Listing Directives 2012} art 17.A.4, \textit{Instructions of Issuing Companies Disclosure 2004} arts 8, 9.
\textsuperscript{497} The ASE's press releases, which are published on its website (News Area), show high level of compliance in the last three years with an average around 88% by listed companies that provide the ASE with the quarterly report. For example, by the end of October 2013, 212 companies representing 90% of the overall listed companies at the ASE submitted their quarterly reports within the time limit, see ASE \textless http://www.ase.com.jo/en/90-listed-companies-provide-ase-their-third-quarterly-report-reviewed\textgreater (14 December 2013).
\textsuperscript{498} For example in the few past years many listed companies on the ASE submitted the quarterly reports to the JSC instead of the ASE.
In order to enhance the ASE role in this field, the JSC restrictions over the ASE role in the disclosure should be removed and a Memoranda of Understanding between both parties should be prepared to reinforce collaboration and communication between them in this field. Furthermore, the ASE may learn from the ASX experience in solving problems, see Chapter 8.6. In Australia, the information which is for release to the market must not be given to any party before it has been given to ASX and received an acknowledgement from ASX that this information has been released. The ASE legislation is required to be reviewed to ensure consistency with the timing for companies disclosures with the JSC and other regulatory bodies in the market. The ASE should also be vested with further powers to request a preliminary final report, information to correct or prevent a false market, and the unlisted company's accounts which securities are included in the listed company's assets (see 8.6).

5.6.5. The ASE's Disclosure Mechanism

The ASE has not developed a clear disclosure mechanism in performing its disclosure duties and responsibilities. It depends upon cooperation between the ASE's departments. The ASE's does not have a special department or even a special division in any department to manage the disclosure issues. On the contrary, the ASE depends on different divisions in the Listing and Operations Department and the Research and International Relations Department to manage the disclosure issues.

The Listing and Operations Department plays a primary role in performing the ASE's disclosure functions through four divisions: Listing Division, Members Division, Operations Division and Dissemination of Information Division. While each the...
Listing Division, Members Division and Dissemination of Information Division almost work solely to perform their duties, the Operations Division performs its role in cooperation with the Statistics and Publication Division and the Information Management Division in the Research and International Relations Department.\footnote{505}

The Listing Division and the Members Division in their work depend on the Administration and Finance Department, which receives from them the listed companies' and brokerage firms' disclosures (the attachments of the listing applications, periodic disclosures, continuous disclosures, material information and general assemblies' activities) to download them manually in order to publish them on the ASE's Intranet and website at the same time. It is noticed that this procedure is time consuming and causes delay in providing the information to investors which might affect their investment decisions.

It is to be noted that, there are two serious problems in the ASE’s disclosure mechanism. The periodic disclosures and continuous disclosures of the listed companies and ASE’s members are downloaded manually in order to be published on the ASE's Intranet and website. The ASE does not examine the listed companies' financial statements before publishing them, it only examines the companies' quarterly reports before publishing them, but with an emphasis on the quantitative side of disclosing rather than the qualitative side.\footnote{506} As a result for this, the ASE’s disclosure mechanism does not fulfil efficiently the ASE disclosure duties and meet the future challenges particularly the increased number of listed companies and brokerage firms.\footnote{507} This negatively impacts on market efficiency and investor’s confidence through providing the participants in the capital market with untimely and inaccurate disclosures. Many studies were conducted to analyse the efficiency of the ASE. The employed econometric procedures confirmed the inefficiency of the ASE.\footnote{508} Several factors may explain why the ASE is weak-form inefficient: First, the listed companies' disclosures are not disclosed promptly. Second, the 5% price fluctuation band restricts the movements of daily prices to capture the new information in the market. Finally, the lack of professional financial analysts that can analyse stock market returns for investors.

To improve the efficiency of the ASE’s disclosure mechanism and accordingly enhance the quality of disclosure in the capital market, the ASE should emphasis a policy of timely disclosure by adopting the electronic disclosure regime in

\footnote{505} ASE's Board of Directors, Decision No 62/2005, 22 November 2005 (Translated from Arabic). The decision has been collected from the ASE

\footnote{506} The quantitative monitoring means: assuring that all disclosure requirements mentioned in the governing legislations are fulfilled by the listed companies without reviewing the quality and validity of all these disclosures. On the other hand, the qualitative monitoring means: examining the validity, truthfulness, and timeliness of the disclosures submitted by the listed companies.

\footnote{507} There are 63 brokerage firms, and 240 Public Shareholding Companies listed on the ASE until the end of December 2013, see ASE <http://www.ase.com.jo/en/contact-information> (16 February 2014).


\footnote{509} Rawashdeh et al, above n 508, 410-411; Al-Zoubi et al, above n 10, 496.
cooperation with the capital market participants. It should also establish or delegate a certain department or division in the ASE to manage the disclosure issues. The ASE can benefit from ASX experience. As will be explained later in Chapter 8.6, ASX has enhanced its role in disclosing the listed entities’ disclosures through delegating the Company Announcement Office to receive entities' documents that are prepared for release to the market, and developing an electronic disclosure mechanism to allow the listed entities to provide the ASX with their continuous and periodic disclosures electronically. The ASE also can enhance its role by examining the companies' disclosures particularly the periodic reports before publishing them with an emphasis on both quantitative and qualitative sides of disclosing.

There is the further problem relating to the procedures by the Legal Department in the ASE to sell securities in accordance with decisions of courts and relevant official parties which violates the ASE mandatory disclosure policy. According to art 36 of the Trading Directives and Regulatory Procedures for the Sale of Securities in Accordance with the Decisions of the Courts and Relevant Official Parties 2010, the ASE is responsible to perform the sale of securities in accordance with decisions of courts and relevant official parties through the following procedures. The court or related official party contacts the ASE for the sale of certain securities. The ASE then contacts the SDC and related public shareholding company to query about the ownership of securities and ownership restrictions on these securities. After receiving the response from the SDC and related public shareholding company, the ASE delegates one of its members (brokerage firms) to sell the certain securities through the ASE in accordance with the Trading Directives. The selling brokerage firm issues a check with the value of the sold securities and submits it to the ASE. Finally, the ASE provides the court or related official party with the funds, bills and ownership restrictions on sold securities as received from the SDC and/or related public shareholding company. The decisions of courts and relevant official parties to sell securities are information that influences the price of securities and trading. The ASE must immediately disclose this according to art 3.B Disclosure Directives. But the ASE does not disclose these sales. Moreover, the ASE procedures on sale increase the problem of information asymmetry where some parties such as the selling brokers are in possession of more information than the other parties in the market. A modern ASE would need to review and modify the Internal Procedures to Sell Securities in Accordance with Decisions of Courts and Relevant Official Parties to achieve consistency with its mandatory disclosure policy and operate efficiently within the capital market.

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510 ASE Administrative By-law 2004 art 3.C.3.
511 Regulatory Procedures for the Sale of Securities in Accordance with the Decisions of the Courts and Relevant Official Parties 2010 (Jordan) art 1, JSC, 5 April 2010 (Translated from Arabic) (Regulatory Procedures for the Sale of Securities 2010). The Procedures have been collected from the ASE.
512 Ibid art 2.
513 Ibid art 3.
514 ASE Trading Directives 2004 art 36.B delegates the ASE board of directors to regulate the distribution of sales to active brokers on the ASE. According to the ASE's Board of Directors, Decision No 34/2004, 30 June 2004, the ASE should distribute sales of securities in accordance with serial numbers of its members, and move from a member to another when the member completes selling securities worth up to JD 50 000 (approximately US$ 70 621) (Translated from Arabic). The decision has been collected from the ASE.
515 ASE Trading Directives 2004 art 36.C.
5.6.6. Summary of the ASE's Disclosure Role in Jordanian Corporate Governance

The ASE participation in corporate governance through its role in disclosure and dissemination of information, as explained before in this chapter, clearly appears in adopting a mandatory disclosure and transparency policy; offering the necessary infrastructure for this purpose (ASE's website and Intranet); regulating the disclosure issues in the listing of securities phase; following the listed shareholding companies compliance with the disclosure requirements; disseminating companies' periodic and continuous disclosures as well as historical trading information and live trading information.

There is no doubt that the ASE role in disclosure and dissemination of information forms the cornerstone in developing and improving the corporate governance in Jordan through reinforcing OECD Principles in chs 2, 3 and 5. Shareholders have the right to obtain material information related to their company on a timely and regular basis. They also have the right to participate effectively and vote in general shareholder meetings by obtaining the agendas of the companies' general assembly meetings within a maximum period of seven days before the meeting, and obtaining the general assembly’s decisions before the trading session on the following day. In relation to stakeholders, they have the right to obtain sufficient and reliable information related to their company on timely and regular basis. As well, there is a duty to disseminate information to users on equal, timely and cost-efficient basis.

Furthermore, to guarantee that companies' financial statements fairly reflect the financial positions and performance of the companies, the ASE requires the listed companies to provide it with their periodic reports (annual, semi-annual and quarterly reports) reviewed by the company's external auditor. However, the ASE does not adopt any accounting standards or auditing standards to prepare the financial statements. In reality, listed companies follow the IFRS issued by the IAS and the International Auditing Standards issued by the International Federation of

517 OECD Principles ch 2.A.3, according to ch 5.A of these principles: "Disclosure should include, but not be limited to, material information on: 1. The financial and operating results of the company. 2. Company objectives. 3. Major share ownership and voting rights. 4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board. 5. Related party transactions. 6. Foreseeable risk factors. 7. Issues regarding employees and other stakeholders. 8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented."

518 OECD Principles ch 2.A.4, according to ch 5.A of these principles: "Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings: 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 2. 3. 4."


520 OECD Principles ch 4.D.

521 Ibid ch 5.E.

522 OECD Principles ch 5.C. In this regard ch 5.B stresses that "Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure"
Accountants in preparing, keeping and auditing their financial statements and documents.\textsuperscript{523} Good corporate governance practices require the ASE to adopt explicitly international standards to achieve high quality of disclosure in the market.

The ASE role in disclosure and dissemination of information is the usual role of an exchange and is consistent with international practices except in some situations as mentioned above. For instance, the ASE has not introduced an electronic disclosure system yet allows listed companies to provide the ASE with their documents electronically. Likely, all these functions will continue if the ASE where to become a publicly listed company as will be discussed later in Chapter 9. But the privatisation will not solve automatically the failures and shortcomings which impact the ASE performance in this field. To facilitate the ASE converting to the new model in future, the ASE must develop a modern infrastructure for disclosure and dissemination of information and overcome the deficits in its performance as explained above.

5.7. The ASE Role in Education and Awareness

The ASE disseminates the culture of investment and educates investors in securities through updating its website on the Internet as explained in 5.6.1; publishing documents and brochures such as the Investment Guide at ASE;\textsuperscript{524} holding series of educational lectures, awareness campaigns and training programs in the ASE's headquarter and in several locations in Jordan particularly in the universities;\textsuperscript{525} and participating in seminars, workshops, conferences, exhibitions and other economic events.\textsuperscript{526}

It is to be noted that the ASE's educational role focuses on the universities. The ASE established the Stock Exchange Simulation and Training Rooms in the Yarmouk University and University of Jordan in 2008 and 2010 respectively to educate students on dealing with the securities and stock exchange.\textsuperscript{527} The ASE also in cooperation with the JSC and SDC signed in 2009 a Memorandum of Understanding with the University of Jordan to establish King Abdullah II Chair for Securities Studies to provide specialised professional education in securities industry and improve the students' knowledge in this field.\textsuperscript{528}

\textsuperscript{523} The JSC requires issuing companies to prepare and audit their financial statements according to those standards, see the \textit{Instructions of Issuing Companies Disclosure} 2004 arts 14, 16.


\textsuperscript{528} ASE Annual Report (2009) 37-38. According to art 4 of the \textit{His Majesty King Abdullah II Chair for Securities Studies Instructions} (Jordan) JSC, 23 June 2008 <http://www.jsc.gov.jo/Public/english.aspx?site_id=1&Lang=3&Page_Id=2360&Menu_ID2=198> (31 July 2013), the Chair's objectives are:-

- A. Teaching students of law and economics and business administration, in its different specializations, specified academic material in securities, capital market and capital market's legislations.
- B. Conducting basic and applied research in the field of securities and capital markets.
- C. Providing financial support for outstanding students in securities studies according to the criterion set by the Board.
- D. Any other issues decided by the Board that are compatible with the Chair’s academic and
In order to improve its role in education and awareness, the ASE should benefit from ASX significant experience in this field which appears in offering high-quality online education resources - some of them with an interactive opportunity - in its website such as the video tutorials, live webinars and sharemarket games, see Chapter 8.9. It also should cooperate with the JSC and other regulatory bodies in the capital market to set a National Financial Literacy Strategy as the Australian experience in this field, see 8.9, to help Jordanian people to achieve their financial aims and accordingly contribute more effectively to the national economy.

5.8. Summary and Conclusions

The ASE plays significant roles in Jordanian Capital Market and Jordanian corporate governance through setting the necessary legal framework for listing and trading in securities, adopting a mandatory disclosure and transparency policy, providing the essential infrastructure for trading, trading operations supervision and disclosure of information. However, there are many legal drawbacks and shortcomings prevent the ASE from fulfilling its duties and responsibilities efficiently.

There is no variation on the financial instruments or companies listed on the ASE. There are only four types of securities and one type of company - the Public Shareholding Company - listed on the ASE with a clear absence of the investment funds. This issue is considered one of the serious problems in the Jordanian Capital Market which affects negatively the investments, trading activities and market stability.

Furthermore, the ASE’s disclosure mechanism does not provide participants in the capital market with timely and accurate disclosures, and accordingly impacts negatively the investor confidence and the market efficiency. This is because the ASE has not introduced an electronic disclosure regime yet. Its disclosure mechanism depends on many divisions in different departments to carry out its disclosure duties, and still downloads the listed companies’ disclosures manually to publish them on the ASE's Intranet and website. A further problem is that the ASE only examines the companies' quarterly reports before publishing them with an emphasis on the quantitative side of disclosing rather than the qualitative side. Another difficulty is that the follow up on disclosures is done by different regulatory bodies in different time frames. The ASE only follows up the quarterly reports for the listed companies and general assemblies activities, and depends on the JSC in following up other disclosures.

In this connection, it is notable that the ASE internal procedures to sell securities in accordance with decisions of courts and relevant official parties violate the ASE mandatory disclosure policy that the ASE does not disclose a type of information influence the price of securities and trading activities, on the contrary it offers this information to some parties without other parties in the securities market. Further, the ASE confused policy to disseminate its live trading information force; a lot of the

research nature". In second half of 2010 the Faculty of Business/Finance Department in the University of Jordan has launched a Master program in securities studies, see the JSC Annual Report (2011) 33 (Translated From Arabic).
brokerage firms to decrease their use of the live trading information methods and many data vendors to suspend their activities in this field which affects negatively the ASE's revenues from live trading information.

As well as the issues relating to the intersection and overlap between the ASE and JSC supervisory functions, the ASE inspection and investigation procedures are not well regulated. This is because of problems relating to appeals from ASE's decisions. There is also the problem that inadequate resources are not devoted to this important role of the ASE.

The ASE is unable to effectively perform its role in regulating and managing the trading activities. The first problem relates to pricing mechanisms. There are no clear mechanisms to price bonds and bills which listed for the first time on the ASE. Moreover, bonds are traded within a 5% price fluctuation band without considering the special nature of the bonds among other listed financial instruments and the factors which determine its market value. The second problem relates to the restrictions imposed on the ASE by the JSC in offering and administering the ITS. There are also operational problems such as the issue relating to telephone authorisation, see 5.4.4.

The ASE Listing Directives should be reviewed and reframed to enhance the reputation of the market and quality of listed issuers by adopting admission conditions such as the profit test, assets test and corresponding requirements with ASE. Moreover, new financial instruments should be created in cooperation with JSC to reinforce market’s depth and liquidity, and attract more investors. The ASE also should benefit from the political stability in Jordan to encourage cross listing and attract foreign investments, in particular, from Palestine, Syria, Lebanon, Iraq and Egypt in the light of the Middle East conflicts and Arab Spring consequences.

In addition, the ASE needs to adopt modern methods and technologies to deal with telephone authorization and clients identification. As well, the infrastructure needs to be improved to allow enhance the trading activities in the bonds market through adopting clear and fair mechanisms to price bonds and bills that listed for the first time on the ASE and price continuously the traded bonds on the ASE depending on the available interest in the market, coupon rate, coupon payments and time to maturity. As well as, extending the trading hours in the Bonds Market particularly the Continuous Trading Phase which is very short (only 20 minutes).

Providing the market participants with timely and accurate disclosures and reinforcing the dissemination of information and the market efficiency, could be achieved by the ASE through adopting the electronic disclosure regime in cooperation with the market participants, examining the companies' disclosures particularly the periodic reports before publishing them with an emphasis on both quantitative and qualitative sides of disclosing, and unifying the time frames for companies' disclosures with other regulators in the market.

Alongside, the above-mentioned suggestions to improve its disclosure mechanism the ASE should establish a special department or division to manage the disclosure affairs. It should also extend its powers to ask for the preliminary final report and any necessary information to correct or prevent a false market. There is also for the ASE
to review its policy to disseminate live trading information to achieve balance between all the market participants; the ASE, brokerage firms, information vendors and investors in securities. The *Internal Procedures to Sell Securities in Accordance with Decisions of Courts and Relevant Official Parties* requires amendment to achieve consistency with its mandatory disclosure policy.

An enforcement and appeals rulebook should be prepared to clarify both the ASE enforcement actions, monitoring activities and sanctions, including the procedures followed by the ASE in respect of these actions, and the appeal process. The appeals process should include information about the ASE's decisions that may be appealed and appeals available to the aggrieved parties. In this connection, the ASE should appoint compliance advisors to listed issuers and brokerage firms in relation to listing and brokers' affairs respectively to strengthen its interrelationship with them and enhance their compliance with the ASE's requirements.

It is to be noted that, the ASE is not the sole regulator in the securities market, there are many regulatory bodies in the market (CCD, JSC, SDC, CBJ and IC) with different roles and responsibilities. The ASE role in the both the capital market and corporate governance is influenced by its interrelationship with other regulatory bodies particularly the JSC which is designated as the capital market watchdog and granted wide powers to enforce the *Securities Law*. The following chapter will examine how these other regulatory bodies interact with the ASE and evaluate their interrelationship with the ASE and its impact on the ASE performance.
Chapter 6

Regulatory Framework of the Securities Market in Jordan

6.1. Introduction

The OECD Principles declare that "The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities." 529

This chapter provides the basis for evaluating the basic framework for regulation of corporate governance in Jordan and the interrelationship between the ASE and other regulatory bodies. It will be argued that the Jordanian system not only falls short in achieving transparency and efficiency but fails to "clearly articulate the division of responsibilities" among the regulatory and supervisory authorities so that there are overlapping responsibilities by regulators, demarcation and communication issues. This forms a critical backdrop to the argument in Chapter 9 that the ASE as a part of the regulatory system needs to be reformed to meet the needs of a modern securities market. The conversion of the ASE into a publicly listed company will assist the ASE to reinforce its financial and administrative independence. But the privatisation does not solve the overlap between the regulatory bodies' roles in the capital market and the lack of cooperation and communication between them. In other words, privatised or not, the ASE will have to operate within this system. This chapter evaluates the interrelationship between the ASE and other regulatory bodies in the capital market, particularly the JSC, and its influence on the ASE's role in corporate governance. The chapter identifies the difficulties in the interrelationship between these bodies and how this affects the ASE's performance. It also suggests the suitable solutions to enhance the Jordanian system and facilitate the ASE role in the market and corporate governance.

The regulatory framework of the Jordanian Capital Market can on a hierarchical form be set out as follows, see Diagram 6.1 below. The House of Nation (Parliament); Council of Ministers; Jordan Securities Commission (JSC) which deals with the issuance and regulation of securities, implementing and enforcing the securities law; the companies Control Department (CCD) which deals with registration and monitoring of companies both public and private; the Amman Stock Exchange (ASE) which is responsible for the listing of public companies and securities; Securities Depositary Centre (SDC) responsible for registration, depositing, safe-keeping, transferring ownership of securities, clearing and settlement of the trading transactions; Central Bank of Jordan (CBJ) which issues and administers special banking codes and rules for banks; and the Insurance Commission (IC) which issues and administers special insurance codes and rules for insurers. 530

529 OECD Principles ch 1.
530 According to art 45.1 Jordanian Constitution 1952 the Council of Ministers is responsible to manage all the state's internal and external issues, except the issues which the constitution or any legislation authorise their management to any other person or commission. While the JSC, SDC,
The following section 6.2 introduces the House of the Nation (Parliament) and the Council of Ministers. Section 6.3 provides an overview of the CCD's goals, powers, and organisational structure. It also investigates the CCD roles in the securities market and corporate governance. Section 6.4 deals with the JSC, its goals, powers, organisational structure, and regulatory and supervisory roles in the securities market. The section examines the JSC role in corporate governance through reinforcing transparency and disclosure, and issuance of the *Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008*. 6.5 examines the SDC's goals, powers, organisational structure, and role in the securities market. It also explores the SDC contribution in corporate governance through providing secure methods of ownership registration. 6.6 discusses the CBJ's goals, powers, organisational structure, and role in the capital market. Further, it highlights the major elements of the CBJ contribution in corporate governance. 6.7 briefly describes the IC's goals, powers, organisational structure, and role in corporate governance. 6.8 evaluates the interrelationships between the regulatory bodies and the ASE and its influence on the ASE performance in the capital market and corporate governance. 6.9 is the summary and conclusions.

CBJ and IC are independent government bodies, the CCD is a government body associated directly with the Ministry of Industry and Trade.
Diagram 6.1: Regulatory Framework of the Securities Market in Jordan

Diagram showing the regulatory framework with the following key entities:
- Parliament
- Council of Ministers
- Ministry of Industry and Trade
- Insurance Commission
- Central Bank of Jordan
- Jordan Securities Commission
- Companies Control Department
- Securities Depository Centre
- Amman Stock Exchange
6.2. The House of the Nation (Parliament) and the Council of Ministers

The House of Nation (Parliament) consists of the House of Senates and House of Representatives.\(^{531}\) The senates are appointed by a Royal Decree,\(^{532}\) and the representatives are elected by the public.\(^{533}\) The Parliament is the major legislature in Jordan. Laws issued by the Parliament are endorsed by a Royal Decree.\(^{534}\)

The Council of Ministers, after consultation with the regulatory bodies in the capital market (JSC, CBJ and IC) and Ministry of Industry and Trade, may propose to the Parliament the enactment of new laws, and amending or repealing of the existing ones.\(^{535}\) The Parliament works through some internal committees such as the Legal Affairs Committee and Economic Affairs Committee which assist the Parliament in fulfilling its regulatory role.

The Prime Minister and ministers are appointed by a Royal Decree.\(^{536}\) The Council of Ministers is responsible for managing all the state's internal and external business except those issues which the constitution or any legislation authorise their management by any other party.\(^{537}\) The Council of Ministers has the right upon the King's approval to issue temporary laws according to its powers in art 94 of the \textit{Jordanian Constitution 1952} where Parliament is not held or dissolved and necessary measures must be taken and can not be delayed. In this connection, the Council issued the temporary \textit{Securities Law 2002 no. (76)}.

Another major regulatory function of Council of Ministers is to issue the necessary by-laws, upon the recommendation of the concerned regulatory body, to implement the provisions of the laws such as the Council's authorities in art 123.A of the \textit{Securities Law 2002} and art 99.A of the \textit{Banking Law 2000 no. (28)}.

The Council of Ministers is the relevant authority that deals with the appointment of the JSC Board of Commissioners, the CBJ Board of Directors and the IC Board of Directors as will be explained later in this chapter.\(^{538}\) Moreover, these regulatory bodies are required to report to the Council and are financially dependent on the government.\(^{539}\)

The following section examines the role of the Companies Control Department as a part of the securities market regulatory framework.

\(^{531}\) \textit{Jordanian Constitution 1952} art 62.  
\(^{532}\) Ibid art 36.  
\(^{533}\) Ibid art 67.  
\(^{534}\) Ibid arts 25, 31.  
\(^{535}\) Ibid art 91.  
\(^{536}\) Ibid art 35.  
\(^{537}\) Ibid art 45.1.  
\(^{538}\) The Minister of Industry and Trade is the concerned authority that deals with appointment of the Companies General Controller as will be explained later in Section 6.3.1.  
6.3. The Companies Control Department (CCD)

6.3.1. Introduction

The CCD is a government body associated directly with the Ministry of Industry and Trade. It was established in 2002 by virtue of the Companies Law no. (40) for the purpose of registering different types of companies in Jordan and controlling them. It is controlled by the Companies General Controller, see Diagram 6.2 below. The CCD aims to develop the national economy through reinforcing the investment environment in Jordan. In order to achieve its goals the CCD seeks to improve companies registration procedures, reinforce control mechanisms over companies, assist faltering companies and develop Companies Law principles. Under the Companies Law, the CCD is responsible for registration and monitoring General Partnership, Limited Partnership, Limited Liability Company, Limited Partnership in Shares, Private Shareholding Company and Public Shareholding Companies. Only three types of companies are able to be listed in the ASE. These are the Limited Partnership in Shares Company, the Private Shareholding Company, and particularly the Public Shareholding Company which must list its securities in a stock market in Jordan. The latter is the only type of company which is listed on the ASE.

541 The CCD’s organizational structure is composed of the Companies General Controller, departments, units and assistant of the General Controller, see the Companies Control Department Administrative By-Law (No 44) 2003 (Jordan) art 3, Council of Ministers, 1 April 2003, Official Gazette, No 4591, 1 April 2003, 1474 (CCD Administrative By-Law 2003) (Translated from Arabic). Article 7.A of this By-Law authorises the Minister upon the Controller’s recommendation to establish new departments, merge and revoke any of them, and the Minister has the same authority with the CCD’s units, branches and offices.
544 The private shareholding companies may list their securities in a stock exchange as they deem appropriate (see Companies Law 1997 art 66.C.bis). However, there is no private shareholding company listed on the ASE since the JSC has rejected all the applications submitted by private shareholding companies to register their issuances with the JSC in order to list them after that on the ASE as explained in Chapter 5.3.
Diagram 6.2: The CCD Organisational Structure


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6.3.2. The CCD's Role in the Jordanian Capital Market

The CCD plays a vital role in the Jordanian Capital Market. It registers the different types of companies in Jordan. It has also the important function of supervising and monitoring the companies' activities. These include: formation and procedures of registration, capital and the minimum limit of the subscribed shares and duration of paying the unsubscribed part, underwriting of shares by founders and principles of subscription in shares by the public, methods of increasing and decreasing the capital, matters related to the corporate bonds, board of directors composition; membership terms and requirements; meetings; duties and responsibilities; remunerations; and situations in which membership is terminated, the general assembly's powers in the ordinary and extraordinary meetings and the meetings quorum, procedures of transformation and merge, and circumstances of the voluntary and compulsory liquidation and general rules of liquidation including the appointment of the liquidator and its tasks and responsibilities.

To fulfil this role, the Companies Law authorises the CCD to audit, inspect, and make copies of the documents, records and registers that belong to shareholding companies except banks and insurance companies which are separately regulated.\(^{547}\) It is also empowered to suspend companies and cancel registration.\(^{548}\) This is subject to notification and warning provisions prior to suspension or cancellation of registration.\(^{549}\) There is also provision for recommending to the Minister to establish a committee to run the shareholding company for six months until the general assembly elects a new board of directors. This can occur where the board of directors resigns and the general assembly does not elect another board of directors.\(^{550}\) It may also occur when the Minister revokes the board of directors after the Controller receives notification that the company faces serious financial and/or administrative difficulties which endanger its financial position and the rights of the shareholders and/or stakeholders.\(^{551}\) The CCD can prosecute through the courts breaches by companies of the Companies Law and breaches of their Articles and Memorandum of Association.\(^{552}\) Remedies include the extreme sanction of mandatory liquidation under art 266 of the Companies Law.\(^{553}\) The Controller has wide investigative and intervention powers as mentioned above but cannot impose monetary fines, which can only be imposed by the court.\(^{554}\) In January 2014 the CCD has started to implement art 285 of the Companies Law which empowers the CDD to transfer the violating companies to a special register for suspended companies and freeze their boards of directors.\(^{555}\)

\(^{547}\) Companies Law 1997 arts 275.A, 276, 283.A.

\(^{548}\) Ibid arts 277.A, 285.A. The CCD can freeze their boards by transferring them to a special register for suspended companies.


\(^{550}\) Ibid art 167.A.

\(^{551}\) Ibid art 168.A, B.

\(^{552}\) According to art 283.B of the Companies Law 1997 the CCD is represented before the courts by its employees, who are lawyers, appointed by the Minister or the Controller, or is represented by an attorney appointed by the Minister for this purpose.

\(^{553}\) Ibid arts 160, 266.


\(^{555}\) Soud Abd Almajed, ‘Suspending the Violating Companies after Warning’, Alrai Newspaper (Amman), Tuesday 7 January 2014 (Translated from Arabic), CCD
The CCD also plays a vital role in monitoring shareholding companies' compliance with the disclosure requirements. It also monitors the rights of shareholders and supervises the responsibilities of the board of directors.

6.3.3. Monitoring Disclosure Compliance

One of the main functions which the CCD performs in order to improve and develop the corporate governance is monitoring the shareholding companies' disclosures. According to the Companies Law the CCD is responsible for the monitoring of shareholding companies' periodic reports, the board directors' ownership of securities and their remuneration.

The shareholding company has to prepare both annual\(^{556}\) and bi-annual reports\(^{557}\) certified by the company's external auditor.\(^{558}\) Board directors must disclose to the board of directors in the first meeting, any securities owned by themselves or their relations and any changes that occur to their ownership of securities within 15 days. The board of directors has to provide the Controller with these disclosures within seven days from their submission.\(^{559}\) The shareholding companies must provide to the Controller three days prior to the general assembly meeting, a report which includes the salaries, wages, travel and transport allowances, bonuses, remunerations, and privileges of the board directors and the top executive management.\(^{560}\) In practice, some companies disclose aggregate compensation of the board only.\(^{561}\)

Although, the CCD monitors the shareholding companies' disclosures, the CCD does not publish public shareholding companies' disclosures. The CCD's website on the Internet (www.ccd.gov.jo) provides information and statistics which includes general information about the CCD, relevant legislation and publications, it also provides reports on annual and monthly statistics, research and studies.\(^{562}\) The Database also includes companies' statistics and companies inquiries; general information about each company such as its capital; objectives; headquarters and board directors.

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\(^{556}\) Within three months of the end of its fiscal year the company must prepare an annual report which includes its financial statements and the board of directors report about its activities, see Companies Law 1997 art 140.

\(^{557}\) Within 60 days of the end of its bi-annual fiscal year the company must lodge a semi-annual report includes its financial position, see Companies Law 1997 art 142.

\(^{558}\) Article 184 of the Companies Law 1997 obligates the shareholding companies to follow the recognised International Accounting and Auditing Standards in preparing, keeping and auditing their financial statements and documents. In Jordan the recognised international standards are the IFRS issued by the IAS and the International Auditing Standards issued by the International Federation of Accountants. According to standards 1 and 34 of the International Auditing Standards the company's annual report, and semi-annual and quarterly reports should be audited and reviewed respectively by the company's external auditor.

\(^{559}\) Companies Law 1997 art 138.

\(^{560}\) Companies Law 1997 art 143.A, according to this article the company has to keep a copy of this report in its headquarter and make it available for the shareholders. In this connection, the CCD checks that the privileges of the board directors and the top executive management are distributed in accordance with art 162 of the Companies Law.

\(^{561}\) ROSC Report, above n 554, 11.

According to the *Companies Law*, the shareholding companies' documents, which are kept with the Controller, are available to the shareholders and the public. While the Controller's and the court's previous approval is necessary for shareholders to examine and obtain copies of the published and unpublished documents respectively. The public can only examine and obtain copies of the published and unpublished documents upon the court's approval and under the Controller supervision.\(^{563}\)

As will be explained later in 6.8.3 there is an overlap between the CCD's and the ASE's disclosure functions. The periodic disclosure and continuous disclosure of the listed companies on the ASE are monitored by the CCD and ASE in different time frames. Further, the CCD plays a limited role in disseminating companies' information. The CCD does not publish companies disclosures, nor review the companies' financial statements before allowing the companies to publish them.

6.3.4. Monitoring the Rights of Shareholders

Another role the CCD plays in enhancing the Jordanian corporate governance is monitoring the rights of the shareholders and the equitable treatment of shareholders. The importance of the CCD role obviously appears in protecting shareholders rights in obtaining material information related to their company on a timely and regular basis as described above and exercising their rights in the general assembly meetings.\(^{564}\)

Exceptionally, the Controller takes a very active role in the company general meetings.\(^{565}\) The *Companies Law* obligates the public shareholding companies to send an invitation to the Controller to attend their general assembly meetings at least 15 days prior to the date set for the meeting and considers the meeting null and void if the Controller (or its delegate) does not attend it.\(^{566}\) The Controller is responsible for supervising the meeting procedures in order to guarantee effective participation by the shareholders and equitable treatment of all shareholders.\(^{567}\)

The Controller's supervises both the convening of the annual general meeting as well as monitoring the meeting. Firstly, the Controller cooperates with the board of

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\(^{563}\) *Companies Law 1997* art 274.

\(^{564}\) *Directives for Supervision on General Assembly Meetings (Jordan)* CCD <http://www.ccd.gov.jo/inside.php?src=news&id=5423> (28 July 2013). These directives are kind of repetition to the *Companies Law* provisions in this regard. For further discussion about the general assembly's powers in both the ordinary and extraordinary meetings see Chapter 7.4.

\(^{565}\) It is notable that the CCD role in this regard meets the OECD Principles which sets out the main features of the shareholders' rights during the general assembly meeting: providing the shareholders with a detailed meeting agenda and sufficient information about the meeting's date and location, allowing them to ask questions during the meeting related to the meeting agenda and the company's issues, and voting rights particularly in relation to the election and removal of board directors, see OECD Principals chs 2, 3.

\(^{566}\) In this regard the company should also invite the JSC which may attend, see *Companies Law 1997* art 182. Although, the private shareholding companies are not obligated to invite the General Controller to attend their meetings and his attendance is voluntary upon the board of directors' or the shareholders' request. The Controller can supervise the meeting procedures of the private shareholding companies through reviewing the minutes of the meetings which must be submitted to him within 10 days after the meeting, see *Companies Law 1997* art 78.E.bis.

\(^{567}\) Ibid art 180.A.
directors to prepare for the general assembly meeting and choose the appropriate date and location for the meeting.\textsuperscript{568} The Controller monitors the invitations, their timing,\textsuperscript{569} the meeting's agenda and requires that the invitation must attach and send the meeting agenda, board of directors' report, financial statements and the auditors' report.\textsuperscript{570} The Controller can also require the general assembly to hold an extraordinary meeting if the board of directors does not carry out its responsibilities to hold the meeting according to art 172 of the \textit{Companies Law}.

The Controller also monitors the meeting. The Controller checks whether the general meeting is quorate, the attendance of the subscribed shares,\textsuperscript{571} board directors,\textsuperscript{572} and the granted proxies at the meeting.\textsuperscript{573} The Controller also examines the quorum of the general assembly’s decisions and monitors the shareholders effective participation in the meetings through discussion and voting.\textsuperscript{574} The purpose of attendance is to ensure the correctness and legitimacy of the meeting procedures and protecting the rights of minority shareholders from actions by controlling shareholders and the board of directors. There is no formal evidence either way on its effectiveness so it is difficult to make any judgments about whether the purpose of these interventions actually works to protect shareholders rights. If the purpose of this approach is to ensure transparency and safeguard the interests of shareholders, this appears to be both costly and inefficient. It may be possible in a system with small numbers of listings as in Jordan but completely impracticable otherwise. This approach is not replicated in other systems which having ensured transparency leave to other public processes to ensure accountability. So, for example, an active financial press and opportunities for small shareholders to commence proceedings to ensure equitable treatment provide avenues for redress.

Another function of the CCD is the supervision of the board of directors' duties and responsibilities.

\textbf{6.3.5. Supervising the Board of Directors}

The Controller supervises the board of directors' performance by monitoring and supervising the board's main statutory duties and responsibilities. The board is responsible for setting the company's internal by-laws to regulate the company's administrative, financial and accounting issues.\textsuperscript{575} The board is also responsible for the appointment of a qualified general manager to run the company in cooperation

\textsuperscript{568} According to art 169 \textit{Companies Law 1997} the general assembly of a public shareholding company should hold at least one ordinary meeting per year inside Jordan within four months following the end of its fiscal year.

\textsuperscript{569} The invitation must be sent to the shareholders 14 days before the meeting's date, the date set for the meeting must be announced in two local daily newspapers and on radio or television at least once within 14 days and three days prior to meeting date respectively, see \textit{Companies Law 1997} arts 144.A, 145.

\textsuperscript{570} \textit{Companies Law 1997} arts 140, 144.B, 171.B, 174, 182. It is to be noted that the extraordinary general assembly meeting includes only the meeting agenda.

\textsuperscript{571} Ibid arts 170, 173.

\textsuperscript{572} Ibid art 177.

\textsuperscript{573} Ibid art 179.

\textsuperscript{574} Ibid arts 175.B, 176, 178.

\textsuperscript{575} The company must provide the Controller with copies of them, see \textit{Companies Law 1997} art 151.
with the Board and under the Board's supervision, and determining the general manager’s rights, duties and responsibilities by issuing special instructions for this purpose.\textsuperscript{576} As well, the Board is responsible to prepare the general assembly meetings as described before in 6.3.4 and the disclosure reports as described before in 6.3.3.

The Controller monitors if any of the board directors commits one or more of the following prohibited actions: receiving loans from the company,\textsuperscript{577} disclosing to any shareholder confidential information related to the company which he/she knows by virtue of his/her position,\textsuperscript{578} and insider trading.\textsuperscript{579}

The CCD reviews the election of the board's chairman and his/her appointment as a general manager for the company (if any).\textsuperscript{580} Furthermore, in order to avoid any conflict of interests, the Controller reviews multiple directorships (cross-directorships) in public shareholding companies,\textsuperscript{581} and examines if any of the board directors: is a board director in a competitive company or a company operating in the same business or a company which has the same objectives, carries out competitive business or has direct or indirect interest in the company's projects and contracts.\textsuperscript{582} In event of conflict, the board director should be dismissed, by the Controller, from the position in the company.\textsuperscript{583} There is no evidence that these functions are actually performed by the Controller or that the Controller is an effective force in monitoring the board of directors. For example, no action was taken when some board directors were members in more than five public shareholding companies and some board directors were on boards of competing companies.\textsuperscript{584}

Another function of the CCD is the issuance of the \textit{Code of Corporate Governance for Jordanian Companies}.

\textsuperscript{576} \textit{Companies Law 1997} art 153.A.
\textsuperscript{577} Art 139 of the \textit{Companies Law 1997} prevents the public shareholding companies from granting loans to the board directors and their relations, according to this article the prohibition does not include banks and financial companies which main objective is granting loans to the public.
\textsuperscript{578} Ibid art 158.
\textsuperscript{579} Ibid art 166.
\textsuperscript{580} Ibid arts 137.A, 152.C. According to art 137.A the board of directors has to provide the Controller with copies of its decisions related to the election of the chairman and his deputy.
\textsuperscript{581} Art 146.A of the \textit{Companies Law 1997} allows each person to be a board director in not more than five public shareholding companies, in his personal capacity in some and as a representative of a corporate body in others. Subsection B of this article states that each member in the board of directors should notify the Controller in writing about his memberships in public shareholding companies. The cross-directorships amongst Jordanian listed companies is high. In the present sample, the average percentage of directors serving in more than one board is 46\%, see Jaafar et al, above n 127, 11-13.
\textsuperscript{582} \textit{Companies Law 1997} art 148. Subsection D of this article grants an exemption for board directors of public shareholding companies who have a direct interest in the company's projects and contracts through participating in the company's public tenders in which all the participants have to submit offers; the board of directors' approval is required to allow the contract.
\textsuperscript{583} Ibid art 148.E.
\textsuperscript{584} To the best of the writer's knowledge in the past few years the SDC found many of these sound breaches and informed the Controller about them.
6.3.6. The Code of Corporate Governance for Jordanian Companies

On 28 June 2012 the CCD issued the Code of Corporate Governance for Jordanian Companies to enhance corporate governance in Jordanian companies, provide a secure investment environment and help develop the national economy. 585

The Code targets limited liability, private shareholding, unlisted public shareholding and non-profit companies which are not included in the codes and instructions for corporate governance issued by the JSC, CBJ and IC. This section omits an in-depth discussion of this Code since it does not deal with public shareholding companies listed on the ASE and consequently only has marginal relevance to the role and functions of the ASE in the Jordanian Capital Market.

The second pillar in the regulation of Jordanian Capital Market is the Jordanian Securities Commission.

6.4. The Jordan Securities Commission (JSC)

6.4.1. Introduction

The JSC is a government body and has a legal personality with financial and administrative autonomy. It was established by virtue of the Securities Law 1997 no. (23) to perform the regulatory and supervisory roles in the Jordanian Capital Market. 586 The JSC seeks to regulate and improve the capital market, shield it from dangers and protect investors in securities. 587 Furthermore, in order to achieve its goals the Securities Law 2002 grants the JSC authority and powers to regulate and monitor the issuance of securities and dealings therein, disclosure issues, licensing and registration issues of market participants (financial services companies), 588 and to supervise the ASE, the SDC, Mutual Funds and Investment Companies. 589

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587 Securities Law 2002 art 8.A.
588 Instructions of Financial Services Licensing and Registration 2005 art 2.A defines the financial services which need a previous licence from the JSC's Board of Commissioners "Activities undertaken by the financial brokers, dealers, investment trustees, investment managers, financial advisors, issuance trustees, issuance managers, margin finance activities and any other service specified by the commission". The article also defines the registered person "Any natural person who is a member of the board of directors or the board of executives, or who is a director, manager or employee of the company, or any person occupying a similar position or performing similar duties at the company, but shall not include any person whose performing only clerical duties, supporting services, or activities unrelated to securities". In this connection, according to art 44.B of these instructions the registration includes:"1- Administrative Registration: the registration granted to a natural person to practice administrative activities, which includes the members of the company's board of directors, board of executives, director, manager or any employee thereof whose duties are related to securities. 2- Technical Registration: the registration granted to practice any of the following activities: (1) Brokerage. (2) Investment Trusteeship. (3) Investment Management. (4) Financial Advisory. (5) Issuance Management. (6) Issuance trusteeship. (7) Safe custody. (8) Any other activities determined by the Board".
589 Securities Law 2002 art 8.B.
The JSC is governed by a Board of Commissioners appointed by a decision of the Council of Ministers upon the Prime Minister's recommendation endorsed by a Royal Decree.\textsuperscript{590} The Board of Commissioners, which is the highest authority in the Commission, has all the necessary authority to achieve the Commission's objects and administer it.\textsuperscript{591}

Although, the appointed commissioners are from different legal, financial and economic backgrounds, the JSC has been criticised as not being sensitive to the market needs and failing to communicate effectively with the sector.\textsuperscript{592} In order to achieve greater market intelligence, flexibility and communication with the market participants, the JSC may find advantage in establishing an external advisory committee. This has been done by the Australian Securities and Investments Commission (ASIC) which includes an External Advisory Panel (EAP) in its structure. The EAP is an advisor body established by virtue of the \textit{ASIC Act 2001} to assist ASIC in understanding the market and systemic risk in the financial system to achieve its aims.\textsuperscript{593} To fulfil the advisory role effectively the EAP consists of 15 members drawn from accounting, auditing, financial services, exchange market operators, market participants, fund management, hedge funds, investor protection, corporate, legal, academic, superannuation, banking, deposit takers, insurer, credit providers, mining, new media, and insolvency practitioners.\textsuperscript{594} This would be important to a restructured ASE as it would provide direct lines of communication with the regulator.

\textsuperscript{590} \textit{Securities Law} 2002 art 10.

\textsuperscript{591} In addition to the Board of Commissioners, the JSC organizational structure is composed of the chairman and deputy chairman, the Planning Committee and any committee established by the Board of Commissioners, consultants and experts, Chief Executive Officer, heads of departments, departments and divisions, see \textit{Administrative By-Law of JSC (No 91) 1998} (Jordan) art 4, Council of Ministers, 1 December 1998, \textit{Official Gazette}, No 4312, 1 December 1998, 4715 (JSC \textit{Administrative By-Law 1998}) (Translated from Arabic).

\textsuperscript{592} For example, there was delay in enacting some necessary legislation during the buoyancy (2005-2008), in contrast there was bad timing in enacting some legislation during the sluggish performance of the ASE.


\textsuperscript{594} Ibid.
Diagram 6.3: The JSC Organizational Structure

Board of Commissioners

Chairman

Consultants

Board of Commissioners' Office

CEO

Board of Commissioners' Secretariat Office

Information Office

Issuance Department

Disclosure Department

IT Department

Administrative & Finance Affairs Department

Implementation & Legal Affairs Department

Research & International Relations Department

Internal Audit Department

Licensing & Inspection Department

Human Resources & Development Department

Communication & Information Department

Supervision on Capital Market Institutions Department

Supervision on Trading Department

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6.4.2. The JSC Regulatory Role in the Jordanian Capital Market

One of the main responsibilities for the JSC as a regulator in the capital market is to prepare drafts of regulations and send them to the Council of Ministers to issue them in order to apply the Securities Law provisions and to discipline the administrative, financial, employees and personnel affairs of the commission.\(^{596}\)

The JSC also issues the required instructions to enforce and implement the provisions of the Securities Law. As in other Government-led Model countries,\(^{597}\) where there are higher levels of direct control, the JSC also performs an important role in its role as a regulator in reviewing the ASE's and SDC's internal by-laws, instructions and decisions.\(^{598}\) The JSC approves the ASE and the SDC internal by-laws, instructions and any amendments before they come into force. In this connection, the JSC's Board of Commissioners has the authority to make amendments. The JSC can also order the ASE and the SDC to amend their by-laws and instructions within a specific period as the JSC considers suitable to achieve its aims. The JSC also reviews the ASE's and the SDC's decisions to guarantee their compliance with Securities Law and the regulations, instructions and decisions issued pursuant thereto, and taking any actions it deems appropriate.

As will be discussed later in 6.8.1, the JSC slow performance in discharging its regulatory functions has affected negatively the ASE's flexibility as a self-regulatory organisation to meet the market needs.

6.4.3. The JSC Supervisory Role in the Jordanian Capital Market

The JSC is also responsible for supervision and enforcement under the Securities Law. The JSC monitors and supervises issuers, licensed persons, registered persons, the ASE and SDC.\(^{599}\)

The Securities Law 2002 grants the JSC wide authority to conduct any investigation, inspection and auditing to monitor the entities, subject to the JSC oversight. The JSC may inspect, audit and make copies of the documents, records and registers that belong to these entities, call witnesses to give evidence under oath and appoint experts and consultants as needed to seek their advice and expertise in investigation, inspection and audit fields.\(^{600}\) In 2004 the JSC issued Instructions of Investigating Violations of the Securities Law to clarify the procedures followed by the JSC in respect of investigation and the establishment, powers and responsibilities of the investigation committee.\(^{601}\)

\(^{596}\) Securities Law 2002 arts 12.R, 123.A.
\(^{597}\) In this regard see Stavros Gadinis et al, above n 31, 1261-62.
\(^{598}\) Ibid arts 73, 83.
\(^{599}\) Ibid art 15.A.
\(^{600}\) Ibid art 17.
\(^{601}\) The JSC has introduced a number of electronic systems and programs to develop its supervisory role. For instance, in March 2009 the JSC has launched ARAMIS Surveillance System for real time trading which is implemented in a number of international markets, see JSC Annual Report (2009) 18.
The JSC has in addition broad powers to act on breaches of *Securities Law* and related regulations.\(^{602}\) This includes fines, suspension or revocation of the license or registration, orders to stop committing, attempting to commit, causing such breach, or order the removal of the breach as well as cessation of issuance or trading in any securities.\(^{603}\) As a general measure the JSC publishes in its annual reports since 2004 the breaches of the *Securities Law* and related regulations as a precautionary action to alert the investors to the breaches and the consequences.\(^{604}\) Furthermore, to enable the JSC to perform its supervisory role, the *Securities Law* empowers the JSC authority to protect the investors and the capital market by ordering the cessation or suspension of any activity related to the securities or a specific security, the public offer of a security and the activities of licensed or registered persons.\(^{605}\)

**Table 6.1: Sanctions Taken by the JSC against Violators of the Securities Law and Related Regulations in 2010**\(^{606}\)

<table>
<thead>
<tr>
<th>Types of Sanctions</th>
<th>Issuer Companies*</th>
<th>Financial Services Companies**</th>
<th>Number of Sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fines.</td>
<td>153</td>
<td>146</td>
<td>299</td>
</tr>
<tr>
<td>Warnings.</td>
<td>32</td>
<td>27</td>
<td>59</td>
</tr>
<tr>
<td>Ceasing trading in the companies' shares by its board of directors, CEO and CFO.</td>
<td>7</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>Suspension of the licence.</td>
<td>-</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Order to stop committing the breach.</td>
<td>-</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>192</td>
<td>179</td>
<td>371</td>
</tr>
</tbody>
</table>

* These violations include the violations of public shareholding companies and their external auditors.\(^{607}\)

** These violations include the violations of the financial services companies and persons associated therewith.\(^{608}\)

Many sanctions were taken against brokerage firms who breached *the ASE Trading Directives 2004*. The JSC imposed fines on the brokerage firms who failed to obtain authorisations from their clients to sell and buy securities on their behalf, or failed to

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\(^{602}\) The JSC has the right to refer any party breaches the *Securities Law* and related regulations to the court.

\(^{603}\) *Securities Law* 2002 art 21, the JSC keeps a professional record for all the parties under its supervision and it registers their breaches in this record, these breaches are considered when they are repeated or when the parties apply for new financial services licenses or registrations, see JSC Annual Reports (2004) 13 (2011) 21.

\(^{604}\) *Securities Law* 2002 art 20, in this regard the JSC publish the names of violators, types of violations, types of sanctions, see the JSC Annual Reports 2004-2011.

\(^{605}\) *Securities Law* 2002 art 19.


\(^{607}\) Types of breaches committed by public shareholding companies such as failure to provide the JSC with preliminary results, annual report, semi-annual report; failure to disclose material information and failure to prepare financial statements according to International Accounting Standards. Types of breaches committed by auditors such as certifying false or misleading financial statements.

\(^{608}\) Types of breaches committed by financial services companies such as breaching the *Criteria Solvency Instructions*, breaching the *Margin Finance Instructions*, submitting false or misleading data to the JSC, failure to keep authorisations issued from their clients to execute selling and buying orders of securities on their behalf.
keep trading in securities agreements, or influenced the interplay of supply and demand on securities by giving a misleading and incorrect idea about the price of, trading volume of or activity on securities.\footnote{JSC Annual Report (2011) 71, 87, 92.} As explained in Chapter 5.2 the JSC's preference to exercise the supervisory role exclusively in the market has prevented the ASE from fulfilling efficiently its supervisory duties in the market. The overlap between the ASE and JSC supervisory functions effectively means that the ASE no longer plays a significant role in supervision. This is examined in detail in 6.8.2. Surprisingly, Gadinis et al found in their survey that the enforcement intensity was low in the Government-led Model jurisdictions where the regulatory powers of stock exchanges are specific and carefully defined, higher in Flexibility Model jurisdictions, which assigned a greater role to stock exchanges, and even higher in the Cooperation Model jurisdictions, where exchanges have a wide presence in the regulatory system.\footnote{Gadinis et al, above n 31, 1572. For more information about the three models see Chapters 5.2 and 9.3.2.} This suggests that the stock exchange dealing with everyday trading are capable of exercising a more effective disciplinary role than the regulator who is several steps removed from trading operations. Therefore, the importance of the ASE's supervisory role in the securities market should not be ignored even if the JSC adopted the Government-led Model.

6.4.4. The JSC role in Jordanian Corporate Governance

The JSC also has an essential role in developing and improving the Jordanian corporate governance by issuing instructions to improve corporate governance.\footnote{Instructions of Issuance and Registration of Securities 2005; Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004; Instructions on the Accounting Principles and Standards Pertaining to the Preparation of Annual and Interim Financial Statements 2007; Instructions for Estimating the Value and Disposal of Revaluation Surplus 2011 and the Code of Corporate Governance for Listed Shareholding Companies on the Amman Stock Exchange 2008.} It also monitors the compliance with these instructions and carries out necessary actions against those in breach.

A key aspect of these instructions relates to the regulating and monitoring disclosure. Disclosure is the essence of efficient capital markets. It has a significant role in reinforcing corporate governance by providing the investors with necessary information for their investment decisions. The JSC has regulated the disclosure through issuing the *Instructions of Issuance and Registration of Securities 2005* and the *Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004*. The first of these focuses on the disclosure in the initial public offer phase, by requiring any public offer must be through a prospectus approved by the JSC.\footnote{Instructions of Issuance and Registration of Securities 2005 art 5.B.} In addition each buyer must receive a copy of this prospectus. The prospectus must include all the information and data which enables the investors to make their investment decisions.\footnote{Securities Law 2002 art 34.A. according to arts 16, 17 *Instructions of Issuance and Registration of Securities 2005* the JSC should be informed of any change to the data and information of the prospectus to take any actions it seems appropriate, and it may ask for a prospectus appendix.} There are also requirements to publish information in
newspapers. The prospectus must be prepared by a licensed issuance manager according to the *Instructions of Financial Services Licensing and Registration 2005*. In this phase the Issuance Department in the JSC is responsible for the issuance and registration of securities affairs. The main responsibilities of the department are to examine whether the prospectus is accurate and in conformity with the requirements of the *Securities Law* and related regulations and recommending to the Board of Commissioners to approve the prospectuses effective, and following up the disclosure matters in this phase.

The *Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004*, impose responsibilities on issuing companies in relation to the requirements for periodic reporting and the disclosure of material facts. The periodic reports which must be disclosed by the issuing companies at specific times, and the data and information that should be included in the periodic reports, (annual, semi-annual and preliminary report about the company's activities). The issuing companies must disclose the material facts that might affect the investor's decision to buy, hold, sell or dispose of a security within a week from its occurrence. The insiders in the issuing companies who know inside information by virtue of their positions must disclose any securities owned by themselves or their relatives and any changes that occur to their ownership of securities. Compliance with filing and disclosure standards is generally good; an average of about 88% of listed companies during 2009-2012 filed their periodic reports.

In 1999 the JSC established its website on the Internet (www.jsc.gov.jo) to provide information and data in Arabic and English to investors, researchers and concerned parties. The JSC's website includes two types of information: general information and historical trading information.

The Disclosure Department in the JSC is fully responsible under the *JSC Administrative By-Law* to monitor companies' compliance with their duties and responsibilities under the *Instructions of Issuing Companies Disclosure*. The

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614 A notice of the effective prospectus should be published in two local daily newspapers twice at least before the date of sale or subscription as well as the subscription results must be informed to the JSC and published in a local daily newspaper once at least, see *Instructions of Issuance and Registration of Securities 2005* arts 5.A, 10.A.
615 *Instructions of Issuance and Registration of Securities 2005* art 11.
617 *Instructions of Issuing Companies Disclosure 2004* arts 3, 4, 6. According to these articles the company's annual report, semi-annual and preliminary report should be audited and reviewed respectively by the company's external auditor.
618 Ibid arts 8, 9.
619 Ibid art 12.
621 JSC <http://www.jsc.gov.jo/public/mainEnglish.aspx?page_id=1454> (31 May 2013). General information, such as comprehensive information about the Jordanian Capital Market, the JSC establishment; missions; objectives; future plans; management and organizational structure, licensed persons, issuances, listed companies' disclosures; periodic disclosures and continuous disclosures; corporate actions, laws and legislation related to the JSC, JSC services; reinforcing disclosure and transparency; licensing and registration; inspection upon financial services companies, the JSC's publications; the board of commissioners' decisions; annual reports; announcements and press releases. Historical trading data such as companies’ board of directors and representatives trading.
Disclosure Department performance has responded to criticisms about inefficiencies by proposing to introduce an electronic disclosure system in 2013. The issue is whether the JSC properly monitors these disclosures. Currently, the JSC does not examine the companies' disclosures, especially the periodic disclosures, once it receives them. The examination process occurs long after publishing the disclosures and does not extensively review the quality of financial statements.

The JSC also has been criticised for its failure to prohibit the insider trading by persons who have access to internal information by virtue of their position or function within the company. There have been recent reported instances. Over the eight years from 2004–2011, the JSC discovered only 17 cases of insider trading. The JSC imposed monetary fines in five cases, 11 cases were referred to the court and in one case the JSC did not take any action. Sonokrt observes that if the JSC imposed strong sanctions against the insiders this phenomenon in the Jordanian market would decrease. In this connection, Sonokrt suggests forbidding the insiders from trading in their companies' securities 15 days before the date of announcing the financial statements. There are other indicators of ineffective regulation by the JSC. One particular problem is the delay in the JSC granting approval to register capital-increase shares in time to allow investors to purchase shares.

It is worth adding that, the JSC's preference to control the capital market has hindered the ASE's effectiveness in relation to disclosure. As mentioned above, Chapter 5.6.4, the JSC follows companies’ periodic disclosures (annual and semi-annual reports) and continuous disclosures (material information), then it sends the companies disclosures to the ASE to publish them via its website and Intranet and the ASE only follows the quarterly reports for the listed companies and general assemblies activities. In order to enhance the ASE role in this field, the JSC restrictions over the ASE role in the disclosure should be removed and a Memoranda of Understanding between both parties should be prepared to reinforce collaboration and communication between them in this field. Furthermore, the ASE may learn from the ASX experience in dealing with these problems as discussed later in Chapter 8.6. The ASE legislation is required to be reviewed to ensure consistency with the timing for companies disclosures with the JSC and other regulatory bodies in the market (see 6.8.3).

In this regard see 'The JSC launched the Electronic Disclosure System', Aldostor Newspaper (Amman), Monday 11 March 2013 <http://www.addustour.com/ViewTopic.aspx?ac=%5CEconomy%5C2013%5C03%5CEconomy_issue1966_day11_id473137.htm> (Translated from Arabic). The Electronic Disclosure System was supposed to launch in August 2013, but it has not launched yet.

ROSC Report, above n 554, 11.


Sonokrt, above n 625.

Ibid. In this connection, Sonokrt indicates that governmental bureaucracy in the JSC causes an unreasonable delay in announcing the JSC's approval within 15 days from the date of this approval to register capital-increase shares through adding the reserves or the accrued retained earnings or the issuance premium. The delay in informing the concerned company with the JSC's approval to register the capital-increase shares on the 15th day leads to a late publication by the company to this approval few days and in some cases one day before the 15th day. As a result, the investors in the market do not have enough time to buy the company's shares and obtain capital-increase shares.
Another important aspect of the JSC's responsibilities relates to the issuing of the code of corporate governance and monitoring its compliance. The JSC issued in July 2008 the Code of Corporate Governance for Listed Shareholding Companies on the Amman Stock Exchange.\(^\text{629}\) The Companies Law, Securities Law, regulations and instructions issued pursuant thereto, the OECD Principles and the recommendations of the World Bank and National Association of Securities Dealers (NASD) are the sources of the Code.\(^\text{630}\) The Code deals with issues relating to stakeholders, related party transactions, independent directors, splitting the role of the chairman of the board from any executive position in the company, adopting cumulative voting in general assembly meetings to protect the minority shareholders, and establishment of the board of directors permanent Nomination and Remuneration Committee.\(^\text{631}\) The Code was issued on 29 July 2008, with a commencement date for listed companies from the first of January 2009 through disclosing in their annual reports the extent of their compliance with the Code according to 'comply or explain' rule.\(^\text{632}\) This rule distinguishes between the provisions which are based on compulsory provisions in the laws, regulations and instructions, and the voluntary provisions. In the case of voluntary compliance, the companies have the choice whether to comply or not, but if they do not comply they have to explain the reasons.\(^\text{633}\) Chapter 7.6 examines the annual reports of 244 listed public shareholding companies for 2009. It finds that 181 listed companies, representing approximately 74% of the total listed companies, disclosed in their annual reports the extent of their compliance with the Code's rules. But 63 listed companies, approximately 26% of the

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\(^\text{629}\) The JSC established in February 2006 a committee consisting of six members from the JSC, ASE and SDC to prepare the corporate governance code. During two years the committee worked hard and participated from 12-13 of December 2006 in a workshop about "The Content of Corporate Governance Codes and Consultants Mechanisms" held by the JSC in cooperation with the Global Corporate Governance Forum (GCGF) and IFC's Private Enterprise Partnership for the Middle East and North Africa (IFC PEP-MENA), and got a feedback from them about the draft code. Moreover, the committee reflected, to the extent that serves the code, the feedback which it received from the public shareholding companies and other parties such as the Jordanian Association of Certified Accountants, after publishing the draft code in the JSC's website on the Internet and sending it to the listed shareholding companies.

\(^\text{630}\) In 2004 as a part of the joint World Bank-IMF program, the Report of Observance of Standards and Codes (ROSC) assessed Jordan's corporate governance policy framework, enforcement and compliance practices. The assessment found little evidence of corporate governance scandal and good disclosure practices. The Jordanian compliance with the OECD principles of corporate governance assessed as the following: First, the right of shareholders (partially to largely observed). Second, the equitable treatment of shareholders (largely observed). Third, the role of stakeholders in corporate governance (observed). Fourth, disclosure and transparency (partially to largely observed). Finally, the responsibilities of the board (partially to largely observed). The report strongly recommended developing a code of corporate governance that focuses on board of directors' practices, minority shareholders rights and related parties transactions. As will be explained in Chapter 7 the Code of Corporate Governance for listed Shareholding Companies on the ASE 2008 adopted the ROSC's recommendations. The Code provides a detailed guidance for boards of directors including duties, responsibilities and functions. It also clarifies the related parties' transactions through defining the disclosure and approval processes to protect the minority shareholders. See ROSC Report, above n 554, 1, 9, 14-16.

\(^\text{631}\) The Code consists of five main chapters. Chapter 1: Definitions, Chapter 2: The Board of Directors of the Shareholding Company, Chapter 3: General Assembly Meetings, Chapter 4: The Shareholders' Rights and Chapter 5: Disclosure and Transparency.

\(^\text{632}\) The JSC's Board of Commissioners, Decision, 29 July 2008 (Translated from Arabic). The decision has been collected from the JSC. For more information about 'comply or explain' rule see 6.8.4.

\(^\text{633}\) The 'comply or explain' rule will be examined in-depth in 6.8.4.
total listed companies, did not. Moreover, as will be explained in Chapter 7.6, the JSC's has not taken steps to ensure that listed companies comply or explain as required under the Code. In this respect the ASE rather than the JSC's Disclosure Department may be more appropriate to follow up the Code compliance, see Chapter 6.8.4. Another difficulty is the failure to adopt clear and transparent examination process for companies disclosures. There is also a problem of overlap between codes governing listed companies dealt with in 6.8.4.

As will be discussed in 6.8, the interrelationship between the JSC and the ASE affects the ASE's role in the securities market and corporate governance. There is a serious overlap between the JSC and ASE in relation to the enforcement of the code for corporate governance as well as other regulatory, supervisory and disclosure functions.

The Third plank in the regulatory system is the Securities Depository Centre.

6.5. The Securities Depository Centre (SDC)

6.5.1. Introduction

The SDC was established in May 1999 by virtue of the Securities Law 1997 no. (23) as a non-profit public entity, with legal personality and financial and administrative autonomy. The SDC objectives are to reinforce investor confidence, enable investors to obtain information concerning their investments easily and limit the dangers of the settlements of trading transactions. In order to achieve its aims, the SDC is authorised exclusively by the Securities Law 2002 to operate in the Jordanian Capital Market under the JSC oversight the registration, depositing, safe-keeping, transferring ownership of securities, clearing and settlement of the trading transactions related thereto. The SDC provides a comprehensive secure registration system for the owners of securities. The SDC maintains up-to-date shareholder registers allowing investor identification, account and balances statements, online account viewing for investors to follow up all transactions executed to their

634 It is to be noted that non disclosure does not mean compliance with corporate governance rules in the Code.
638 The SDC issues for each investor identified on its database through its electronic systems, by it directly or by brokers or custodians, a unique number called the "SDC Investor Number", see Instructions of Registration, Deposit and Settlement of Securities 2004 arts 22, 23, 25. Article 24 of these instructions states that the SDC investor number is the National Identification Number for natural Jordanian persons and a unique number issued by the SDC to non-Jordanians and other entities.
accounts, as well as providing mechanisms for freezing accounts. Since 2002 the SDC set a legal framework for these functions through issuing *Instructions of Registration, Deposit and Settlement of Securities 2002* now repealed and replaced by the *Instructions of Registration, Deposit and Settlement of Securities 2004* and the *Internal By-Law of the Settlement Guarantee Fund 2004*. Its systems comply with international standards.

The SDC is managed by a board of directors and a full-time CEO appointed by the board. The board of directors consists of seven members, three of them are appointed by the JSC and the other four members are elected by the SDC's general assembly, which consists of public shareholding companies, public issuers, financial brokers and dealers, custodians and any other entities designated by the JSC.

The SDC is subordinated to the authority of the JSC which must approve SDC's by-laws in order to be effective, and must grant approval where it is sought to suspend a member of the SDC, see below. As will be noted in the conclusion to this section, the SDC has largely not fulfilled its statutory purpose in so far as ensuring that there is compliance with statutory by-law requirements. This is because although the SDC has the authority to monitor, investigate and sanction members for breaches of the law, it has not exercised these statutory powers. Its ability to enforce compliance is effectively neutered by the requirement that JSC approval is required to enforce suspension.

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641 *SDC Disclosure Instructions 2003* states that "The owners of securities deposited at the Centre shall have the right to view the data related to them or their ownership of securities and obtain statements or documents regarding their ownership".
642 Upon a request of the deposited securities owner the SDC may freeze his/her securities. The freezing means that neither the owner nor anyone else can dispose the securities in any form; the owner cannot dispose the securities until he/she requests the SDC to unfreeze the securities, see *Instructions of Registration, Deposit and Settlement of Securities 2004* art 132.
643 SDC has implemented the "Securities Central Operation Registry Processing and Information Online" (SCORPIO) in 2002. SCORPIO is a comprehensive system for registration, depositing, safe-keeping, transferring ownership of securities, clearing and settlement, and also it includes brokers, issuers, custodians, surveillance and auditing, pledge and website services systems. SCORPIO meets the international standards of IOSCO’s Technical Committee, the Bank for International Settlement’s Committee on Payment and Settlement Systems (CPSS), the World Federation of Exchanges (WFE), the International Securities Services Association (ISSA) and International Federation of Stock Exchanges (IFBIV), see SDC’s Annual Report (2002) 16, SDC <http://www.sdc.com.jo/english/index.php?option=com_content&task=view&id=33&Itemid=66> (31 May 2013).
644 SDC *Internal By-Law 2004* art 13.B states that "The Board of Directors shall consist of the following: 1- Two members representing Brokers and companies licensed to perform custodial activities. 2- Two members representing the rest of the centre's members not included in subparagraph (1) of paragraph (B) of this article and not licensed as Financial Brokers, Dealers or Custodians. 3- Three members of the private sector with experience in legal, financial and economic fields appointed by the Board".
645 Ibid art 7.
Diagram 6.4: The SDC Organisational Structure

SDC Administrative By-Law 2004 (Jordan) arts 3-4, JSC (Translated from Arabic). The By-Law has been collected from the SDC.
6.5.2. The SDC Role in the Jordanian Capital Market

The SDC plays a vital role in the Jordanian Capital Market under the JSC supervision. First, the SDC has responsibilities for the registration of issued securities. One of the SDC main functions is to register the public shareholding companies' issued securities, issuers' new registered securities with the JSC and the issuances of bonds; corporate bonds and private shareholding companies' shares through a public offer. In order to accomplish this function the SDC established in 2000 an Electronic Database and transferred all the issuers' registers to it.

It also has responsibility for depositing the securities and updating the securities registers and the information and data of securities owners. The SDC also authenticates the ownership of registered securities and information related to ownership. In this connection, the SDC is responsible for updating the deposited securities registers in its database by registering any increase or decrease of the capital, stock split and merger made by the issuer; updating the information and data of deposited securities owners upon the owners' or official authorities' requests; following up the placing and releasing of ownership restrictions such as liens and pledges on deposited securities.

While the SDC has full control over deposited registers, the public shareholding companies are responsible for maintaining the non-deposited registers, update them and inform the SDC of any changes that occur to these registers.

The third key responsibility of the SDC is transferring ownership of deposited securities which are traded on the ASE. At the end of the trading session the ASE

647 See Instructions of Registration, Deposit and Settlement of Securities 2004 arts 8-9.
648 SDC<http://www.sdc.com.jo/english/index.php?option=com_content&task=view&id=117&Itemid=142> (31 May 2013). Art 5 Instructions of Registration, Deposit and Settlement of Securities 2004 determines the SDC's Electronic Database content: 1- Centre's Members. 2- Securities' Issuers. 3- Securities registered at the Centre. 4- Securities deposited at the Centre 5- Owners of deposited securities. 6- Ownership restrictions placed on deposited securities and the rights of third parties related to deposited securities. 7- Transfer of securities' ownership. 8- Any other data that the Centre deems necessary to maintain.
649 Securities Law 2002 art 77.A.2, SDC Internal By-Law 2004 art 5.A.2. After transferring the shareholders registers of the public shareholding companies to the SDC's database and after auditing these registers and the owners' information by the SDC. The SDC provided the public shareholding companies with copies of their shareholders registers to check and audit them, and then it sent them on 31 December 2004 the final registers containing the deposited and non-deposited registers. It is worth adding that upon the depositing of securities at the SDC all the securities ownership certificates were cancelled, the deposited securities ownerships were authenticated as records in the SDC's database and all the deposited registers at the SDC's database substituted the issuers' registers, see Instructions of Registration, Deposit and Settlement of Securities 2004 art 14.
650 Instructions of Registration, Deposit and Settlement of Securities 2004 art 13.A states that "Securities shall be considered authenticated and eligible for deposit if the Issuer provides the Centre with the following information and data concerning each owner of the securities: 1- The Centre Number. 2- The full name. 3- The nationality. 4- The address. 5- The ownership balance of securities. 6- Any ownership restrictions on the securities and the number of securities subject to the restriction (if available)."
651 Ibid arts 20, 43, 44.
652 Ibid art 15.
653 The SDC only transfers the ownership of companies shares; bonds and subscription rights while the CBJ transfer the ownership of treasury bonds and bills as will be explained later in 6.6.2.
provides the SDC with an electronic trading file includes all the daily executed trading transactions, after receiving the file the SDC starts transferring the ownership of deposited securities from sellers' accounts to buyers' accounts, which are under the control of the SDC's members, by virtue of electronic records.\textsuperscript{654} Although, the authentication of the transfer of the deposited securities ownership is on the trade date, the buyer cannot transfer the securities to the SDC or other accounts within his/her broker control; or pledge them until the completion of settlement procedures.\textsuperscript{655}

In addition, the SDC is responsible to transfer the ownership of transactions excluded from trading\textsuperscript{656} and non-traded securities in the ASE\textsuperscript{657} in accordance with chs 5 and 6 of the Instructions of Registration, Deposit and Settlement of Securities 2004 respectively. The SDC provides secure methods of ownership registration, which the OECD Principles establish as one of the basic shareholders' rights.\textsuperscript{658}

Finally, the SDC is responsible for conducting clearing and settlement for securities transactions.\textsuperscript{659} At the beginning of 2005 the SDC implemented the clearing\textsuperscript{660} and settlement\textsuperscript{661} processes for the deposited securities that traded in the ASE on the Delivery versus Payment basis, which considered an important international standard applied in capital markets, where transfer of sold securities is against payment of funds. Moreover, to reduce the risks of the settlements of trading transactions, the Settlement Guarantee Fund was established by virtue of art 90 of the Securities Law

\textsuperscript{654} Instructions of Registration, Deposit and Settlement of Securities 2004 arts 74.A, 75.A.

\textsuperscript{655} Ibid art 75.B, C.

\textsuperscript{656} Ibid art 103. According to this article transferring the ownership of transactions excluded from trading includes: "1- Inheritance Transfers which includes the transfer of securities from a deceased’s Account to the Accounts of his lawful inheritors and the inheritance division for securities by transferring the securities registered in the Joint Account of the inheritors of a deceased to the Accounts of the lawful inheritors of those securities. 2- Family transfers that occur between ascendants and descendants and between spouses. 3- Transfers for the purpose of dividing the joint ownership of securities. 4- Donating securities to religious, charitable or social associations registered at the competent authorities. 5- Waqf of securities whether charitable or descendentiary. 6- Securities contained in wills. 7- Transfers that occur in accordance with the Law of the Government’s Acquisition of Monies that Reach Limitation. 8- Transfers in accordance with decisions of courts and execution departments."

\textsuperscript{657} Ibid art 114. According to this article transferring the ownership of non-traded securities in the ASE includes: "1- Transfer of securities suspended from listing. 2- Transfer of securities suspended from dealing. 3- Transfers of non-listed and non-Traded securities through the Market."

\textsuperscript{658} OECD Principles ch 2.A.

\textsuperscript{659} Instructions of Registration, Deposit and Settlement of Securities 2004 arts 81, 101 stress that the financial settlements of trading contracts, and all block trades that executed in the Block Trade Session in the ASE should be conducted directly between the concerned brokers without the SDC intervention unless SDC’s Board of Directors decides otherwise. The SDC only conducts clearing and settlement for companies shares and subscription rights transactions while the CBJ conducts clearing and settlement for treasury bonds and bills transactions as will be explained later in Section 6.6.2.

\textsuperscript{660} In the clearing process, the SDC calculates the net amounts that must be paid or received by the brokers by subtracting the total value of bought securities from the net value of sold securities for each broker, and then it informs the brokers electronically about the Liquidity Reserve amount and the settlement amount which must be paid within specified timeframes, see Instructions of Registration, Deposit and Settlement of Securities 2004 arts 86, 88. According to art 92 of these instructions the broker must pay the Liquidity Reserve amount on the first day after trading day (T+1) and the settlement amount on the second day after trading day (T+2).

\textsuperscript{661} In the settlement process, after receiving the brokers' payments, the SDC transfers from the Settlement Account at the Settlement Bank those payments to the accounts of brokers which should receive them, see Instructions of Registration, Deposit and Settlement of Securities 2004 art 87.
The fund, which has a legal personality with financial autonomy, is managed by the SDC's Board of Directors and CEO, and aims to cover the shortage in cash and the securities account of the fund members in connection with their purchases and sales of securities respectively.662

As an adjunct to these roles, the SDC as a keeper for the Central Registry publishes statistics and information in Arabic and English to investors, researchers and concerned parties through its website on the Internet (www.sdc.com.jo).663 The SDC website includes general information,664 historical trading information665 and accumulative statistics.666

The SDC drafts internal by-laws and instructions to manage the SDC's affairs.667 These by-laws and instructions regulate its key functions of registering, depositing, safe-keeping, transferring ownership of securities and the clearing and settlement of the trading transactions. These by-laws must be approved by the JSC in order to be effective.668 The SDC is also responsible for making the necessary decisions to implement and enforce the SDC's internal by-laws and instructions.669 The SDC is given authority under Securities Law 2002 to inspect and monitor compliance with the bylaws, instructions and decisions.670 Under the Securities Law it is a precondition for

664 General information, such as the SDC establishment; responsibilities; mission; objectives; accomplishments; future plans; management and organizational structure, the SDC members, public issuers, corporate actions, legislation related to the SDC, SDC services; client identification; account and balances statements; pledge; freezing, operations in the SDC; transfers; clearing and settlement; custodian system; Settlement Guarantee Fund; corporate actions; lien, the SDC's Electronic Systems, the SDC's publications; annual reports; memos and press releases.
665 The JSC's Board of Commissioners delegates the SDC to publish the companies' board of directors trading and their ownerships without relieving them from their disclosure responsibilities. It is to be noted that publishing the board of directors trading after the trading session reinforces the transparency in the capital market and is supposed to play an important role in restricting the insider trading by the board of directors.

666 The SDC may also disclose the following information and data in an accumulated statistical method without breach their confidentiality; registered securities at the SDC; their status; numbers and figures, corporate actions, registers of deposited securities owners, trading transactions executed through the ASE, transfer of ownership transactions executed through the SDC and cash settlement of trading transactions. See Instructions on the Disclosure of Information, Data and Records of the SDC 2003 (Jordan) art 8.B, JSC, 5 October 2003, SDC <http://www.sdc.com.jo/english/index.php?option=com_content&task=view&id=118&Itemid=143> (28 July 2013) (SDC Disclosure Instructions 2003).
667 SDC Internal By-Law 2004 art 19.B.
668 Securities Law 2002 art 83.A.
669 For example, the Internal By-Law of the SDC's Proceeds 2004; the Internal By-Law of Settlement Guarantee Fund 2004 and the Instructions of Registration, Deposit and Settlement of Securities 2004 delegate the board of directors to issue the necessary decisions to enforce the provisions of these by-laws.
membership to the SDC that the SDC can monitor compliance.\textsuperscript{671} As a co-operative measure the JSC and the ASE may send to the SDC draft legislation relevant to its work for advice.\textsuperscript{672}

In order to enable the SDC to perform its supervisory role, the \textit{Securities Law}, the \textit{Internal By-Law of the Membership and Code of Conduct 2004}, the \textit{Internal By-Law of the SDC’s Proceeds 2004}, the \textit{Instructions of Registration, Deposit and Settlement of Securities 2004} and \textit{Internal By-law of Settlement Guarantee Fund 2004} empower the SDC to impose penalties on members who breach its by-laws, instructions and decisions. This can take the form of fines,\textsuperscript{673} restrictions or suspension of activities,\textsuperscript{674} or suspension of services provided to members.\textsuperscript{675}

Although, the SDC has power to impose monetary fines against issuers and to request the JSC to suspend trading in their securities, the SDC cannot suspend any of the services it provides to the issuers without a previous approval from the JSC.\textsuperscript{676} The requirement that JSC gives approval for certain actions severely impacts on the SDC's efficiency.

In addition to the sanctions that the SDC can impose, the \textit{Securities Law} grants the SDC the right to impose a lien on its members’ securities when those members fail to settle their obligations as required by SDC.\textsuperscript{677} Since this action affects the members' property rights, it is then surprising that there are no appeals against the SDC’s decisions in the \textit{Securities Law}. This is out of step with normal processes for protecting property rights. It would be expected that, at a minimum, that there should be some restrictions on this power and that SDC should notify the JSC before taking this action.

In reality, the SDC role does not exceed informing the regulators (JSC, CCD, CBJ, IC and ASE) when it finds any breach of the law by its members. The SDC does not have a surveillance and inspection department and since its establishment in May 1999 the SDC has not monitored, inspected or investigated members.\textsuperscript{678} In the past few years the SDC has only suspended the services provided to its members and the brokers where there was a failure to pay the due fees and the due cash amounts to the settlement account within the period specified on settlement date respectively.

Developing and restructuring the payment system in relation to clearing and settlement services for securities transactions should be considered by the government to grant the ASE more flexibility to enhance its operations in the future through

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{671} \textit{Securities Law} 2002 art 82.C.2, \textit{SDC Code of Conduct 2004} art 4.B.
\item \textsuperscript{672} \textit{SDC Internal By-Law 2004} art 5.A.5.
\item \textsuperscript{674} \textit{SDC Code of Conduct 2004} arts 17.A, 23.A.
\item \textsuperscript{676} \textit{Instructions of Registration, Deposit and Settlement of Securities 2004} art 143.
\item \textsuperscript{677} \textit{Securities Law} 2002 art 85, \textit{Internal By-law of Settlement Guarantee Fund 2004} art 13.E.
\item \textsuperscript{678} The SDC organisational structure does not include a surveillance and inspection department.
\end{itemize}
\end{footnotesize}
creating new products and providing clearing and settlement services to these new products without any delay that could happen from waiting the SDC or CBJ to develop their infrastructure to follow the ASE's new products. In this regard the Jordanian Capital Market may learn from the Australian experience. As will be discussed later in Chapter 8.5, ASX provides its participants with central counterparty facilities, risk management and securities collateralization services to perform their clearing activities. It also provides a 'delivery versus payment' settlement service and is a Central Securities Depository. As a Clearing and Settlement facility licence holder, ASX is regulated by the Reserve Bank of Australia (RBA) in accordance with Securities Settlement Facilities Standards (SSF Standards) and Central Counterparties Standards (CCP Standards). In this regard ASX must comply with the standards which issued by RBA to ensure that clearing and settlement facility licensees conduct their business consistently with the stability in the Australian financial system.

Central to the regulatory system is the role played by the bank regulator.

6.6. The Central Bank of Jordan (CBJ)

6.6.1. Introduction

The CBJ was established in 1959 by virtue of the Central Bank of Jordan Law 1959 no. (4). It commenced operations in October 1964 as a public entity with a legal personality and with financial and administrative autonomy. The CBJ seeks to guarantee the convertibility of the Jordanian Dinar, preserve monetary stability and encourage the sustained economic growth in Jordan in accordance with the Jordanian government's general economic policy. In order to achieve its goals the Central Bank of Jordan Law grants the CBJ the following responsibilities and functions:

- issuing the bank notes and coins, maintaining and managing Jordan's reserves of gold and foreign currencies; regulating all matters which related to the credit to meet the requirements of economic growth and monetary stability, and adopting proper methods to deal with local economic and financial difficulties; acting as a banker and financial agent to the government and public entities, and counselling the government about preparing and executing its financial and economic policy; as a banker to licensed banks and specialised credit institutions, and oversighting them to guarantee the strength of their financial positions and to protect depositors' and shareholders' rights.

The CBJ is managed by a board of directors consists of the governor, deputy governors and five directors, with experience in financial and economic fields, appointed by a decision of the Council of Ministers endorsed by a Royal Decree.

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681 Ibid. art 10. In addition to the Board of Directors, the CBJ organisational structure is composed of the governor and deputy governor, permanent committees, executive managers and advisors, Departments, branches and divisions, see CBJ <http://www.cbj.gov.jo/uploads/CBJ_Structure_Eng_2013.pdf> (31 May 2013).
Diagram 6.5: The CBJ Organisational Structure

[Diagram showing the organisational structure of the CBJ with labels for each department and the Board of Directors, Governor, Deputy Governor, Legal Consultations Office, etc.]

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6.6.2. The CBJ Role in the Jordanian Capital Market

The CBJ plays a secondary role in the Jordanian Capital Market. It regulates the Jordanian banks' activities in specific areas in the capital market. Based on its powers under Banking Law 2000 no. (28), the CBJ issued instructions to regulate shares buyback by Jordanian banks (Treasury Stocks), the ownership of the capital of the Jordanian banks and banks' acquisition of companies' capital. Under the Treasury Stocks Instructions 2006 no. (28) the CBJ imposes additional obligations for banks over and above the regulations applying to public shareholding companies. Special conditions apply to bank buyback of their shares, and new methods of disposal of shares to the employees or the shareholders. In the Instructions of Ownership of Effective Interest in the Capitals of the Jordanian Banks 2010 no. (49), the CBJ has new regulatory powers. These instructions determine the conditions and requirements which should be met by the person who wants to possess an effective interest or increase the percentage of an interest in any bank's capital.

The CBJ also regulates and manages public debt issuances. According to the Public Debt Law 2001 no. (26) the CBJ, as a public issuer on behalf of the government, is responsible for managing the public debt issuances such as governmental Treasury Bonds and Bills. One of the CBJ main functions in managing the public debt issuances is to determine the general conditions for the Treasury Bonds and Bills issuances. In cooperation with the Jordanian banks the CBJ registers the public debt issuances. The CBJ is also responsible for the transfer of ownership of governmental securities which traded in the ASE and over the counter. The CBJ

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688 CBJ, CBJ Issuances of Treasury Bonds and Bills, Memo No 51/2006, 18 June 2006 <http://www.cbj.gov.jo/arabic/pages.php?menu_id=322> (30 July 2013) (Translated from Arabic). The general conditions such as the price of the bond/bill, the minimum and the maximum number of bonds/bills in each application for the subscription, the mechanism to apply the application for the subscription, the time in which the application of subscription should be submitted, the CBJ's department to which the application of subscription should be submitted.

689 CBJ, Regulating the Primary Market for Bonds Issued by the Government and its Corporations, Memo No 127/1998, 1 July 1998, arts 1,2, 4 <http://www.cbj.gov.jo/arabic/pages.php?menu_id=322> (30 July 2013) (Translated from Arabic). The CBJ keeps these issuances in its registers and the banks then open Safe-Custody Accounts for the owners of the bonds/bills and provide the owners with ownership certificates. Bank accounts are opened for the owners to deposit the interests and the bonds/bills values on the date of their maturity.

690 CBJ, Regulating the Primary Market for Bonds Issued by the Government and its Corporations, Memo No 127/1998 art 6. After receiving written orders from the SDC and the selling bank respectively, the CBJ starts transferring in its registers the ownership of bonds/bills from the selling
also conducts clearing\textsuperscript{691} and settlement\textsuperscript{692} for governmental securities which their ownership transfers from bank to bank.\textsuperscript{693}

6.6.3. The CBJ Role in the Jordanian Corporate Governance

The CBJ plays an essential role in enhancing the Jordanian corporate governance by issuing codes of corporate governance for banks monitoring the banks compliance with the disclosure requirements and monitoring the responsibilities of the banks' board of directors. The relevant codes are contained in the Bank Director's Handbook of Corporate Governance in 2004\textsuperscript{694} and the Corporate Governance Code for Banks in 2007.

The CBJ issued in August 2007 the Corporate Governance Code for Banks to enhance corporate governance in the Jordanian banking system. The CBJ is based on the OECD principles and the guidance issued by the Basle Committee on Banking Supervision in its publication: Enhancing Corporate Governance for Banking Organisations.\textsuperscript{695}

The CBJ requires banks to follow this code, as a model for establishing the minimum requirements necessary in preparing their own codes. The individual banks must publish their codes in their annual reports and websites. Upon the CBJ's request the banks have started to implement their codes by 31 December 2007, through applying 'comply or explain' rule by disclosing in their annual reports and websites the extent of their compliance with their codes.\textsuperscript{696}

In spite of some shortcomings in the CBJ role in following the Corporate Governance Code for Banks, (see 6.8.4), the CBJ strict policy and sound enforcement powers

\textsuperscript{691} In the clearing process, the CBJ calculates the net amounts that must be paid or received by the banks by subtracting the total value of bought bonds/bills from the net value of sold bonds/bills for each bank, and then it informs the banks about the amount which must be paid.

\textsuperscript{692} In the settlement process, the CBJ transfers the payments from the buying banks' accounts under its control to the selling banks' accounts which should receive them, and the selling bank in its turn transfers the payments to its selling clients' bank accounts.

\textsuperscript{693} CBJ, Regulating the Primary Market for Bonds Issued by the Government and its Corporations, Memo No 127/1998 art 6, according to this memo the CBJ pays the settlement amount on the first day after the trading day (T+1).

\textsuperscript{694} Bank Director's Handbook of Corporate Governance 2004 (Jordan) CBJ, 2004 \textless http://www.cbj.gov.jo/uploads/corp_e.pdf\textgreater (29 December 2013). The Handbook has five main sections, each of which addresses a broad area of corporate governance and bank director responsibilities or duties. Section 1: Introduction and background, Section 2: Directors standards, values and efficiency, Section 3: Management selection and oversight, Section 4: Planning and policies, Section 5: Internal control and audit.


\textsuperscript{696} Corporate Governance Code for Banks 2007 (foreword).
towards banks have reinforced the effectiveness of CBJ roles in both securities market and corporate governance and enhanced the banks compliance with the CBJ requirements. For instance banks' annual reports in 2011 and websites on the Internet show that all listed Jordanian banks on the ASE (15 banks) prepared their own codes for corporate governance and disclose these codes in their annual reports.\textsuperscript{697}

The CBJ monitors banks' compliance with disclosure requirements and may publish their findings as it deems appropriate.\textsuperscript{698} Banks have to provide the CBJ by the end of February every year with an annual report\textsuperscript{699} including its financial statements, the board of directors report about its activities, the board directors and their relatives ownership of securities and the board directors' and high executive management's remunerations.\textsuperscript{700} They are also required by the end of July every year to provide a semi-annual report which includes its financial position.\textsuperscript{701} Financial statements must be certified by the bank's external auditor.\textsuperscript{702} Banks must also disclose to the CBJ any acquisition which exceeds 5\% in any company's capital within 15 days from its occurrence.\textsuperscript{703} The \textit{Banking Law}, in addition, authorises the CBJ to issue special accounting requirements which are applied in priority to other rules.\textsuperscript{704}

As will be explained later in section 6.8.3, there is an overlap between the CBJ's and the ASE's and other regulatory bodies' disclosure functions. The periodic disclosure and continuous disclosure of the listed companies on the ASE are followed by the regulatory bodies in different time frames. Further, the CBJ plays a limited role in disseminating banks' information.

The CBJ supervises the banks' board of directors duties and responsibilities. The CBJ exercises supervision over the boards performance in setting the bank's policies, strategies, plans and objectives, and monitoring their implementation;\textsuperscript{705} setting the bank's internal by-laws to regulate the bank's issues;\textsuperscript{706} the appointment of qualified executive management to run the bank and providing the CBJ with the disclosure reports as described above.\textsuperscript{707}

The CBJ also monitors the equitable treatment of all shareholders through monitoring if any of the board directors or his/her relatives: deal with the bank according to

\textsuperscript{697} 13 out 15 listed banks published their codes on their websites, 7 banks published the codes directly in their websites, and 6 banks published the codes indirectly in their websites by publishing their annual reports which include the codes.

\textsuperscript{698} \textit{Banking Law 2000} art 60.B.

\textsuperscript{699} The \textit{Banking Law} obligates the banks to prepare their annual reports according to the \textit{Companies Law 1997} no.(22) and \textit{Securities Law 2002} no. (76) which adopt the IFRS as mentioned before in 6.3.3, see \textit{Banking Law 2000} arts 60.A.2, 68.A.

\textsuperscript{700} Ibid arts 63, 68, 69.A; CBJ, Circular No 10/1/11141, 12 November 2007, art 1.


\textsuperscript{702} CBJ, Circular No 10/1/11141, 12 November 2007, arts 1, 2.

\textsuperscript{703} \textit{Banking Law 2000} art 39.

\textsuperscript{704} Ibid art 60.A.2.

\textsuperscript{705} Ibid art 21.A, C, D.

\textsuperscript{706} Ibid art 21.H.

\textsuperscript{707} Ibid art 21.B.
preferential conditions, or receive loans, credits and financial assistance from the bank which exceed the determined limits in the CBJ's orders.

The CBJ also monitors the board of directors' objective independent judgement and the conflict of interests. In order to avoid any conflict of interests, the CBJ checks if any of the board directors, is a board director or a manager or an officer in another bank, or has not made disclosure of his or his relatives' personal interest in the bank's transactions and contracts. These provisions replicate the position in relation to non banking corporations. There is, however, a lack of empirical evidence about how far these roles are effectively implemented and enforced within the Jordanian Banking system thus leaving open to question issues of transparency and accountability.

As noted previously, there is a problem of overlap between codes governing companies generally, the listed companies code and banking code. There is also the problem of potential inconsistencies between codes and difficulties when banks deal with the listed companies code. Because of multiple types of codes there is overload disclosure for banks and insurance companies that have to comply with the listed companies code and other codes and specialised instructions for corporate governance issued by CBJ and IC respectively. The Australian experience in avoiding this problem is dealt with in chapter 8.8.

Another area of special risks and special codes is in relation to insurance.

6.7. The Insurance Commission (IC)

6.7.1. Introduction

The IC was established in 1999 by virtue of the Insurance Regulatory Law 1999 no. (33) as a government body with legal personality and with financial and administrative autonomy to regulate and monitor the insurance sector and improve the insurance industry, in order to develop the national economy through protecting the individuals, properties and investments. Moreover, in order to achieve its aims the IC monitors the insurance companies' solvency to guarantee adequate insurance coverage for the insured and beneficiaries' rights, and also it improves the insurance companies' services by applying a professional code of conduct and rules of ethics, and enhancing the qualifications of the insurance companies' employees in cooperation with the Jordan Insurance Federation.

The IC is managed by a board of directors which consists of the Minister of Industry and Trade as a chairman, the General Director as vice-chairman and five directors, with experience in financial and economic fields in particular the insurance business; two of them from the public sector and three of them from the private sector,

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[709] Ibid arts 46.B, 47.
[710] Ibid art 22.A.3.
[711] Ibid art 31.
[713] Ibid art 6.
appointed by a decision of the Council of Ministers upon the chairman's recommendation.\textsuperscript{714}

Diagram 6.6: The IC Organisational Structure\textsuperscript{715}

\textsuperscript{714} Insurance Regulatory Law 1999 art 8.A.

6.7.2. The IC Role in the Jordanian Corporate Governance

Because of the special risks in the insurance industry, the IC has issued *Corporate Governance Instructions for Insurance Companies 2006 no. (2)* and the *Corporate Governance Instructions for Reinsurance Companies 2010 no.(2)*. These instructions set out the responsibilities, duties and functions of the directors, executive management, audit committee and the internal auditor. It also deals with the establishment of the risk management and internal control in the insurance companies and reinsurance companies.

The IC is also responsible to follow up the insurance companies' periodic reports (annual, semi-annual and quarterly reports) which must be certified by the company's external auditor and submitted within stipulated times. Financial statements must be in accord with prescribed standards. The IC issued in March 2003 *the Instructions of Accounting Policies to be Adapted by the Company and the Forms Required to Prepare the Financial Reports and Statements* and required the insurance companies to implement the accounting policies stated in the financial statements forms attached to these instructions, these have priority if there is conflict with the IFRS. Because of special risks involved in insurance, it is standard international practise to make special regulatory provision for insurance companies.

6.8. The Interrelationship between the ASE and the Regulatory Bodies in the Jordanian Capital Market

The interrelationship between the ASE and the regulatory bodies impacts on the ASE's role and performance in the capital market and corporate governance. This involves duplication and overlap in the functions as well as, in the case of the ASE, the inability to fully exercise its powers and autonomy as a consequence of the overriding powers of the JSC. This occurs is in relation to the regulatory and

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716 The *Corporate Governance Instructions for Insurance Companies* came into force upon publication in the Official Gazette on 16 January 2007. It gave insurance companies one year to comply from this date, see Corporate Governance Instructions for Insurance Companies (No 2) 2006 art 18.
718 The *Insurance Regulatory Law* adopts the hard law form in order to enforce these instructions through delegating the IC's board of directors to impose monetary fines against who breaches the law, regulations and instructions issued by virtue thereof, see Insurance Regulatory Law 1999 arts 94, 95.
719 Submission must be within one month of the end of the relevant quarter except the annual report which must be submitted by the end of February, see Insurance Regulatory Law (No 33) 1999 art 38.A, Instructions of Accounting Policies to be Adapted by the Company and the Forms Required to Prepare the Financial Reports and Statements (No 2) 2003 (Jordan) art 4.A, IC, 2 March 2003, Official Gazette, No 4587, 2 March 2003, 1008 (Instructions of Accounting Policies 2003), Decision of the Financial Reports and Statements for the Supervisory Purposes of the Insurance Commission (No 24) 2010 arts 1-2. According to art 4.A of the *Instructions of Accounting Policies 2003* the company's annual and semi-annual reports should be audited and reviewed respectively by the company's external auditor.
720 *Implementing International Accounting Standards Instructions (No 4) 2001* art 2.
722 *Implementing International Accounting Standards Instructions (No 4) 2001* art 4.
supervisory roles, the disclosure regime and the implementation of codes of corporate governance.

As will be discussed in Chapter 9 the conversion of the ASE into a publicly listed for-profit company is the potential solution for some problems relating to the ASE’s institutional structure. The privatisation will assist the ASE to remove the government's and JSC’s control over its financial and administrative affairs and accordingly reinforce its independence. But the privatisation does not solve the overlap between the regulatory bodies' roles in the capital market and the lack of cooperation and communication between them. In other words, privatised or not, the ASE will have to operate within this system. This section will identify the difficulties in the interrelationship between these bodies and suggest the suitable solutions to enhance the Jordanian system and facilitate the ASE role in the market and corporate governance.

6.8.1. The Regulatory Roles in the Jordanian Capital Market

The ability of the ASE to fulfil its functions is severely compromised particularly by shortcomings by the JSC in discharging its regulatory functions. First, there is the problem of delays in the JSC. In order to meet market needs, the ASE must be able to quickly respond to issues as and when they occur.\(^{723}\) One of the methods for achieving flexibility and responsiveness is through the amendment of the ASE's rules. A serious problem for the ASE is the delay in approving ASE's internal by-laws, instructions and decisions.\(^{724}\) For example, there was a delay of two and a half years before the activation of the Internet Trading Service in July 2010.\(^{725}\) A further problem for the ASE relates to the failure of the JSC to implement current bylaws and instructions. As Appendix 6.1 indicates there is a very serious default by the JSC where it continues to apply old by-laws and instructions which were issued pursuant to repealed laws.\(^{726}\) In particular there is the regulatory failure to respond to the changes under the Securities Law 2002 no. (76). For instance the JSC continues to apply the Instructions of Mutual Investment 1999 no. (2) which conflicts with the later and applicable regulation of mutual funds in the Securities Law 2002.\(^{727}\) This has prevented the investors from establishing new mutual funds in the Jordanian Capital Market since 2002.\(^{728}\)

\(^{723}\) Malkawi et al, above n 496, 20.

\(^{724}\) Serious delays have also occurred in relation to the JSC's and SDC's by-laws and instructions drafts before they officially issued or approved by the JSC. The JSC and SDC roles in the Jordanian Capital Market complement the ASE role, and any influence on these roles impacts the trading activities on the ASE.

\(^{725}\) ASE Annual Report (2010) 34. It is worth mentioning that the ASE established in October 2005 a committee consisting of six members to activate the Internet Trading Service in the ASE.

\(^{726}\) The temporary Securities Law 1997 and its amendments have been repealed according to the Securities Law 2002 art 122A which became effective as of 31 December 2002 the date of its publication in the Official Gazette.

\(^{727}\) Articles 91-106 of the Securities Law 2002 regulate the mutual funds and investment companies.

\(^{728}\) There is a serious disagreement between the JSC and CCD about the nature of the mutual fund. While the CCD claims that the mutual fund is a type of the public shareholding company and must register with the CCD according to Pt 9 of the Companies Law. The JSC insists that there is a difference between the investment company and the mutual fund, the mutual fund is a legal person its establishment and registration must be with the JSC in accordance with arts 91–106 of the Securities Law.
In recognition of these problems, the JSC has established a legislation committee to support and advise the Board of Commissioners.\textsuperscript{729} It also publishes on its website draft by-laws and instructions and invites comments from participants in the securities market. This should help resolve what had become a serious problem for market participants. Co-operation is improved by the JSC providing the ASE and the SDC with the draft legislation and important decisions before issuing them. The last step is the signing of Memoranda of Understanding with the CBJ and CCD.\textsuperscript{730} If these changes are fully implemented, it will remove some of the more serious shortcomings of the JSC which seriously affect the ASE's ability to perform its role within the capital market. This has yet to be demonstrated.

The JSC slow performance negatively affects the implementation of the Securities Law, administering the JSC's, ASE's and SDC's affairs, and trading activities on the ASE. Jordan can learn from the Australian experience in improving the regulatory environment. The Corporations Act sets the legal basis for cooperation and communication between the regulators. For example, ASIC advises the Minister for Financial Services, Superannuation and Corporate Law about disallowing a proposed change to the operating rules by the financial market, clearing and settlement facilities licensees.\textsuperscript{731} Another instance, before determining, varying or revoking the Financial Stability Standards for securities settlement facilities and central counterparties, the RBA must consult with ASIC in each situation.\textsuperscript{732} Moreover, the Reserve Bank of Australia (RBA) has to publish the determination, variation and revocation in the Gazette and on the Internet and submit a copy to the Minister of Treasurer, ASIC and licensees.\textsuperscript{733}

6.8.2. The Supervisory Roles in the Jordanian Capital Market

All the regulatory bodies in the capital market are granted wide authority and powers to conduct any investigation, inspection and audit to monitor the compliance with the applicable laws and regulations, instructions, and decisions.\textsuperscript{734} They have also been given extensive powers to take action to protect the investors and the capital market,\textsuperscript{735} and to impose sanctions against entities and persons who breach or take

\textsuperscript{729} The legislation committee was established in 2003, but since 2009 it has been frozen.

\textsuperscript{730} Memorandum of Understanding between the CBJ and the IC 2006 art 2.2, Memorandum of Understanding between the CBJ and the JSC 2010 art 1.3, 4 and Memorandum of Understanding between the CCD and the JSC 2010 art 1.2, 3 obligate the regulatory bodies to cooperate in preparing the legislation and provide each other with their legislation. Furthermore, according to Memorandum of Understanding between the CBJ and the JSC 2010 art 1.8 both regulators have to establish a technical committee in order to set a mechanism to apply the Treasury Stocks Instructions 2006 and the Instructions of Ownership of Effective Interest in the Capitals of the Jordanian Banks 2010. To the best of this writer's knowledge the technical committee was established, but it was gathered once only in 2011 and it has not achieved its purpose yet. (Translated from Arabic) all the MOUs have been collected from the JSC and CBJ.

\textsuperscript{731} Corporations Act (No 50) 2001 (Cth) ss 793E(2)-(3), 822E(2)-(3).

\textsuperscript{732} Ibid s 827D(1).

\textsuperscript{733} Ibid s 827D(3), (6-9).


preparatory measures to breach the relevant legislation. In relation to the ASE, it has power under the Securities Law and the Internal By-Law of the ASE to conduct any investigation and impose disciplinary actions against its members and persons associated therewith who breach or take preparatory measures to breach the ASE's by-laws, instructions and decisions, and the Securities Law, regulations, instructions and decisions. This causes a direct conflict with the JSC which has same powers in relation to breaches under the Securities law.

There is an overlap between the regulatory bodies' supervisory roles in the capital market with a lack of demarcation in their functions and lack of cooperation and communication between them. There is a duplication of functions in relation to the monitoring and supervision of the board of directors. The CCD, CBJ and IC all have responsibilities for monitoring and supervising the board of directors' principal statutory duties and responsibilities, the exercise of board of directors' objective independent judgement and the equitable treatment of all shareholders.

In addition to the overlapping powers of the regulatory bodies, there is lack of clarity in relation to the appellate processes. On one hand the appellate processes against the CBJ's and the IC's decisions are clear in the Banking Law and the Insurance Regulatory Law. They provide that the aggrieved parties against whom an action is taken can appeal before the High Court of Justice within 30 days from the day this decision is issued. On the other hand the appellate processes against the JSC's, ASE's, SDC's and CCD's decisions are not clear in the Securities Law and the Companies Law. The Securities Law states that aggrieved parties have a right to appeal to the High Court of Justice where monetary fines are imposed by the JSC, but the Securities Law does not set out the time period for appeal. The Securities Law does not clarify the appellate processes against the JSC's, ASE's and SDC's decisions, if they can be appealed or not, to whom they can be appealed or the appellate period. Similarly, the appellate processes in the Companies Law against the CCD's decisions are not well defined. In some cases the aggrieved parties do not know if they can appeal or not, to whom they can appeal or the appellate period. This is the case where the CCD suspends any company and freezes its board of directors by transferring it to a special register. Moreover, the Companies Law sets out different appellate periods and allows the aggrieved parties to appeal before different courts, in some cases before the High Court of Justice and in other cases before the court at first instance. To determine the appellate processes against these decisions the aggrieved parties who want to appeal have to return to the general provisions in the High Court of Justice Law no. (12) 1992.

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737 See Securities Law 2002 art 68. A.
738 See ASE Internal By-Law 2004 art 36. A.
739 As explained before in Chapter 5.2 the JSC prevents the ASE from receiving investors complains, and obligates the ASE to submit the investigations’ findings to the JSC to continue the investigations procedures and carry out necessary actions by itself.
741 In this connection, Malikawi et al, above n 496, 6 criticise the JSC's authority and powers since there are few checks on its powers.
743 According to High Court of Justice Law 1992 art 12. A, B the appeal must be filed by an aggrieved person within 60 days from the date of submitting the decision to him, or publishing it in the Official
Laws in a Government-led Model countries subject the market institution's discretion in the exercise of its enforcement powers to government agency oversight.\textsuperscript{744} The difficulty is that the ability of the ASE and SDC to act quickly to protect investors and the capital market is seriously hindered by the delays caused by the requirement of JSC prior approval. Indeed both the ASE and the SDC do not have any effective supervisory roles in the Jordanian Capital Market as explained in 5.2 and 6.5.2. It is to be noted that the direct conflict between the ASE's and the JSC's supervisory powers in \textit{Securities Law} and the JSC restrictions over the ASE supervisory powers are a serious barrier for the ASE to fulfil its supervisory responsibilities and consequently impact negatively the trading operations supervision, trading activities and investor confidence. In this connection, privatising the ASE to a publicly listed company will lead to more conflicts of interest between the ASE's roles as a market supervisor and a publicly listed company at the same time and increase the grey area that exists between the ASE and JSC. While some jurisdictions significantly reduced the scope of stock exchanges' powers after privatisation, no jurisdiction has considered it necessary to remove all regulatory powers from stock exchanges.\textsuperscript{745} Reframing the ASE and JSC supervisory roles in relation to listing, trading in the market and brokers participating in it as well as shifting the supervision over the real-time trading activities to the JSC, which the ASE does not exercise in reality, will lead to faster enforcement procedures and reduce the duplication of the supervisory roles between JSC and ASE. The JSC enforcement powers, as a default regulator for the securities market, should include the supervision of the real-time trading activities, the operation of markets and conduct of brokers on markets or towards their clients. On the other hand, the ASE enforcement powers should only be against the listed issuers and the ASE members who breach the listing directives and the membership requirements in the ASE's internal by-laws and instructions respectively. As will be clarified later in Chapters 8.7 and 9.3.2, Australia solves this problem by shifting to ASIC in August 2010 the supervision of the real-time trading activities, the operation of ASX and ASX 24 markets and brokers responsibility to the market and their clients.

In order to reinforce the cooperation and communication between the regulatory bodies in the supervisory area and avoid the overlap between their supervisory roles Memoranda of Understanding were signed between CBJ and IC,\textsuperscript{746} CBJ and JSC,\textsuperscript{747} and CCD and JSC.\textsuperscript{748} There is no formal evidence about whether these memoranda have overcome the problems of overlapping jurisdiction. More clearly defined

\textsuperscript{744} In this regard see Gadinis et al, above n 31, 1259.
\textsuperscript{745} Ibid 1258.
\textsuperscript{746} Memoranda of Understanding between the CBJ and the IC 2006 art 3.1, 2 regulates the cooperation between them in the supervisory area, and obligate each party to provide the other party with the material investigation results related to the banks and insurance companies which subject to their supervision.
\textsuperscript{747} Memoranda of Understanding between the CBJ and the JSC 2010 art 2.1 obligates each party to provide the other party with the material investigation results related to the financial services companies which subject to their supervision.
\textsuperscript{748} Memoranda of Understanding between the CCD and the JSC 2010 art 2.
demarcation of authority and rights of enforcement would assist in avoiding some of the problems outlined above.

It is to be noted that in Australia many procedures were taken to improve the cooperation and communication between the regulatory bodies in the supervisory field. The *Corporations Act* sets the legal basis for the cooperation. For instance, ASIC, as a market regulator, exercises some of its powers in cooperation with Minister for Financial Services, Superannuation and Corporate Law such as providing the Minister with an annual assessment about the licensees compliance with their obligations as a market operator or clearing and settlement facility. ASIC also informs the Minister; if any licensee fails to comply with their obligations in s 792A or s 821B(1) of the *Corporations Act*. Another instance, the RBA advises the Minister of Treasurer; if any licensee fails to comply with the financial stability standards and in relation to any matter concerning the clearing and settlement facilities. It also requests ASIC to give a direction to the clearing and settlement licensees to comply with financial stability standards or reduce systemic risk.

Another aspect of cooperation is the establishment of the Council of Financial Regulators (CFR) which includes representatives from the four main financial regulatory agencies in Australia. The CFR aims to enhance the efficiency and effectiveness of Australian financial regulation through reinforcing cooperation and communication between the regulatory agencies and advising the government about the adequacy of Australia's financial system architecture in light of ongoing developments. The CFR released in September 2008 a joint Memorandum of Understanding to ensure close consultation and avoid overlaps and gaps in regulatory coverage. The Memorandum covers both financial crisis management arrangements including the regulatory agencies responsibilities during such times and operational matters such as exchange of information and arrangements to avoid overlap of responsibilities. It will be recommended in 6.9 that Jordan adopt a similar approach.

The problems of overlap also extend to issues of disclosure.

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749 *Corporations Act 2001* ss 794C, 823C. According to:
- s 794C(3)-(6) ASIC has to provide the Minister and the licensee with a copy of the report and may publish the report or part of it when it deems appropriate.
- s 823C(3)-(6) ASIC has to provide the Minister and the RBA with a copy of the report and may publish the report or part of it when it deems appropriate.

750 Ibid ss 792A, 821B(1).

751 Ibid ss 821BA(2), 827C.

752 Ibid ss 823E(1), (8). In this connection, before giving, varying or revoking the direction according to *Corporations Act 2001* s 823E(1) ASIC must consult the RBA.

753 The CFR comprises two representatives from the four main financial regulatory agencies: the Reserve Bank of Australia (RBA) - which chairs the CFR, the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Australian Treasury, see RBA <http://www.rba.gov.au/fin-stability/reg-framework/cfr.html> (31 January 2013).


755 Ibid.
6.8.3. The Disclosure Regime in the Jordanian Capital Market

There is again an overlap between the regulatory bodies' disclosure functions. There is a lack of demarcation in their functions and lack of cooperation and communication between them in following up periodic disclosure and continuous disclosure.\(^{756}\)

One of the overlaps is in following up of the periodic reports (annual, semi-annual and quarterly reports). Listed companies on the ASE must submit to the ASE, JSC, and CCD annual and semi-annual reports, and in the case banks or insurance companies they have to submit these reports to the CBJ and IC respectively.\(^{757}\) Moreover, a quarterly report must be submitted to the ASE by listed companies;\(^{758}\) insurance companies must submit this report to the IC.\(^{759}\) In addition to the difficulty in submitting the periodic reports to many regulatory bodies, there are differences in the time frames for the reports submission.\(^{760}\)

Another issue concerns continuous disclosures.\(^{761}\) The listed companies' material information and the insiders' disclosures must be submitted to the ASE and JSC,\(^{762}\) and to the JSC and CCD respectively.\(^{763}\) Moreover, the remunerations report must be submitted to the CCD and in relation to banks to the CBJ.\(^{764}\) Acquisitions which exceed 5% of capitals must be submitted to the JSC and in relation to banks to the CBJ.\(^{765}\)

In addition to the difficulty in submitting the continuous disclosures to many regulatory bodies, there are again differences in the time frames for the continuous disclosures submission. Material information has to be submitted to the ASE and JSC

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\(^{756}\) Zain Sharar referred in his study to this overlap and the need to review the regulatory bodies' disclosure roles to achieve an efficient collaboration between them, *A Comparative Analysis of the Corporate Governance Legislative Frameworks in Australia and Jordan Measured against OECD Principles of Corporate Governance 2004 as an International Benchmark* (Doctor of Legal Science, Bond University, 2006) 128.

\(^{757}\) See ASE Listing Directives 2012 art 17.A.1. 2; Securities Law 2002 art 43.A.1. 2; Companies Law 1997 arts 140, 142; Banking Law 2000 art 63; CBJ, Circular No 10/1/11141, 12 November 2007, art 1; CBJ, Circular No 10/2/7563, 12 May 2002; *Decision of the Financial Reports and Statements for the Supervisory Purposes of the Insurance Commission (No 24) 2010* art 2.\(^{758}\) According to art 15.B of the repealed ASE Listing Directives 2004 only listed companies on the First Market were obligated to submit a quarterly report for the ASE.


\(^{760}\) The annual report has to be submitted to: the ASE within three months; JSC within 90 days; CCD before 21 days of the general assembly meeting which usually should be held within four months of the end of the company's fiscal year, CBJ and IC by the end of February. The semi-annual report has to be submitted to: the ASE within one month; JSC within 30 days; CCD within 60 days of the end of the company's bi-annual fiscal year, CBJ and IC by the end of July. The ROSC Report pointed out that the timelines of periodic disclosure remains an issue for some listed companies, see ROSC Report, above n 554, 12.

\(^{761}\) As mentioned before in this chapter companies' continuous disclosures include: the material information which might affect the company's securities price; dealings of insiders and their relatives in securities issued by the company; the privileges of the board directors and the top executive management; any acquisition which exceeds 5% in any company's capital.


\(^{763}\) See *Instructions of Issuing Companies Disclosure* art 12, *Companies Law 1997* art 138.

\(^{764}\) See *Companies Law 1997* art 143, *Banking Law 2000* art 69.A.

immediately from its occurrence. But insiders' disclosures have to be submitted to the JSC directly within one week from their occurrence, and the CCD indirectly in that the board directors must disclose to the board of directors within 15 days, and in turn the board of directors has to provide the Controller with these disclosures within seven days from their submission. 766 Furthermore, regardless of the party which acquires 5% or more in any company's capital, the acquisition must be disclosed to the JSC within one week, and the CBJ - if the party is a bank - within 15 days from its occurrence. While, the Companies Law obligates the companies to submit the remuneration report to the CCD three days before the general assembly meeting, the Banking Law obligates the banks by the end of February every year to provide the CBJ with an annual report including the board directors' and top executive management's remuneration. 767

Furthermore, except the CBJ and IC which review the banks' and insurance companies' annual reports respectively, 768 neither of the regulatory bodies reviews the companies' financial statements before publishing them or allowing the companies to do that. 769 Moreover, there are differences in the publication time frames and methods. The CBJ obligates banks to publish their annual reports in two local daily newspapers within six months of the end of the fiscal year. 770 The JSC and CCD obligate companies to publish them, in any method, within three months of the end of the fiscal year and 30 days of the general assembly meeting respectively. 771

The regulatory bodies have limited roles in disseminating companies' information. It may be that Jordan has been relatively slow in adopting internet disclosure and electronic filing and dissemination of information. But modern systems rely on electronic methods of disclosure and the ASE and the Jordanian regulatory system need to meet international standards in order to be internationally competitive. In 2010 the ASE and JSC have improved and enhanced their websites through offering the listed companies' historical disclosures, periodic disclosures and continuous disclosures from 2001 and allowing the investors to easily access these disclosures. The SDC's website includes the board of directors trading and ownership. The websites of the CCD, CBJ and IC are considered poor sources of companies' disclosures and information for shareholders, investors, researchers and concerned parties. The CCD's website includes only the companies' Database. The CBJ's and IC's websites include almost nothing related to companies' disclosures and information. Neither of these regulatory bodies has thus far adopted the electronic disclosure regime. 772

766 Companies Law 1997 art 138. While the Companies Law sets out the insiders in this article "The chairman and every member of the board of directors of a public shareholding company, its general manager, and principal managers ...", The Securities Law 2002 adopts a broad definition in art 2 "A person who possesses inside information by virtue of his position or job".
767 Banking Law 2000 art 69.A.
769 As explained before in Chapter 5.6.4. The ASE examines the companies' quarterly reports before publishing them, but with an emphasis on the quantitative side of disclosing rather than the qualitative side.
770 Banking Law 2000 art 66.A.
771 Instructions of Issuing Companies Disclosure 2004 art 5, Companies Law 1997 art 141.
772 As mentioned before in Section 6.4.4 the JSC was supposed to launch the Electronic Disclosure System by the end of August 2013, but the system has not launched yet.
As a result of the inconsistent rules and following the periodic and continuous disclosures by different regulators in the market, listed companies face difficulties in implementing their transparency and disclosure policies and complying with the legislation particularly the Directives for Listing Securities on the ASE 2012. Moreover, the ASE depends on other regulatory bodies in following up compliance with the disclosure requirements. All this leads to ineffective monitoring of companies and results in poor quality of disclosures which impact negatively on the market efficiency and potentially investor confidence.

Providing the market participants with timely and accurate disclosures and reinforcing the dissemination of information and the market efficiency, could be achieved by the regulatory bodies through focusing on the enforcement of the disclosure provisions, adopting electronic disclosure regime in cooperation with the market participants, examining the companies’ disclosures particularly the periodic reports before publishing them with an emphasis on both quantitative and qualitative sides of disclosure, and reviewing the related legislation to unify the time frames for companies’ disclosures. In Australia, ASX has developed an electronic disclosure mechanism to allow the listed entities to provide ASX with their continuous and periodic disclosures electronically. As well, ASX Listing Rules oblige the listed entities on ASX to provide ASX with periodic disclosures at the same time they lodged with ASIC or security holders. The Listing Rules also stress that the information which is for release to the market must not be given to any party before it has been given to ASX and received an acknowledgement from ASX that this information has been released, see Chapter 8.6.

Corporate governance codes are another area of significant overlap.

6.8.4. Codes of Corporate Governance in the Jordanian Capital Market

During the last decade, four codes and two specialised instructions on corporate governance were issued by the CBJ, JSC, CCD and IC. The Insurance Regulatory Law adopts the hard law form in order to enforce the corporate governance instructions. It states in art 45.B that the IC’s Board of Directors issues the instructions which determine the corporate governance, and delegating the board in art 94 to impose monetary fines not less than JD 1000 (approximately US$ 1412) and not more than JD 10 000 (approximately US$ 14 124) against insurance companies who breach the law, regulations and instructions. The Corporate Governance Instructions for Insurance Companies 2006 no.(2) came into force in early 2007. The IC has been conducting offsite supervision and onsite visits on insurance companies to ensure their adherence to the corporate governance rules through reviewing the insurance companies’ adopted policies and systems in this regard. In 2011 the IC fined two

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773 For more information about the influence of the intersection between the regulatory bodies’ disclosure functions on the ASE performance see Chapter 5.6.4.
774 As explained before in Chapter 5.6.4 the ASE only follows the listed companies’ quarterly reports and general assemblies activities, and depends on the JSC in following up the companies compliance with other disclosure requirements.
775 ROSC Report, above n 554, 1, 12, 16.
776 Ibid.
insurance companies which had breached the corporate governance instructions. In one case, the board of directors did not include the minimum number of independent directors and in the other case the company did not hire an internal auditor. The number of insurance companies is small (only 27 companies) and the IC did not in the early days act to enforce the instructions. It only started to do so some five years after the commencement of the instructions at the end of 2011. Enforcement, monitoring and supervision are costly exercises. In the context of insurance companies this has been feasible where there are only 27 insurers. The question is whether it would be feasible to adopt the hard law approach to enforce corporate governance code with a larger number of listed companies (240 companies).

The use of broadly stated principles, rather than reliance on more detailed rules has been a feature of the regulatory regime for financial services since 1992. This UK style approach to regulate capital markets aims to reframe the regulatory relationship from one of directing and controlling to one based on responsibility, mutuality and trust. Within this approach the regulators communicate their goals and expectations in the principles, the firms adopt a self reflective approach to development of processes and practices to achieve the outcomes the regulators seek. The principles based regulation regime (PBR) has many characteristics, in addition to shifting the responsibility to the firms for ensuring that the objectives of the principles are met, these principles are a purposive approach to interpretation worked out through iterated regulatory conversations; a broadly responsive approach for enforcement; a focus on outcomes; and adoption of the meta-regulatory techniques (focusing on the firms' internal systems of management and control).

The codes on corporate governance as models of PBR provide a flexible regulatory regime which can facilitate innovation. The formal principles provide flexibility, facilitate regulatory innovation in the methods of supervision, enhance competitiveness and grant the regulatory regime some durability in a rapidly changing market environment. Although, the principles facilitate the interpretation of the regulatory objectives and responsibilities of firms more clearly for some, they may hinder the interpretation and communication for a number of reasons. One reason is

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779 The principles have a number of characteristics: they are drafted at a high level of generality; they contain terms which are qualitative not quantitative; they express the reason behind the rule; they are behavioural standards by focusing on integrity and reasonable care for example. See Julia Black, ‘Forms and Paradoxes of Principles Based Regulation’ (LSE Law, Society and Economy Working Paper No 13/2008, London School of Economics and Political Science - Law Department, 23 September 2008) 8, Social Sciences Research Network electronic library <http://ssrn.com/abstract=1267722> (18 January 2014)
780 Ibid 8.
782 Black, 'Forms and Paradoxes of PBR', above n 779, 12-24; Black, 'The Rise, Fall and Fate of PBR', above n 781, 5-11. There are four forms of PBR: formal, substantive, full and polycentric PBR. The PBR can be formal in the sense that there are rules in the rule books including legislation, codes of practice and so on. When the regime has some operational characteristics of a PBR regime but does not principles in the rule books it is described substantive. Where it is both, it is it is described as full PBR. Polycentric PBR is full PBR with the additional element that is characterised by the enrolment of others.
783 Black, 'Forms and Paradoxes of PBR', above n 779, 3.
that the regulatory regime may contain several interpretive communities each with a different interpretation. Another reason is the lack of regulators discipline in their provision of guidance produces uncertainty and an atmosphere of concern. Similarly, the flexibility which allows the regulators to enforce the regulatory requirements, and the firms to innovate in ways to comply with these requirements such as relying on the firms' internal compliance systems can overload the firms and lead to the adoption of conservative behaviour. This may arise because the regulator only accepts certain practices as complying or because firms treat guidance on practices as if it were detailed rules. The Jordanian experience in this field has been affected by these paradoxes in particular the enforcement paradox and compliance paradox as will be explained below and in Chapter 7.

The JSC, CBJ and CCD adopt the soft law form in order to enforce their corporate governance codes through implementing ‘comply or explain’ rule. The JSC requires the listed companies to disclose in their annual reports the extent of their compliance with the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008. The CBJ requires the banks to disclose in their annual reports and websites the extent of their compliance with their own codes. The 'comply or explain' rule assists companies to determine their governance policy according to their needs and grants companies flexibility and sufficient time to adapt to these rules in order to enhance full compliance gradually. However, none of the codes set out a mechanism to force companies to 'comply or explain'. The codes do not penalise those who do not comply or reward those who comply. Moreover, the CBJ does not determine its actions against the banks which do not prepare their own codes for corporate governance or do not disclose them in their annual reports and websites.

The JSC and the CBJ can exercise their powers under the Securities Law, Banking Law and CBJ Law respectively to follow up all matters related to the implementation of the codes. However, the lack of enforcement or response where there is failure to comply is a serious deficit in ensuring appropriate corporate governance. Mechanisms are required to encourage listed companies to implement the 'comply or explain' rule such as publishing a black list to show companies which do not comply with the 'comply or explain' rule and accordingly with the corporate governance principles. Following this, investors' assessment of the situation can be

784 Black, 'Forms and Paradoxes of PBR', above n 779, 25-27.
785 Ibid 28-32.
786 There are seven paradoxes encounter the PBR, these relate to interpretation, communication, compliance, enforcement, internal management, ethics and trust.
787 Most governance codes introduced in OECD member countries employ the 'comply or explain' approach, see Role of Stock Exchanges report, above n 36, 12.
788 While the Bank Director's Handbook of Corporate Governance issued in 2004 as a guidance to promote the bank directors to review their responsibilities, the Corporate Governance Code for Banks 2007 adopts the 'comply or explain' rule in order to be enforced.
790 See Securities Law 2002 arts 20, 21, 22.
reflected through the pricing mechanism. The importance of the special actions clearly appears in the light of the absence of the ASE role in enforcing the Code of Corporate Governance for listed Shareholding Companies issued by the JSC in 2008.

In recent decades stock exchanges have been at the forefront of a process of raising corporate governance standards through developing national codes of corporate governance and monitoring the listed companies compliance with the corporate governance requirements. Amongst the ten exchanges which were selected by the OECD Steering Group on Corporate Governance as illustrative examples in its study about the role of exchanges in corporate governance, all the exchanges issued their own corporate governance codes, and the majority (7 out of 10 exchanges) enforce the codes. The most direct power of exchanges to enforce compliance obviously pertains to those standards which are incorporated in the listing requirements. Exchanges play an important role in enforcing the corporate governance codes for the following reasons: First, exchanges allow for greater diversity in methods of compliance with legal rules. Exchanges can impose corporate governance requirements on listed companies through their ability to condition the right to trade on compliance with the listing standards via one of the following forms: a recommendation, a part of the listing agreement or a listing condition. The high quality listed issuers would not jeopardise their reputation and would respect the regulatory standards that increases investors’ confidence in their stocks and thereby reduces its own transaction costs. Second, exchanges balance between overregulation and underregulation of the stock exchange industry since they are driven by the needs of the market and the requirements of investors. Third, exchanges are more flexible than the government agencies to establish and enforce ethical standards and best practice principles. The government’s powers are limited by specific mandate and/or procedural restrictions that make their enforcement actions inflexible and unsuitable for the fast-changing and highly competitive environment of the financial markets. The ASE can be relied upon in the future to enforce efficiently this code as a listing condition as will be explained later in Chapter 8.8. In this connection, Jordan may learn from the Australian experience in this field. ASX plays a leadership role in developing Australian corporate governance. ASX established a Corporate Governance Council (ACGC) drawn from business, shareholder and industry groups to prepare the Corporate Governance Principles and

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792 *Role of Stock Exchanges report*, above n 36, 13, 19. The report argues that aside from extreme measures such as de-listing, exchanges have other means of enforcement through publication of opinions on compliance or imposing financial penalties.


794 *Role of Stock Exchanges report*, above n 36, 10-13. The choice of the exchanges (ASX, NASDAQ, NYSE, Euronext, LSE, NASDAQ OMX Nordic Exchanges, Tokyo Stock Exchange, Toronto Stock Exchange, Six Swiss Exchange and Warsaw Stock Exchange) was not only guided by their prominence in global capital markets, but also by the necessity to look at diverse regulatory and as well as ownership models.

795 *Role of Stock Exchanges report*, above n 36, 13-14; Christiansen et al, above n 793, 2.

796 Donnan, above n 37, 22.

797 Wymeersch, above n 79, 2; *Role of Stock Exchanges report*, above n 36, 13.

798 Gadinis, above n 31, 1247.

799 Donnan, above n 37, 22; Gadinis, above n 31, 1246.

800 Gadinis, above n 31, 1246; Donnan, above n 37, 22.
Recommendations. Although these principles are not binding, the ASX *Listing Rules* require listed entities to disclose in their annual reports the extent of their compliance with these recommendations in accordance with "if not, why not" approach (comply or explain rule), see Chapter 8.8.

All the codes and instructions address the following main areas: the functions of the board of directors, management and control environment, treatment of shareholders and stakeholders, disclosure and transparency. However, each code focuses on different corporate governance issues. For example, while the *Code for Listed Companies* has a very strong focus on the shareholders' rights and disclosure issues, the *Code for Banks* seems to focus on the risk and control environment. This could be a result of different interests based on the applicability and scope of the regulation.

With the exception of the CCD's *Code of Corporate Governance*, the existence of more than one code and specialised instructions for corporate governance in the Jordanian Capital Market with different means to enforce them by different regulatory bodies causes confusion within the market about responsibility for compliance. Where there are multiple supervisory authorities, there may be overreliance on other regulatory bodies to monitor compliance with the corporate governance rules. This leads to weak implementation of corporate governance rules as will be explained in Chapters 7.6 and 8.8. In this connection, it is recommended that banks and insurance companies be allowed to adopt alternative corporate governance practices to avoid any conflict that may rise from the duplicate implementation of the corporate governance codes and specialized instructions issued by JSC, CBJ and IC. As will be explained in Chapter 8.8, the Corporate Governance Principles and Recommendations issued by ASX expand the application of the "if not, why not" approach through providing flexibility for listed entities to adopt alternative practices accord with spirit of the relevant corporate governance principles.

### 6.9. Summary and Conclusions

There are many regulatory bodies (ASE, CCD, JSC, SDC, CBJ and IC) in the Jordanian Capital Market which monitor the implementation of corporate governance rules. There are overlaps in the regulatory bodies' roles, intersection between their functions and lack of demarcation in these functions, cooperation and communication between them, which inhibits the ASE in performing its functions in the capital market and corporate governance.

The JSC slow examination of the JSC's, ASE's and SDC's by-laws and instructions drafts has negative effects on the implementation of the *Securities Law* and the ASE's flexibility to meet market needs and trading activities. Moreover, the JSC restrictions over the ASE supervisory powers alongside the direct conflict between their supervisory powers in *Securities Law* prevent the ASE from fulfilling its supervisory duties which impact negatively the trading operations supervision, trading activities and investor confidence. In this connection, there is also lack of clarity in the

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801 For more details about the focus areas and depth of such focus areas see ‘Jordan CG Regulations', above n 789, 9.
appellate processes against the JSC's, ASE's, SDC's and CCD's decisions in the Securities Law and the Companies Law.

The periodic disclosure and continuous disclosure of the listed companies on the ASE are followed by many regulatory bodies in different time frames. Moreover, although, the regulatory bodies adopt the IFRS for preparing the companies financial statements, the majority (JSC, CBJ and IC) issued special accounting requirements and granting them priority to be applied. Further, some of regulatory bodies (JSC and CCD) do not review the companies' financial statements before publishing them or allowing the companies to do that. In addition, neither of the regulatory bodies has adopted the electronic disclosure regime yet, and all of them, except the ASE and JSC, play limited roles in disseminating companies' information. All this leads to ineffective monitoring of companies and provides participants in the securities market with poor quality of disclosures which impact negatively the market efficiency and the investor confidence.

It is worth adding that, the existence of more than one code and specialized instructions for corporate governance in the market with different means to enforce them by different regulatory bodies, and the absence of the effective mechanism to enforce the 'comply or explain' rule in the light of the absence of the ASE role in this regard have negative influence on the compliance with the corporate governance rules.

An advisory co-ordinating body, as the CFR in Australia, should be established for Jordan's main financial regulatory bodies, the JSC, CBJ, CCD, IC, and Ministry of Finance, see Diagram 6.7 below. The purpose is to enhance the efficiency and effectiveness of the financial regulation in Jordan through reinforcing cooperation and communication between the regulatory bodies and advising the government about the adequacy of the financial system architecture in light of ongoing developments. The CFR should focus on merging the CCD's functions related to shareholding companies within the JSC's responsibilities to align functional responsibilities and minimise duplication of regulatory effort and the regulatory burden on companies, preparing comprehensive and detailed memoranda(s) of understanding between all the regulatory bodies to reinforce cooperation and communication between them in the regulatory, supervisory and disclosure fields, and setting a National Financial Literacy Strategy to help Jordanian people to achieve their financial aims and accordingly contribute to the national economy.

In this connection, to enhance the regulatory bodies' roles in the capital market and corporate governance, the capital market's legislation should be reviewed and reframed to enhance the quality of legislation to achieve consistency, increase their effectiveness and attain their objectives. It is also argued that what is necessary is to restructure and reregulate the supervisory roles of the regulatory bodies, establish the legal basis for cooperation and communication between the market regulators, and set

802 **ROSC Report**, above n 554, 16. In Australia, ASIC is responsible to regulate and monitor: companies registration, financial services and credit licensing, auditors and liquidators registration, disclosure issues in relation to companies and financial services licensees, issuance of financial products and dealings therein, see Corporation Act 2001 chs 2, 2M.3, 6CA, 7.7, 7.9, 9.2.
the legal background for the merger between regulatory bodies and establishment of the CFR. 803

Evaluating the role of the ASE in Jordanian Capital Market and Jordanian corporate governance in the context of its institutional structure, its setting alongside other regulatory bodies influencing the conduct and operation of listed companies, and its ability and effectiveness to monitor listed corporations requires also examining the obstacles and barriers that prevent listed public shareholding companies from compliance with corporate governance rules as will be discussed later in Chapter 7.

803 The ROSC Report suggested reviewing the regulatory jurisdictions of the main regulatory bodies (JSC, CCD, CBJ) that oversee corporate governance in Jordan in order to improve the Jordanian compliance with the OECD principles. See the ROSC Report, above n 554, 1, 16.
Chapter 7

Listed Companies Compliance with Corporate Governance Rules

7.1. Introduction

Efficient enforcement of the corporate governance rules requires cooperation between the regulatory bodies and listed public shareholding companies. In the previous chapter (Chapter 6) the overlaps in the regulatory bodies' functions and lack of cooperation and communication between them, and the negative impact on the ASE roles in the capital market and corporate governance were discussed. This chapter examines the obstacles that prevent companies from complying with corporate governance rules. In particular, the concentration of ownership in families and the government has strong influence on the board structure and control management in the listed companies. Other explanation including, the lack of understanding of the corporate governance requirements by listed companies and the inconsistency between these requirements and the Companies Law 1997 no. (22) are also examined in this chapter. These issues are important for the discussion of the effectiveness and possible reform of the ASE if it is to play a leadership role in Jordanian corporate governance and enforce the Corporate Governance Code for Listed Companies instead of the JSC as will be discussed in 8.8.

Following the introduction, the chapter examines ownership concentration in Jordanian listed companies in 7.2. 7.3 explores the key requirements for an independent board of directors essential for good corporate governance. It discusses the balance between executive directors and non-executive directors on the board, the presence of the independent directors in the board, splitting the role of the chairman of the board from any executive position in the company and establishing the board's permanent committees. 7.4 will present briefly the general assembly relationship with the board of directors and the division of power between them. 7.5 will focus on the directors' statutory and fiduciary duties and their responsibilities to meet the corporate governance requirements. 7.6 examines the main obstacles for non compliance with the Code of Corporate Governance for listed Shareholding Companies on the ASE 2008 (hereinafter referred to as CG Code for Listed Companies) through examining the annual reports of listed companies in 2009. 7.7 will present a summary and conclusions.

7.2. Ownership Concentration in Jordanian Listed Companies

There are two main types of boards of directors: the Unitary Board (one-tier board) which is common in many countries such as, the USA, UK and Australia, and the Dual Board (two-tier board) which is common in countries such as, Germany, Austria and Denmark. The unitary board of directors is formed from a single executive board, and the dual board of directors is formed from two boards, a supervisory board and an executive or management board. The board which forms the unitary board consists of
executive and non-executive directors who are responsible for running the company and performing the managing and monitoring roles in the company.\textsuperscript{804} The supervisory board is responsible for monitoring the executive board and the executive board is responsible for managing the company.\textsuperscript{805} As such, they perform different functions and have separate responsibilities, yet united in the common goal of advancing the interests of the entity and its claimants. Other differences between the two boards include the manner in which the directors are appointed. The company's general assembly elects all the unitary board's directors, and the dual board's supervisory directors in the annual general meeting. The dual board's executive directors are appointed by the supervisory directors.\textsuperscript{806}

It is notable that there are some basic similarities in the manner in which the directors are appointed. The unitary board's directors, and the dual board's supervisory directors are elected by the company's general assembly. Further, the unitary board and the dual board's supervisory directors appoint the executive management which is responsible for running the company.\textsuperscript{807}

The Jordanian \textit{Companies Law 1997} adopts the unitary board type (one-tier board). According to the \textit{Companies Law} the public shareholding company is managed by a board of directors consisting of not less than three directors and not more than 13 directors who are elected, for renewable terms of four years, by the company's general assembly in the company's annual general meeting.\textsuperscript{808} This board, which consists of executive and non-executive directors, is responsible for performing the executive and supervisory roles in the company through appointing a general manager to run the company in cooperation with the board and under its supervision.\textsuperscript{809} Moreover, the board determines the general manager's rights, duties and responsibilities by issuing instructions for this purpose.\textsuperscript{810}

Jordan's corporate legal system follows the civil-law system which has weak legal protection of investors in comparison to the common-law system.\textsuperscript{811} Ownership concentration in Jordanian companies seems to be negatively associated with the legal protection.\textsuperscript{812} A 2008 study using a sample of nearly 116 listed companies in the ASE,\textsuperscript{813} found that the majority of Jordanian companies are either government or family owned; 46 listed companies (representing approximately 40\% of the sample) having more than 80\% of the shareholdings in the hands of individuals and private

\textsuperscript{804} Christine A Mallin, \textit{Corporate Governance} (Oxford University press, Fourth edition, 2012) 166.
\textsuperscript{805} Ibid.
\textsuperscript{806} Ibid. According to Mallin in Germany and some other countries, half the members of the supervisory board are appointed by shareholders, and other half are appointed by the employees; the chairman is appointed by the shareholders and has a casting vote.
\textsuperscript{807} Ibid.
\textsuperscript{808} \textit{Companies Law 1997} art 132.A.
\textsuperscript{809} Ibid art 153.A.
\textsuperscript{810} Ibid.
\textsuperscript{812} Omran et al, above n 811, 32-33.
\textsuperscript{813} The sample of companies covers all major sectors: industry, financial institutions and services; with industry companies comprising close to half the total of 116 companies, financial institutions a quarter and services companies a quarter.
institutions. The results show that ownership concentration is a significant determinant in influencing positively the value and performance of the Jordanian listed companies, the findings of these studies are consistent with the most evidence from emerging economies.

However, the problems in achieving good corporate governance and independent boards of directors are exacerbated where the major shareholders in listed Jordanian companies are families, the Jordanian government and official public institutions. The influence of these factors is considered in turn.

7.2.1. Family Owned Companies

Corporate governance system in Jordan is an insider – dominated system in which a small number of major shareholders, families, control the management. In an empirical study based on 103 listed companies in the ASE during the period 2002 to 2005, it was found that 54 listed companies (representing approximately 53% of the sample) having more than 51% of the shareholdings in the hands of families. The company could be considered a family company, if the chief executive, managing director or chairman regard the company as being a family business; if a family group owns the majority of shares; if a family group owns and manages the business and, if the company has experienced an inter-generational ownership transition to a second or later generation of family members drawn from a single dominant family group with a majority ownership in the business.

There are opposing views on whether family control has a positive influence on the performance of the companies and their value. Family control may improve the monitoring system and reduce its costs. This is because family ties, loyalty and altruism, between its members encourage them to work together to maximise the family interests and protect their family properties. In contrast, family control may have many disadvantages. There can be competition and infighting between family members, weak monitoring, lack of experience of board directors and nepotism.

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814 Omran et al, above n 811, 35; Jaafar et al, above n 127, 9.
815 Omran et al, above n 811, 41; Jaafar et al, above n 127, 23.
817 Jaafar et al, above n 127, 18.
and tunnelling which means the transfer of the company’s assets to the families. Concentrated family ownership structure is regarded as associated with weak monitoring, conflict of interests and information asymmetry, which are obstacles to the implementation of corporate governance in Jordan. Family companies in order to attract external finance need to comply with the corporate governance requirements in order to reinforce the investor confidence and persuade them to invest in the company. Despite this, according to companies’ answers in their annual reports set out below in Section 6, the dominance of family owned companies suggests reduced observance of good corporate governance practices. For example, there is still resistance to effective corporate governance by such measures as the independent director membership on the board of the company and the splitting between the role of chairman of the board and the role of the CEO. A further problem is the reduced presence of properly qualified directors with adequate knowledge and experience, see Appendix 7.1.

In order to restrict families’ and small groups’ powers in the boards and protect minority shareholders, the CG Code for Listed Companies adopts the Cumulative Voting procedure in general assembly meetings especially for the election of the board directors. According to the Cumulative Voting mechanism the shareholders may cast all their votes to one board member or for more than one board member, provided that none of the votes is counted more than once. It is to be noted that, the implementation of the Cumulative Voting does not conflict with the voting mechanism in art 178 of the Companies Law, which grants each shareholder a number of votes equal to its number of shares, but in practice the shareholders misuse this article by voting for more than one board member and counting these votes more than once.

7.2.2. Jordanian Government and Official Public Institutions

Another vital element in the Jordanian board of directors structure and operation is the Jordanian government's and official public institutions' participation in the capital of the public shareholding companies. The government has sold a significant part of its ownership in the companies with its ownership decreasing by 46.5% after the

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824 MENA Workshop Report, above n 816.
825 Mallin, above n 804, 85-86.
826 The Corporate Governance Code for listed Companies 2008 Pt 1 defines Cumulative Voting as "Each shareholder will have a number of votes equal to the number of owned shares. A shareholder may cast all his votes to one board member; or, if he selects, he can vote for more than one board member, provided that none of the votes is counted more than once.”
827 The Cumulative Voting allows minority shareholders to cast all their votes for a single candidate. In a company has two shareholders for example, one holds 80% of the votes and another one holds 20%. Five directors need to be elected. If there is no cumulative voting rule in place, each shareholder will have to vote separately for each director. The majority shareholder will get all five seats, since he will outvote the minority shareholder each time by 80:20. But with the cumulative voting, the minority shareholder can decide how to place his votes. The optimal strategy would be to take all his votes 20% and cast them for one board member. The minority shareholder will then win that seat. See ROSC Report, above n 554, 4.
privatisation process began in 1996. However, the government still retains 16% of the total market capitalization of listed companies on the ASE as at 28 November 2013. The government ownership is in many large listed companies such as Arab Potash Company, Jordan Phosphate Mines Company and Jordan Petroleum Refinery Company.

The Companies Law provides that the board representation for government and official public corporations is proportional to ownership. In other words, depending on their participation in the companies' capital, they have the right to appoint a number of representatives on the boards of these companies in proportion to their participation without participating in the election of the board directors. But if their participation in these companies does not allow them to appoint representatives, they have a right to participate in the elections as other shareholders.

While the families and small groups might fight against the board compliance with corporate governance requirements to protect their vested interests, the government as a shareholder might play a positive role in reinforcing compliance. This may assist in attracting external investments, allowing the government to dispose of its holdings in companies or enhancing the companies' productivity and consequently its revenues. It has been argued that the identity of owners matters more than the concentration of ownership, and that government ownership has a positive impact on the firm performance. However, according to companies' answers in their annual reports (see Section 6), the government's and official public institutions' powers on the boards of directors do not seem to have positively influenced companies compliance with corporate governance rules. For instance, the presence of the independent directors on the board is affected by the concentration of government representatives and it may prevent some companies from establishing mechanisms to receive shareholders' complaints.

Grantham claims that the corporatisation movement to apply the private sector corporate governance model to governmental activities is done to capture the efficiency and accountability features of the private sector model. He also argues that if the government companies are to capture these features, the government companies have to deal with the central governance issue of the private sector company which is the agency costs. In his study in relation to Queensland government owned companies, Grantham found that the governance structure of the government companies cannot replicate the features of the private companies for different reasons: First, non of the Australian jurisdictions have explicitly included a rewards strategy. Thus, the absence of such bonding devices compromises the government companies' ability to produce efficient and accountable management. Second, the government companies boards differs from their private sector counterparts that the government boards do not have full autonomy to set the corporation's strategic goals and their goals are not wholly directed toward maximising the value of the company. In other words, the government companies have both commercial and non-

831 Omran et al, above n 811, 42.
832 Grantham, above n 58, 188-193.
commercial goals since they remain public institutions subject to different social and political considerations. Third, the external market forces such as the product market, capital markets, market for corporate control, insolvency which use to monitor and constrain agency behaviour have limited application to the government companies. For instance, the risk of insolvency represents a significant disciplining force on company management. On the other hand, the liquidation is difficult to conceive of a situation where the state would allow a government company to fail.\textsuperscript{833} Another example, where a company is not being efficiently managed, the creditors will be reluctant to lend or ask for higher rates of interest. But where the debt issuer is guaranteed by the government the financing process will be much easier.\textsuperscript{834}

In Jordan, the government owned companies are almost in the same position as the Australian government owned companies that governance strategies developed for the private sector companies are unlikely to be suitable for the government companies for the mentioned above reasons. There is little incentive for the boards of directors or management to maximise the value of the company. For instance, the \textit{Transportation and Travel Allowances Regulation (No 56) 1981} was amended to be applied on all the public-sector employees including the employees of wholly government owned companies from 15 July 2010.\textsuperscript{835} Furthermore, the considerable autonomy which the government boards apparently enjoy is in fact constrained by the government’s power to require the company to comply with its policy, in this regard see the influence of the government policy on the National Electric Power Company debts (Chapter 4.4.4 - Footnote 78).

\section*{7.3. The Independent Board of Directors and Good Corporate Governance}

In response to the agency problem, see 6.2.1, the board of directors is the key mechanism to ensure that management is acting for the benefit of shareholders. But this assumes that the board of directors exercises independent judgement in monitoring executive management. Beginning with Cadbury Report, and the OECD Principles (see 2.7) this independence was sought to be achieved by having a balance between executive directors and non-executive directors on the board; the presence of independent directors in the board; splitting the role of the chairman of the board from any executive position in the company and establishing the board permanent committees.

\subsection*{7.3.1. The Non-Executive Directors}

The balance between non-executive directors (NEDs) and executive directors in the board is, in theory, one of the major elements to achieving the independent board of directors and promote good corporate governance. The board director is considered a

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\textsuperscript{833} Grantham, above n 58, 187, 188, 193. \\
\textsuperscript{834} Ibid 187, 192. \\
\end{flushleft}
NED if he/she does not work for the company or receive a salary from it.\textsuperscript{836} The NEDs' existence in the board has many advantages for the company. NEDs monitor the executive directors' performance which guarantees that the individuals and small groups in the board cannot control the board and its decisions.\textsuperscript{837} The NEDs' presence allows the board to establish its permanent committees and provide them with sufficient number of members.\textsuperscript{838}

While the \textit{Corporate Governance Code for Banks 2007} (hereinafter referred to as \textit{CG Code for Banks}) requires that the majority of the board to be NEDs,\textsuperscript{839} The \textit{CG Code for Listed Companies} does not specify the number of NEDs in the board. However, as will be explained below, the need for at least three NEDs for the composition of the board's committees is an implicit requirement to have at least three NEDs in the board.\textsuperscript{840} The NED concept is an established concept in the Jordanian legislation. The \textit{Securities Law 2002 no. (76)} requires each public shareholding company to form an Auditing Committee comprising three non-executive directors. The \textit{Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004} issued by the JSC defines the NED as a part of the Auditing Committee's structure, functions and authorities, and also the \textit{CG Code for Listed Companies} defines the NED for determining the boards' permanent committees structure.\textsuperscript{841}

Furthermore, the \textit{CG Code for Listed Companies} imposes further requirements in order to meet the corporate governance requirements and form a board of sufficient size to perform its responsibilities without any interruption for any reason such as the retirement or the resignation of any director. The \textit{CG Code for Listed Companies}, the \textit{Corporate Governance Instructions for Insurance Companies 2006 no. (2)} and the \textit{Corporate Governance Instructions for Reinsurance Companies 2010 no. (2)} (hereinafter referred to as \textit{CG Instructions for Insurance}) require companies to increase the lower limit of the directors of the board from three directors to five and seven directors respectively.\textsuperscript{842} In spite of this increase, Jordanian companies have modest board sizes; the average number of board members is around nine.\textsuperscript{843} The board size can have a positive and significant influence on the firm performance. Companies benefit from the knowledge and expertise of the board members and the

\textsuperscript{836} \textit{Instructions of Issuing Companies Disclosure 2004} art 15.B, \textit{Corporate Governance Code for listed Companies 2008} Pt 1 (definition of 'non-executive director').
\textsuperscript{838} Calder, above n 837, 70. \textit{Corporate Governance Code for listed Companies 2008} art 2.2.2.
\textsuperscript{839} \textit{Corporate Governance Code for Banks 2007} art 2.4.A.
\textsuperscript{840} \textit{Corporate Governance Code for Banks 2007} art 2.4.A.
\textsuperscript{841} \textit{Corporate Governance Code for Banks 2007} art 2.4.A.
\textsuperscript{842} \textit{Corporate Governance Code for Listed Companies 2008} art 2.1.
\textsuperscript{843} \textit{Corporate Governance Code for Listed Companies 2008} art 2.1.
\textsuperscript{844} \textit{Companies Law 1997} art 132.A states that the members of the board of directors should not be less than three and not more than 13 as determined by the company's Memorandum of Association.
opportunities they can provide for establishing networks with the external environment.  

7.3.2. Independent Directors

Another major element to achieve the balance in the board is the presence of the independent directors on the board. The independent director concept is new in the Jordanian legislation. The corporate governance codes require a number of independent directors on the companies' board of directors. There is divergence between the requirements for listed companies, insurance companies and banks.

The CG Code for Listed Companies defines an independent director as:

"A member of the board of directors who has no relations with the company, or any member from the top executive managers, or associated companies, or the company's auditor that involve personal financial interests or even the appearance of benefiting financially, materially or otherwise, which influence his decisions or lead to exploitation his position in the firm".

The CG Code for Listed Companies sets out circumstances which may affect the independence of directors. Independent directors are, in theory, better able to

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844 Jaafar et al, above n 127, 5.
845 The Corporate Governance Instructions for Insurance Companies 2006 introduced the independent director concept for the first time on 16 January 2007.
846 Corporate Governance Code for listed Companies 2008 art 2.1 states that "The administration of the Company is entrusted to a board of directors whose members shall be not less than five and not more than thirteen, as determined by the Company’s memorandum of association. Principles of good corporate governance require that board members be elected by the company’s general assembly in a secret ballot, by means of cumulative voting system, provided that at least one third of the board members are independent members. If the result in calculating the above-mentioned third is with a fraction, the fraction is removed by rounding the result to the next figure".
847 On one hand the Corporate Governance Code for listed Companies 2008, the Corporate Governance Instructions for Insurance Companies 2006 and the Corporate Governance Instructions for Reinsurance Companies 2010 require a number of the independent directors on the board not less than one-third of the board. On the other hand the Corporate Governance Code for Banks 2007 requires three independent directors at least on the board. It is notable that if the bank's board of directors consists of less than nine directors this requirement in the Corporate Governance Code for Banks 2007 is more stringent than in other codes. In contrast, this requirement is weaker if the bank's board of directors consists of more than nine directors. See the Corporate Governance Code for listed Companies 2008 art 2.1, the Corporate Governance Instructions for Insurance Companies 2006 art 4.B.1, Corporate Governance Instructions for Reinsurance Companies 2010 art 4.B.1, Corporate Governance Code for Banks 2007 art 2.4.B.
848 Corporate Governance Code for listed Companies 2008 Pt 1 (definition of 'independent director').
849 Corporate Governance Code for listed Companies 2008 Pt 1 (definition of 'independent director').
850 The independence of director will not be satisfied if the director has been an employee in the company or any affiliated company within the last three years or if any of the director's relatives has been an employee in the executive management in the company or any affiliated company within the last three years. It will also not be satisfied if the director or any of director's relatives has direct or indirect interest in the contracts and projects which value equals JD 50 000 (approximately US$ 70 621) or more and belong to the company or any affiliated company. Similarly, if the director or any of director's relatives has been a partner of the company's external auditor or an employee in the company's external auditor within the last ten years or if the director has control over the company
monitor the executive directors' performance which guarantees that the individuals and small groups on the board cannot control the board and its decisions. Independent directors add value to the board through providing the board with new skills and experience. Independent directors also provide the board with members for its permanent committees. But the mere presence of independent directors does not guarantee proper monitoring of the board. There is evidence that in UK, USA and Australia, independent directors do not add significant value to the companies. There is also the risk that independent directors reinforce the executive management's powers through depending on it, since they have limited time, insufficient knowledge of the company's business and weak communication with the shareholders.

In Jordan it is still too early to evaluate the added value of the independent directors presence in companies since it's still a new concept for Jordan. In order to determine whether the independent director concept is important for Jordanian companies, two elements should be considered. Excepting insurance companies, the provisions which regulate independent directors in the corporate governance codes are voluntary provisions and companies have the choice whether to comply with them or not. If they do not comply they just have to explain the reasons. Relevant also are the obstacles against compliance. This will require a review of the companies' annual reports to ascertain whether companies accept this new concept, and whether they comply with these voluntary provisions and their reasons if they do not comply. As will be explained later in Section 6, according to companies' answers in their annual reports, compliance with this voluntary rule is affected by the lack of understanding of the independent director concept. This suggests that the regulatory bodies such as the JSC and the ASE should provide an educational role through training and support material on their websites aiming at increasing the awareness of good governance practices and the CG Code for Listed Companies. The regulators in the Jordanian market may learn from ASX in this regard. ASX has dedicated a section of its website contains links to useful material and websites to help the listed entities to implement Corporate Governance Principles and Recommendations, see Chapter 8.8.

through acquiring 10% or more of the company's capital. It is worth adding that the independent director definitions and circumstances which affect the independence of director (employment, business, family connection and significant shareholding) are almost similar in the Corporate Governance Instructions for Insurance Companies 2006, the Corporate Governance Instructions for Reinsurance Companies 2010 and the Corporate Governance Code for Banks 2007.


Calder, above n 837, 70, Corporate Governance Code for listed Companies 2008 art 2.2.2 appoints out that each board committee consists of three NEDs at least two of them are independent directors.

Farrar, above n 851, 395-96.

The Rosc Report suggested a director training program, with support from the government and the private sector, to provide directors with an understanding of their role and duties and to educate them in financial, business and industry practices, see ROSC Report, above n 554, 14, 16; Role of Stock Exchanges report, above n 36, 15.
7.3.3. The Chairman of the Board and the CEO

Another major element in achieving board independence is the separation of the role of the chairman of the board and the role of the CEO. Good corporate governance practice requires a clear separation between the chairman's responsibilities and the executive management responsibilities in the company to avoid the agency problem (see 2.6.1) which gives rise to conflicting interests. The separation of roles is necessary to maintain effective supervision over the management.\(^{857}\) The chairman's main duty is to lead the board, which is responsible to design the companies' policies and strategies, and to monitor the CEO who runs the company.\(^ {858}\) The chairman ensures the balance between the executive directors and NEDs in the board, providing the directors with necessary information to carry out their duties and the board's interaction with the shareholders.\(^ {859}\) In other words, the chairman duality weakens the board supervisory role over the top management. Surprisingly, Omran et al and Jaafar et al found that the Jordanian listed companies' performance is not affected by whether there is a separation between the CEO and the chairperson positions.\(^ {860}\)

In Jordan, the Companies Law 1997 allows the chairman to work as a general manager or to fill any executive position in the company after obtaining the board's approval.\(^ {861}\) Splitting the role of the chairman of the board from any executive position in the company was introduced in Jordanian legislation in 2007 by the CG Instructions for Insurance. These instructions and the CG Code for Listed Companies reinforce this new requirement.\(^ {862}\) Moreover, the CG Code for Banks obligates the banks to separate the chairman's role and the general manager's role and requires no family relationship between them to the third degree.\(^ {863}\) The CG Code for Banks allows the chairman to fill an executive position in the bank, but it obligates the bank in this case to appoint an independent director on the board as a deputy chairman to protect the shareholders' rights.\(^ {864}\)

As indicated in 7.6 below, 28 out of 181 listed companies (representing approximately 15.5% of the total listed companies which disclosed in their annual reports the extent of their compliance with the code's rules) failed to split the role of the chairman of the board from any executive position in the company. Explanations included cost reduction. The more likely explanation is that this measure is resisted because it diminishes the board's control over the company.

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\(^{857}\) 'Jordan CG Regulations', above n 789, 18.
\(^{858}\) Knell, above n 837, 73.
\(^{859}\) Ibid, Calder, above n 837, 69.
\(^{860}\) Omran et al, above n 811, 41; Jaafar et al, above n 127, 22.
\(^{861}\) Companies Law 1997 art 152.C.
\(^{862}\) Corporate Governance Code for listed Companies 2008 art 2.5, Corporate Governance Instructions for Insurance Companies 2006 art 4.E.
\(^{863}\) Corporate Governance Code for Banks 2007 art 2.2.A.
\(^{864}\) Corporate Governance Code for Banks 2007 art 2.2.B. In this regard, Calder argues that many may resist this appointment since it might create an alternative source of power in the board and affect the board performance, see Calder, above n 837, 71.
7.3.4. Establishing the Board’s Permanent Committees

The codes of corporate governance require the boards to establish the following committees: the Auditing Committee, the Nomination and Remunerations Committee and the Risk Management Committee. All the board’s permanent committees should consist of three NEDs of which at least two should be independent directors. An exception is the Risk Management Committee in banks which can include executive directors. The risk management committee reviews and provides expert input to the risk management policies before they are approved by the board of directors. The presence of executive directors in this committee may be useful to provide expert input to the committee, but the risk of management influence remains significant. In contrast executive membership of the Auditing Committee and the Nomination and Remunerations Committee is not allowed because of the serious risk of conflict of interests with the board, see below.

While the Audit Committee already exists in the Securities Law 2002, the Nomination and Remunerations Committee and the Risk Management Committee are new concepts in the Jordanian legislation and both of them were introduced for the first time in 2007 by the CG Code for Banks.

The Audit Committee has responsibility to review matters related to the external auditor’s nomination and independence, discuss the auditor’s work and the management’s response, and provide comments and recommendations to the board of directors related to the work of the external auditor. The Committee should also evaluate the internal auditor’s work plan, examine the periodical reports, and provide comments and recommendations to the board of directors related to the internal audit procedures and the work of the internal auditor. Its duties also extend to examining and evaluating the internal monitoring procedures, and reviewing the external auditor’s assessment of such procedures and the internal monitoring reports; reviewing the company transactions with the related parties and ensuring that there are no

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865 Corporate Governance Code for listed Companies 2008 art 2.2.1 obligates the companies’ boards of directors to establish the Auditing Committee and the Nomination and Remunerations Committee. Corporate Governance Code for Banks 2007 art 3 obligates the banks’ boards of directors to establish the Auditing Committee, the Nomination and Remunerations Committee and the Risk Management Committee. Corporate Governance Instructions for Insurance Companies 2006 art 3.K, Corporate Governance Instructions for Reinsurance Companies 2010 art 3.K authorises the board of directors to establish the necessary committees to execute its functions and art 7 in both instructions obligates the companies’ boards of directors to establish the Auditing Committee.

866 Corporate Governance Code for listed Companies 2008 art 2.2.2, Corporate Governance Code for Banks 2007 arts 3.2.A, B, 3.3.A, Corporate Governance Instructions for Insurance Companies 2006 art 7.A, Corporate Governance Instructions for Reinsurance Companies 2010 art 7.A. In this connection, the members of the Audit Committee should be qualified and enjoy adequate knowledge and experience in finance and accounting affairs. Further, at least one of the members must; have worked previously in accounting or finance fields and have an academic or professional certificate in accounting, finance or related fields. (Corporate Governance Code for listed Companies 2008 art 5.1.1).

867 Corporate Governance Code for Banks 2007 art 3.4.A.

868 Corporate Governance Code for Banks 2007 art 3.4.B. The 14 listed banks in the ASE have Risk Management Committee.

869 Securities Law 2002 art 46 requires each public shareholding company to form an Auditing Committee comprising three non-executive directors of the board.
conflicts of interest, monitoring the company compliance with legislation and the regulatory bodies' requirements.870

One of the major corporate governance mechanisms which plays a crucial role in solving the agency problem is the Nomination and Remunerations Committee.871 The Nomination and Remunerations Committee is responsible to ensure the independence of independent directors and evaluate the efficiency of the board and its directors regularly. Further, it sets and annually reviews criteria for granting salaries, remunerations, incentives and privileges; criteria for appointing the high executive management and employees in accordance with the company's needs and the company’s human resources and training policy.872 As will be explained in 7.6, 90 listed companies (representing approximately 50% of the total listed companies) failed to establish a permanent Nominations and Remunerations Committee. According to companies' answers in their annual reports, the families' dominance appears to hinder the establishment of the committee in some cases. For example, in some companies all the shareholders are members of the board of directors, see Appendix 7.1 and Table 7.1. The more likely explanation is the size of companies' operations. It is worth adding that some companies claimed that there is no need for the committee since board directors have adequate knowledge and experience in administrative affairs, which reflects the lack of understanding of the committee's functions.

To reinforce the permanent committees contribution in achieving an independent board of directors, committees have to submit a report about their activities to the company’s general assembly annual meeting.873 In addition, the Audit Committee is authorised to meet the company’s external auditor, without the presence of the executive management.874

7.4. The Board of Directors Dialogue with the Shareholders

Jordan follows international practice in vesting power in the company’s annual general meeting to make decisions binding on the company, shareholders and board of directors. The capacity of the general meeting to exert influence on the governance of the company may be compromised by the dominance of family shareholdings, see 7.2.1. It can result in the lack of institutional investor pressure - particularly the government - on the board of directors to improve corporate governance as individual shareholders are not able to exercise their voting power effectively.875

871 For more details about the agency problem see Chapter 2.6.1.
873 Corporate Governance Code for listed Companies 2008 art 2.2.5.
874 Ibid art 5.1.4.
875 The ROSC Report claimed that the private institutional investors in Jordan are of limited importance since they are either passive or related to controlling families, see ROSC Report, above n 554, 2, 7.
In order to understand the shareholders concerns and increase their participation in the company's activities, good corporate governance practice requires effective interaction between the company's board of directors and the shareholders especially major shareholders and institutional shareholders. The CG Code for Listed Companies sets out procedures to encourage the shareholders attendance and participation in the general meetings. This includes expanding the notice period for the meeting from the minimum 14 days (in the Companies Law) to at least 21 days. Not unexpectedly most listed companies felt it unnecessary to comply with the longer notice period, see Appendix 7.1. The Companies Law sets minimum standards but the Code, which is voluntary, sets a 21 day notice period as good corporate practice. It suggests that publicly listed companies in Jordan will comply with minimum statutory requirements but not the voluntary codes of conduct. This matter highlights the question about companies understanding for the application of the corporate governance rules; that some voluntary rules are applicable and there is no conflict with Companies Law.

One of the main powers of the general assembly in the company's ordinary meeting is the election of the board's directors through a secret ballot. The Companies Law allows the board directors to nominate themselves as board directors and to be re-elected without limit. Good corporate governance practice, especially in modest size boards as in Jordan, requires continuous refreshment of the board through encouraging the entrance of new directors and the retirement of old ones. In order to achieve this goal, Knell suggests that the Nomination Committee reviews the directors' performance regularly and maintain biographical data on them and provide shareholders with these biographical details before the elections of the board directors. The CG Code for Listed Companies requires the shareholders who want to nominate themselves for the election of the board to submit biographical notes about themselves to the company, which is attached to the invitation to the general assembly meeting. More than one-third of the listed companies did not comply with this aspect of the Code. According to some companies' answers in their annual reports, the concentration of government representatives in the boards prevented some of them from implementing this new application, see Appendix 7.1.

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876 Knell, above n 837, 179.
877 Corporate Governance Code for listed Companies 2008 arts 3.3, 3.6, 3.9.
878 The CG Code for Listed Companies requires the companies to choose the suitable time and place to hold the meeting, and announce these details in its website on the Internet and three local daily newspapers twice at least; requiring the companies to administer the meeting in an appropriate way through answering the shareholders questions and providing them with sufficient information, in order to allow them to participate effectively and make their decisions. In this connection, it is worth mentioning that according to art 145 of the Companies Law 1997 the date set for the meeting must be announced in two local daily newspapers at least once within 14 days prior to meeting date.
879 Companies Law 1997 art 171.A states that the general assembly at the company's ordinary meeting has the authority to discuss and take decisions in all the company's affairs, except the extraordinary meeting's affairs, especially the following issues: The board of directors' report about the company's activities. The company external auditor's report about the company's financial statements. The company's annual balance sheet. Election of the board directors. Election of the company's external auditor. According to article 150.A Companies Law 1997 if the board of directors appoints any temporary director to a vacant position on the board, this appointment must be presented to the general assembly in its first subsequent meeting to approve the appointment or to elect another director.
880 Calder, above n 837, 73.
882 Corporate Governance Code for listed Companies 2008 art 3.5.
While the director is appointed by the general assembly in an ordinary meeting, the director is removed by the general assembly in an extraordinary meeting. The Companies Law states that shareholders who hold 30% or more of the company shares can submit a request to hold an extraordinary meeting in order to remove the board or the chairman or any other director, except the government's or corporate bodies' representatives. The general assembly in the extraordinary meeting can remove any director through a secret ballot, and if it does that it can elect a director to fill its position in accordance to the ordinary meeting's rules. There is no formal evidence whether this has occurred but anecdotal evidence that Jordanian companies exercised this authority in rare cases. In order to reinforce the powers of the general assembly in extraordinary meetings; the CG Code for Listed Companies empowers shareholders who hold only 20% of the company shares to request an extraordinary general assembly meeting to dismiss the board of directors. But as discussed later in 7.6, this voluntary rule is not applicable since it conflicts directly with the compulsory provision in the Companies Law 1997 which sets the percentage in this regard by 30%. Consequently, this conflict should be resolved by amending the Companies Law to achieve consistency with the OECD principles and implement the corporate governance new concepts and applications in the Code.

7.5. The Board of Directors' Duties and Responsibilities

In general, the board of directors has a managing role and the monitoring role. The board of directors’ managing role concerns the setting of the company's strategies, policies and plans to achieve its aims, as well as appointing the top executive management to run the company's activities. The board of directors’ supervisory role involves following up the implementation of the company's strategies, policies and plans, and monitoring the top executive management’s performance.

The following Section 7.5.1 is concerned with the board of directors' fiduciary duties and their importance in the implementation of the corporate governance requirements. Section 7.5.2 will introduce the board of directors' main duties under the Companies Law and Civil Law which are related to directing and running the company, and Section 7.5.3 is concerned with the new corporate governance requirements (voluntary rules) in the CG Code for Listed Companies that should be met by the board of directors. These issues are important for the discussion of the effectiveness and possible reform of the ASE if it is to play a leadership role in Jordanian corporate governance and enforce the Corporate Governance Code for Listed Companies instead of the JSC as will be discussed in 8.8.

883 Companies Law 1997 art 165.A.
884 Ibid art 165.B.
885 ROSC Report, above n 554, 1, 16.
886 This section will not consider other duties in other legislation such as the Tax Law and Labour Law.
7.5.1. The Board of Directors' Fiduciary Duties and Duty of Care

Directors' fiduciary duties have become critically important. The duties of directors are largely governed by statutes and codes. But rarely do these instruments completely spell out the nature and content of a director's duty. In such situations fiduciary duty provides a standard against which an exercise of power or discretion can be evaluated.\(^\text{887}\)

The directors who are in fiduciary relationship with the company have two key duties. The first is the duty of loyalty. This duty means that the directors have to give priority to the interests of the company against their interests. This duty requires the directors to exercise their powers in good faith, for a proper purpose, in the best interests of the company and avoid conflicts of interest.\(^\text{888}\) In *Bristol West Building Society v Mothew* Millett LJ articulated the different aspects of the duty of loyalty:

"The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the singleminded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or for the benefit of a third person without the informed consent of his principal".\(^\text{889}\)

In this connection, in *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)*, Owen J explained the subjective and objective elements of the good faith duty.\(^\text{890}\) Owen J said that

“directors will breach their duty if, on consideration of the surrounding circumstances ‘objectively viewed’, the assertion of directors that their conduct was bona fide in the best interests of the company and for proper purposes should be doubted, discounted or not accepted”.

The duty is to act in the best interests of the shareholders as a collective group.\(^\text{891}\) The courts also consider the objective purpose for which the power was granted and the purpose which actually motivated the exercise of the power to ascertain if directors have exercised their powers for proper purposes.\(^\text{892}\) In the High Court of Australia in *Australian Metropolitan Life Assurance Co Ltd v Ure*, Justice Isaacs addressed the scope of the duty to act for a proper purpose and its link with the duty to act bona fide for the good of the company:

"Although it is a power which necessarily involves some discretion, it must be exercised, as all such powers must be, bona fide, that is, for the purpose for which it was conferred, not arbitrarily or at the absolute will of the directors, but honestly in the interest of the shareholders as a whole".\(^\text{893}\)

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\(^{888}\) Mallin, above n 804, 169-171; Farrar, above n 851, 108-109; Zabihollah, above n 59, 94-95.

\(^{889}\) [1998] Ch 1.

\(^{890}\) [2008] WASC 239.

\(^{891}\) See *Darvall v North Sydney Brick & Tile Co Ltd (No 2)* (1987) 16 NSWLR 212.


\(^{893}\) (1923) 33 CLR 199.
Directors also have a duty of care. Directors, in fulfilling their duties particularly making routine business decisions and strategic decisions, have to exercise the care that a reasonable person exercises in the same position and circumstances.\textsuperscript{894} The standard is the objective standard of a reasonable person in those circumstances.\textsuperscript{895} The directors have to exercise due diligence, skill and independent judgment.\textsuperscript{896} To carry out these responsibilities efficiently the directors must have good knowledge about the company's business and activities and keep this information current.\textsuperscript{897} Leading cases in Australia such as Daniels v Anderson make it clear that the law imposes minimum standards of care and diligence on directors.\textsuperscript{898} In this connection, courts have recognised the legitimacy of some degree of risk-taking in business judgment. As the High Court of Australia said in Harlowes Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co:

"Directors in whom are vested the right and the duty of deciding where the company's interests lie and how they are to be served may be concerned with a wide range of practical considerations, and their judgment, if exercised in good faith and not for irrelevant purposes, is not open to review in the courts. However, the Business Judgment Doctrine which states a general judicial policy is to be distinguished from the Business Judgement Rule which creates a rule or presumption of no liability".\textsuperscript{899}

In the words of the majority in Daniels v Anderson:

"The courts have recognised that directors must be allowed to make business judgments and business decisions in the spirit of enterprise untrammelled by the concerns of a conservative investment trustee. Any entrepreneur will rely upon a variety of talents in deciding whether to invest in a business venture. These may include legitimate but ephemeral, political insights, a feel for future economic trends, trust in the capacity of other human beings".\textsuperscript{900}

Fiduciary duties have long existed in common law countries such as the UK, USA and Australia, and have largely been translated into statutory duties.\textsuperscript{901} In Australia to improve corporate governance practices, the Corporations Act 2001 clarifies the company director's duties of care, diligence and honesty; the Act introduces also a business judgement rule for directors and a statutory derivative action for shareholders. The duty to exercise care and diligence is set out in s 180. This section requires the director to exercise his powers with the degree of care and diligence that a reasonable person would exercise; it makes clear that the standard of care required of a director takes into account the particular circumstances of corporation and responsibilities of the particular director. Section 180(2) introduces a statutory

\textsuperscript{894} Zabihollah, above n 59, 94, Kim A Kenneth and John R Nofsinger, Corporate Governance (Upper Saddle River, Second edition, 2007) 42.
\textsuperscript{895} Farrar, above n 851, 142; Mallin, above n 804, 170; Zabihollah, above n 59, 94, 95; Knell above n 837, 35, 36; Kenneth et al, above n 894, 42.
\textsuperscript{896} Zabihollah, above n 59, 95.
\textsuperscript{897} Ibid.
\textsuperscript{898} (1995) 37 NSWLR 438, Lipton et al, above n 892, 351.
\textsuperscript{899} (1968) 121 CLR 483, 493.
\textsuperscript{900} (1995) 37 NSWLR 438.
\textsuperscript{901} Calder, above n 837, 58.
business judgment rule. This provides that a director who makes a business judgment as defined in s 180(3) will be taken to have met the requirements of the duty of care and diligence in s 180(1) and those duties at general law if that the judgement is made in the circumstances set out in s 180(2). Section 181(1) casts the duty to act honestly by requiring a director to exercise director's powers and discharge director's duties in good faith to be in the best interests of the corporation and for a proper purpose. Sections 182 and 183 prohibit a director from improperly using the position or available information to gain advantage or cause damage to the company. Under s 184(1), it is an offence for directors to engage in reckless or intentionally dishonest conduct or fail to exercise directors' powers in good faith and in the best interests of the corporation or for a proper purpose.

In Jordan there is no explicit provision in the Companies Law which states that directors have fiduciary duties. Sharar argues that there are many implicit provisions in the Companies Law which assume directors' fiduciary duties. Articles 157A and 159 state that the directors are responsible to the company, shareholders and others for every breach of the legislation or the company's Memorandum of Association, and any error, default or negligence in the management of the company.

In this connection, the Jordanian Civil Law 1976 no. (43), applies to commercial companies when there is no explicit provision in the Companies Law and Commercial Law, provides some explicit and implicit provisions that, it can be argued, impose fiduciary duties on directors. The Civil Law provisions highlight explicitly the duty of care and require the objective standard of the reasonable person as the standard of care and diligence. Article 597.1 obligates the partner in the company who participates in the management to exercise the care that a reasonable person exercises in running the company. Similarly, art 841.2 provides that the fiduciary must attain the standard of a reasonable person in performing his duties.

In addition, the Civil Law provisions include some implicit directors' fiduciary duties. Article 593 obligates the directors to comply with their authority in managing the company and compensate the company for any damage which occurs if they exceed their authority. Furthermore, art 597.2 obligates the directors to comply with objectives of company and not to take any action that causes damage to the company. The concept of a director's fiduciary duties has not been expressly incorporated into Jordanian legislation, nor are there judicial decisions which discuss fiduciary duties of directors. The judicial precedents of the Court of Cassation are very rare in this field. Nor have judicial decisions added to the understanding of the reach of fiduciary obligations. The available judicial precedents focus on the duty of care and the reasonable person standard of care. The Court of Cassation decisions stress that the fiduciary must attain the standard of a reasonable person in performing his duties according to art 841.2 of the Civil Law. In this connection, the decisions consider the fiduciary is responsible to compensate the principal for any damage which occurs

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902 Sharar, above n 460, 147.
903 The Court of Cassation is an appellate court of the highest instance, it is equivalent to Supreme Court in other countries. For more information about the court system in Jordan see Chapter 4.4.2.
904 See ROSC Report, above n 554, 14.
if the fiduciary does not exercise the standard of care of a reasonable person by committing any fault or default in performing the fiduciary’s duties.906

The *CG Code for Listed Companies* does not explicitly refer to the board of directors’ fiduciary duties the duty of loyalty and duty of care. These are of central importance,907 since they reinforce the key monitoring role of the board and effective implementation of the board duties and responsibilities, in particular, the corporate governance requirements, for example, equitable treatment of shareholders and monitoring the related party transactions.

7.5.2. The Board of Directors’ Statutory Duties

The board of directors has many statutory duties and responsibilities under the *Companies Law*. The board of directors’ main duties and responsibilities are setting the company's internal by-laws to regulate the company's administrative, financial and accounting issues in accordance with the *Companies Law*, the regulations and instructions issued pursuant thereto.908 According to the *Companies Law* the board must specify in these by-laws its duties and responsibilities in each field in order to clarify the board and management accountability to the company.909 The board has to provide the Companies General Controller with copies of these by-laws, who also in turn can recommend to the Minster of Industry and Trade to make any required amendments for the benefit of the companies.910

The board of directors is also required to appoint a qualified general manager to run the company in cooperation with the board of directors and under its supervision, and determining the general manager’s rights, duties and responsibilities by issuing special instructions for this purpose.911 These instructions clarify the management’s accountability to the company. The Board also has the responsibility to execute the general assembly decisions arising out of the ordinary and extraordinary meetings.912 The board is responsible to follow up the implementation of these decisions. The Board is also responsible for preparation and providing the Controller with the following periodic reports; an annual report and a semi-annual report as explained before in Chapter 6.3.3.913

The Board also has the duty to inform the Controller if the company has any financial or administrative difficulties or serious losses that affect the company shareholders’

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907 *Corporate Governance Code for listed Companies 2008* art 2.4 states briefly that the board of directors should exercise due professional care in managing the company, and devote the time needed to carry out its activities in honesty and transparency in order to serve the company's interests and realise its objectives.
908 *Companies Law 1997* art 151.
909 Farrar, above n 851, 93.
910 *Companies Law 1997* art 151.
911 Ibid art 153.A.
912 Ibid art 183.A.
913 Ibid arts 140, 142.
and creditors' rights. After verifying the correctness of the information the Minster upon the recommendation of the Controller can dissolve the board and appoint a committee consisting of qualified persons to run the company for a period of six months to 18 months. During this period the committee must invite the general assembly to meet and elect a new board.

7.5.3. Board of Directors Responsibilities to Meet Corporate Governance Requirements

This section is concerned with the corporate governance requirements (voluntary rules) in the *CG Code for Listed Companies* that should be met by the board of directors. It will not consider the board of directors' main duties and responsibilities (compulsory provisions) in the *Companies Law* which have been referred to in 7.5.2 and 6.3.

To comply with the corporate governance requirements, boards of directors have to set a plan to implement the corporate governance principles, review and evaluate the scope of implementation annually. As explained later in 7.6, 66 listed companies (representing approximately 36% of the total listed companies) failed to set written procedures for implementing good corporate governance. The companies state in their annual reports that they need more time to achieve full compliance with this rule, see Appendix 7.1. This rate of non compliance may be explained in part by the distinctive nature of Jordanian companies with high levels of family ownership and government representation. Families are less likely to see the need for detailed rules and procedures where they are both the managers and owners. Where government appointees dominate the board agency problems are less likely with less pressure to establish monitoring and other procedures.

Corporate governance requirements are broadly concerned with five different areas. The first concerns the board structure and composition discussed in 7.3. The second area relates to the company's disclosures. The board is responsible to set the company's disclosure and transparency policy and the necessary procedures to implement this policy as required by the regulatory bodies. This extends to related party transactions, see below. The board of directors is also responsible to disclose in clear, accurate and timely basis: periodic reports and continuous disclosures.

914 *Companies Law* 1997 art 168.A.
915 Ibid art 168.B.
916 While the *Corporate Governance Code for Listed Companies* 2008 art 2.1.17, *Corporate Governance Instructions for Insurance Companies* 2006 art 3.L, *Corporate Governance Instructions for Reinsurance Companies* 2010 art 3.L obligate the boards of directors to set a plan to implement the corporate governance principles, review and evaluate the scope of implementation annually, *Corporate Governance Code for Banks* 2007 arts 1.1, 1.2 obligates the banks' boards to set a code and establish a committee for this purpose.
918 *Corporate Governance Code for listed Companies* 2008 art 5.2.
919 The periodic reports include the annual, semi-annual, quarterly and preliminary reports. In this regard *Corporate Governance Code for Listed Companies* 2008 art 5.3 stresses that the financial statements should be prepared according to the IFRS.
(see Chapter 6.8.3). Consistently with obligations to stakeholders, it must also establish its policy toward the local community and environment.\footnote{The continuous disclosures include: the material information which might affect the company's securities price; dealings of insiders and their relatives in securities issued by the company; the privileges of the board directors and the top executive management; any acquisition which exceeds 5% in any company's capital.}

All the information mentioned above, except related parties' transactions, are set out in the \textit{Companies law 1997 no. (22)}, \textit{Securities Law 2002 no. (76)}, \textit{Banking Law 2000 no. (28)} and \textit{Insurance Regulatory Law 1999 no. (33)}, regulations and instructions issued pursuant thereto. The Related Parties' Transactions concept is new in the Jordanian legislation.\footnote{The roots of Related Parties' Transactions concept were exist before in the \textit{Companies Law 1997} which for example forbids the company from granting loans to the board directors and their relations and prohibits direct and indirect transactions between the company and its board members, general manager and employees, see \textit{Companies Law 1997} arts 139, 148. In this regard, the ROSC Report assessed the Jordanian compliance with OECD Principles in relation to related parties' transactions as largely observed, see \textit{ROSC Report}, above n 554, 8-9.} It was introduced by the \textit{CG Code for Banks} and the \textit{CG Code for Listed Companies} which require the board of directors to set a policy to regulate the relationship between the company and the related parties in order to avoid conflicts of interest.\footnote{Corporate Governance Code for Listed Companies 2008 art 2.8.B.1. Chapter 1 of the \textit{Corporate Governance Code for Listed Companies 2008} defines the Related Parties Transactions as: any transaction or contract its value exceeds JD 50 000 (approximately US$ 70 621) concluded between the company and any of the following related parties: affiliated companies; the company's board directors and top executive management; the affiliated company's board directors or the management committee and the top executive management; any person who owns 5% or more of the company's shares or in any of its affiliated companies; relatives and partners of the parties mentioned above; the company's Joint Venture Projects with other parties; saving funds of the company's employees; companies under the control of the board directors and the top executive management and their relatives.}

The Board is also responsible to protect the rights of the shareholders. Boards of directors should protect and facilitate the exercise of shareholders' rights by providing the shareholders with material information related to their company on a timely and regular basis as described above in this section. The board should also ensure shareholders participation in the general assembly meetings, see above 7.4.\footnote{For more information about the board of directors role in equitable treatment of shareholders in \textit{Companies Law 1997} see Chapter 6.3.4.} In this connection, boards of directors should adopt the procedures to encourage shareholders attendance and participation in the general assembly meetings, see 7.4. Moreover, the boards of directors should treat all shareholders fairly.\footnote{Corporate Governance Code for Listed Companies 2008 art 2.1.2, 8. \textit{Corporate Governance Code for Listed Companies 2008} ch 1 (definition 'insider') defines insider at the Company as: "A person who has access to internal information by virtue of his position or function within the company, including the chairman and members of the board of directors and the company’s general manager, financial manager and internal auditor, the representative of the legal person, and relatives of the above-mentioned persons".} For this purpose they should set procedures to ensure that all shareholders are treated equally without any discrimination and enjoy their full rights and forbid insider trading.\footnote{For more information about th}
The boards of directors should also distribute annual dividends to shareholders within 30 days from the date of the general assembly's meeting instead of 45 days as in the Companies Law; grant shareholders priority to subscribe in new share issuances to be made by the company before any other investors, establish mechanisms for receiving shareholders' complaints and suggestions. Again a difference between a voluntary rule in the CG Code for Listed Companies and a provision in the Companies Law prevented 48 listed companies (representing approximately 26.5% of the total listed companies) from distributing annual dividends to shareholders within 30 days from the date of the general assembly's meeting, see Appendix 7.1. This matter highlights again the question about companies understanding for the corporate governance rules.

The Board has important supervisory duties and responsibilities. As explained above in 7.5.2 the board is responsible to appoint a qualified general manager to run the company in cooperation with the board and under its supervision. In order to enhance the boards of directors supervisory role, they should set procedures, policies and criteria to forbid insider trading, identify authorised personnel in the company and their powers, and grant incentives and remunerations to the executive management; establish a special unit for internal audit and control, to ensure compliance with the legislation in force, regulatory bodies' requirements, and company’s internal regulations, policies and plans; ensure the independence of the external auditor.

The board duties extend to rights of stakeholders. The stakeholders concept was adopted recently by the CG Code for Listed Companies. The Code identifies stakeholders as “Persons who have vested interests in the company, including its shareholders, employees, creditors, suppliers, and prospective investors.” The Board of directors should respect the stakeholders’ rights that are established by law or through mutual agreements and provide them with material information related to the company on a timely and regular basis. For this purpose, boards of directors

927 Corporate Governance Code for Listed Companies 2008 art 4.1.6, Companies Law 1997 art 191.C.
928 Corporate Governance Code for Listed Companies 2008 art 4.1.7. Companies Law 1997 art 92.B.7 states that the shareholding company Articles of Association and Memorandum of Association should include whether the shareholders hold pre-emptive right to subscribe for any new issues to be made by the company.
930 Corporate Governance Code for Listed Companies 2008 art 2.1.8, 9, 15.
931 Ibid art 2.1.12.
932 According to art 5.4.3 Corporate Governance Code for Listed Companies 2008 the company should take appropriate actions to ensure the following:- 1-The company’s external auditor is not a founder, a shareholder, a member of its board of directors, or a partner or an employee of any member of the board of directors. 2- The external auditor does not perform any additional services to the company such as administrative or technical consultations. 3- The external auditor is independent in accordance with international auditing standards. 4- The external auditor performs his duties impartially without interference from the board of directors or the executive management.
933 The roots of the stakeholders concept were exist before in the Companies Law 1997 which provides for example bondholders with special protections, see Companies Law 1997 arts 126-130. In this regard, the ROSC Report assessed the Jordanian compliance with OECD Principles in relation to the role of stakeholders in corporate governance as observed, see ROSC Report, above n 554, 9-10.
934 Corporate Governance Code for Listed Companies 2008 ch 1 (definition 'stakeholders').
935 According to ch 4.D of the OECD Principals where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.
should set a policy to organise the relations with stakeholders. Appendix 7.1 shows high compliance; only 17 listed companies (representing approximately 10% of the total listed companies) failed to set a policy to organise the relations with stakeholders. This might be the case where it is a family dominated company with family members acting as managers, employees and directors. There may also be an issue whether companies understand this new concept. To enhance the listed companies compliance with this requirement, the concerned regulatory bodies in the market should further develop their educational roles in relation to the corporate governance new concepts and applications through holding series of educational projects and training programs.

The following section will show the extent of listed companies compliance with the new corporate governance voluntary rules in the CG Code for Listed Companies.

7.6. Companies Compliance with the Corporate Governance Code for Listed Companies

On 29 July 2008 the JSC issued the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008 and requested listed companies to comply with it from the first of January 2009 through disclosing in their annual reports the extent of their compliance with the Code according to the 'comply or explain' rule.

A total of 244 listed public shareholding companies annual reports for 2009 (including 14 banks and 27 insurance companies) were examined. It was found that 181 listed companies (representing approximately 74% of the total listed companies) disclosed in their annual reports the extent of their compliance with the Code's rules. While, 63 listed companies (representing approximately 26% of the total listed companies) failed to disclose the extent of their compliance with the Code's rules; in other words they did not apply the 'comply or explain' rule.

The principal reasons for non compliance are summarised in the Appendix 7. The main reasons which prevent the companies from complying with the Code's voluntary rules may be categorised within the following six groups:

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936 Corporate Governance Code for Listed Companies 2008 art 2.1.16.
937 For more information about 'comply or explain' rule see Chapter 6.8.4.
938 All the findings of the examination depend on the 181 listed companies which disclosed the extent of their compliance with the Code's rules.
Table 7.1: The Main Reasons which Prevent the Listed Companies from Complying with the Voluntary Rules in the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008:

<table>
<thead>
<tr>
<th>1- Legal Reasons</th>
<th>Examples</th>
<th>Comments</th>
</tr>
</thead>
</table>
| 1 - Direct conflict between voluntary rules in the **CG Code for Listed Companies** and compulsory rules in **Companies Law**. | Conflict on requirements for calling an extraordinary general assembly meeting to dismiss the board: Art 4.1.11 **CG Code for Listed Companies** shareholders holding 20% required. Art 165.A **Companies Law**; shareholders holding at least 30% of the company shares required. | - The voluntary rule is not applicable.  
- Amending the **Companies Law** is required. |
| 2 – Indirect conflict between voluntary rules in the **CG Code for Listed Companies** and rules in the **Companies Law**. | There is a conflict on topics not listed in agenda sent to shareholders art 3.4 **CG Code for Listed Companies** unlisted topics cannot be discussed; art 171.A.9 **Companies Law** unlisted topics can be discussed if approved by shareholders holding at least 10% of the shares represented in the meeting. | - Companies cannot apply the voluntary rules and ignore the rules which grant rights for the shareholders.  
- Amending the **Companies Law** is required. |
| 3- Difference between voluntary rules in the **CG Code for Listed Companies** and rules in the **Companies Law** and other legislation in force. | Differences in requirements for publicising details of the annual general meeting art 3.6 **CG Code for Listed Companies** and art 145 **Companies Law**. | - The voluntary rule is applicable and there is no conflict with rule in the **Companies Law**. |

<table>
<thead>
<tr>
<th>2- Families Dominance</th>
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<tbody>
<tr>
<td>1- Number of shareholders in the company is small (8 shareholders), and all of them are members of the board of directors.</td>
<td>Art 2.6 <strong>CG Code for Listed Companies</strong>; directors should be qualified with adequate knowledge and experience in administrative affairs.</td>
<td>- Some directors are not qualified.</td>
</tr>
</tbody>
</table>
| 2- Number of shareholders in the company is small, and 92% of them are represented on the board of directors. | Art 2.1.14 **CG Code for Listed Companies**; a mechanism to receive shareholders' complaints and suggestions should be set by the board of | - Some companies do not set a mechanism since almost all the shareholders can complain directly to the board.  
- This voluntary rule is |

939 Art 3.6 of the **CG Code for Listed Companies** states that "place and date set for the general assembly meeting should be announced at least twice in three local daily newspapers, and on the company's website". Art 145 **Companies Law** states that "date set for the general assembly meeting should be announced at least twice in two local daily newspapers, and only once on radio or television".
<table>
<thead>
<tr>
<th>3- Number of shareholders in the company is small.</th>
<th>Art 3.3 <em>CG Code for Listed Companies</em>; invitations to attend the general assembly meeting shall be sent to shareholders via e-mail.</th>
<th>- The invitations delivered to the shareholders by hand according to art 144. <em>Companies Law</em>. - This voluntary rule is applicable.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3- Jordanian Government Dominance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1- The majority of board directors are representatives for the public corporate bodies.</td>
<td>Art 2.1 <em>CG Code for Listed Companies</em> &quot;At least one-third of the board of directors shall be independent members&quot;.</td>
<td>- The board composition affects its independence.</td>
</tr>
<tr>
<td>2- All board directors are representatives for the public corporate bodies.</td>
<td>Art 3.5 <em>CG Code for Listed Companies</em>; shareholder who wishes to nominate himself for the board membership should provide the company with his C.V, which in turn should send the C.V to shareholders who are invited to attend the general assembly meeting.</td>
<td>- Some companies do not attach the shareholder's C.V to the invitation since the public corporate bodies should be entitled to be represented on the boards by a number of members in proportion to their subscription in the company's capital according to arts 135 and 136 <em>Companies Law</em>.</td>
</tr>
<tr>
<td><strong>4- Timing Reasons</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1- Some companies have been established recently and have not started their activities yet or have already started.</td>
<td>- Art 2.2.1 <em>CG Code for Listed Companies</em> &quot;The board of directors shall establish the permanent Nominations and Remunerations Committee&quot;.</td>
<td>- Some rules were not applied. - Companies need time to achieve full compliance with the Code's rules.</td>
</tr>
</tbody>
</table>
| 2- The *CG Code for Listed Companies* has issued recently. | Art 2.1.17 *CG Code for Listed Companies* "The Board of directors shall set written procedures for implementing the good corporate governance rules in the company, ..."
. | - Companies could not apply some rules. - Companies need time to achieve full compliance with the Code's rules.                                                                                      |
| 3- Some companies are working on applying the Code's rules. | - Art 2.1.1 *CG Code for Listed Companies* "The board of directors shall set strategies, policies, plans and procedures that achieve the company's interest and objectives, ...". | - Companies need time to achieve full compliance with the Code's rules.                                                                                                                      |
| 4- Some companies promise to apply the Code's rules in the future. | - Art 5.1.4 *CG Code for Listed Companies* "The Audit Committee shall meet the company's external auditor once a year at least, ...". | - Companies need time to achieve full compliance with the Code's rules.                                                                                                                      |
| 5- Some rules were not applied since the related | - Art 2.1 *CG Code for Listed Companies*; company's | - This rule was not applied since the company has not                                                                                                                                       |
cases have not happened yet. 

| 1- The size of some companies' activities does not require applying some rules. | - Art 2.1.12 *CG Code for Listed Companies* "The board of directors shall establish a special unit for internal audit and control ...". | - These rules are applicable. |
| 2- Cost reduction. | - Art 2.5 *CG Code for Listed Companies* "The board of directors shall split the role of the Chairman of the board from any executive position in the company". |
| 3- Some companies do not have adequate facilities to apply some rules. | - Art 5.4 *CG Code for Listed Companies* "The company shall use its website on the Internet to enhance disclosure and transparency, ...". |

| 1- Some companies take actions to minimize the effects of non compliance with the rules. | - Art 2.5 *CG Code for Listed Companies* "The board of directors shall split the role of the Chairman of the board from any executive position in the company". | - In order to improve the control system efficiency over executive management's decisions and performance, the bank has adopted different control measures:  
   1. Established many Board Committees. 2. Appointed an independent director in the board as a deputy chairman. 3. Established the deputy general manager position. |
| 2- Some companies claim that there is no need to apply some rules. | - Art 5.1.4 *CG Code for Listed Companies* "The Audit Committee shall meet the company's external auditor once a year at least, without the presence of the executive management ...". | - These answers reflect that the companies do not understand the corporate governance new concepts, applications and their importance. - These rules are applicable. |
| 3- Some companies claim that they apply the essence | - Art 2.1.8 *CG Code for Listed Companies* "The board | - These answers reflect that the companies do not understand...
of the rules through applying the related provisions in the legislation. of directors shall set procedures to forbid insiders in the company from using confidential inside information to achieve material or moral gains”.

4- Some companies depend on some external parties such as the external auditor/ external services company, and internal parties such as the board of directors/ executive management/ general manager to perform committees’ duties. - Art 2.1.12 CG Code for Listed Companies "The board of directors shall establish a special unit for internal audit and control, …". -Art 2.2.1 CG Code for Listed Companies "The board of directors shall establish the permanent Nominations and Remunerations Committee".

The examination also reveals some serious issues relating to compliance. Some reports set out the companies’ policies but not whether the voluntary rules were applied nor the reasons for non compliance. In some instances reports did not give reasons for non-compliance and in some cases companies did not understand the rule or that they were applicable. There were also instances where annual reports indicated that companies did not understand the corporate governance new concepts, applications and their importance. There were also instances where companies did not comply with some compulsory rules in Companies Law and Securities Law. 8 out of 14 listed banks did not disclose in their annual reports the extent of their compliance with the CG Code for Listed Companies. 940

One explanation for this failure to comply may be the JSC’s confused role in enforcing the Code which resulted in very poor quality of disclosure. 941 The JSC has not implemented any mechanism to enforce the Code in accordance with the ‘comply or explain’ rule. So the JSC did not take any action against the 63 listed companies which failed to apply the ‘comply or explain’ rule. The JSC also ignored the importance of the ASE’s role in imposing the corporate governance requirements on listed companies through its ability to condition the right to trade on compliance with the listing standards (see 6.8.4), as well as it did not establish a specialised unit in its organisational structure to follow the Code. 942 In addition, the JSC has not made it

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940 Maybe these banks considered that if they satisfied the CG Code for Banks, they did not have to satisfy the CG Code for Listed Companies since the CG Code for Banks is more stringent than the CG Code for Listed Companies and there are many similar rules in both codes. In this connection, it is worth mentioning that, the CG Code for Banks has priority to be applied if there is conflict with the CG Code for Listed Companies since the banks code considered a private statute and has priority to be applied before the listed companies code which considered a public statute.

941 For more information about the shortcomings in the JSC performance in this regard see Chapters 6.8.4 and 8.8.

942 The JSC authorises the Disclosure Department to follow up all the Code affairs.
clear to listed companies the requirements of the 'comply or explain rule'. Nor has the JSC adopted a clear examination process for companies disclosures. As mentioned in 6.8.4 and 8.8, the ASE should be empowered, instead of the JSC, to enforce the Code. Jordan may benefit from the Australian experience in this field. ASX impose effectively the corporate governance requirements on listed entities through its ability to condition the right to trade on compliance with its Listing Rules which require listed entities to disclose in their annual reports the extent of their compliance with corporate governance recommendations in accordance with the ‘comply or explain rule’. As will be explained later in 8.8, ASX effectiveness in enforcing the code in accordance with the ‘comply or explain rule’ appears in the report that was issued by ASX Compliance in March 2013 about adoption of the ASX Corporate Governance Council's recommendations relating to gender diversity in 2012. The report, which analysed compliance by 600 listed companies, show that the majority 96% of the listed companies comply with gender diversity recommendations by adopting a diversity policy or explaining the reasons for non-compliance.

7.7. Summary and Conclusions

Corporate governance system in Jordan is an insider – dominated system in which a small number of major shareholders, essentially families, and the Jordanian government, influence the board structure and control management. Alongside the dominance of families and government, there are many obstacles to compliance with corporate governance rules particularly those in the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008.

The listed companies' answers in their annual reports, see Appendix 7.1 and Table 7.1, show that the concentration of ownership in families suggest a negative influence on the board structure and the control of management in the listed companies. As a result for this and families' resistance against some of the corporate governance applications to keep their control over the companies, the extent of compliance with the corporate governance rules in the CG Code for Listed Companies has been weak. For instance, the presence of qualified directors who enjoy a adequate knowledge and experience may be affected by the concentration of family's members in the board, see Table 7.1.

Similarly, the concentration of ownership by the government and official public corporations affects the board structure and control of management. According to

943 In 2010 the JSC issued an announcement to listed companies and clarified the essence of 'comply or explain' rule and how listed companies should apply this rule, see the JSC's Board of Commissioners, Decision No 12/1/4659, 15 December 2010 <http://www.jsc.gov.jo/Public/Arabic.aspx?site_id=2&Lang=1&Page_Id=2721&Menu_ID=147> (29 July 2013) (Translated from Arabic).

companies' answers in their annual reports, the concentration of government representatives on the boards has negative influence on the presence of the independent directors on the boards. As well, this concentration prevents some companies from complying with the corporate governance new applications such as setting a mechanism to receive shareholders' complaints, see Table 7.1.

There are some serious legal obstacles affecting companies compliance with the corporate governance rules, see Table 7.1. Some rules could not be applied because of inconsistent provisions between the voluntary provisions in the Code and the compulsory provisions in the Companies Law. Some other rules were not applied by companies since there is a difference between the voluntary provisions in the Code and the provisions in the Companies Law.

Another obstacle is the misunderstanding of the corporate governance new concepts, applications and their importance to good corporate governance, see Table 7.1. Many companies do not understand the new corporate governance concepts and applications such as the presence of the independent director in the board, splitting the role of the chairman of the board from any executive position in the company and establishing the board permanent committees, which are key requirements to achieve an independent board of directors. In this connection, the lack of clarity of the fiduciary duties of the board directors does not assist good corporate governance. The regulation of the directors' fiduciary duties in the Jordanian legislation is underdeveloped. Moreover, the judicial precedents in this field are very rare. Nor have judicial decisions added to the understanding of the reach of fiduciary obligations.

The problems do not just relate to compliance but also to enforcement of the CG Code for Listed Companies. The JSC has not implemented any mechanism to enforce the Code in accordance with the 'comply or explain' rule. The ASE's ability to impose corporate governance requirements on listed companies through the listing standards is not considered by the JSC. The JSC does not provide listed companies with useful methods to facilitate implementation the Code such as support material on its websites, nor allow them to adopt alternative corporate governance practices, or follow the results of the listed companies' disclosures for any statistical purposes or enhancing the companies compliance in the future. The ASE should play a leadership role in developing Jordanian corporate governance. The ASE may learn from Australian experience in this regard. ASX, which impose the Corporate Governance Principles through the Listing Rules, provides on its website links to useful material and websites, and publishes aggregate statistical analysis about the listed entities' disclosures to assist these entities to implement the Principles and enhance their compliance. Further, as explained in Chapter 8.8, ASX Corporate Governance Principles provide flexibility for listed entities to adopt alternative practices according with spirit of the relevant corporate governance principles to avoid any conflict that

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945 In this situation the voluntary rule in the CG Code for Listed Companies is not applicable since there is a direct conflict between the voluntary rule in the Code and the compulsory rule in the Companies Law, see Appendix 7.1.

946 In this situation the voluntary rule in the CG Code for Listed Companies is applicable since there is only a difference between the voluntary rule and another rule in the Companies Law, but there is no conflict between these two rules.
may arise from the duplicate implementation of different corporate governance principles.

To enhance the listed companies compliance with the Code, the concerned regulatory bodies in the market should further develop their educational roles in relation to the corporate governance new concepts and applications through holding series of educational projects and training programs as well as providing support material on their websites. Moreover, reviewing and amending the Companies Law 1997 no. (22) is required to achieve consistency with the OECD principles and implement the corporate governance new concepts and applications in the Code. In this connection the Companies Law should also legislate the fiduciary duties of the board directors and enforce the implementation of the Cumulative Voting in general assembly meetings especially in the election of the board directors to restrict families' and small groups' powers in the boards and protect minority of shareholders.

This chapter examined the corporate governance structure in Jordan. It reviewed the level of compliance with voluntary rules of corporate governance and indicated significant levels of non compliance for different reasons as mentioned above, see the listed companies' answers in their annual reports (Appendix 7.1). These issues are important for the discussion of the effectiveness and possible reform of the ASE if it is to play a leadership role in Jordanian corporate governance and enforce the Code instead of the JSC. The next chapter will compare the ASE system with Australian Securities Exchange system to identify the strengths and weaknesses of the ASE performance and provide recommendations to enhance this system.

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947 ROSC Report, above n 554, 1, 16.
948 Ibid 14.
Chapter 8

Evaluating the Amman Stock Exchange Role in Corporate Governance

8.1. Introduction

In order to evaluate the future role of the ASE, this chapter will compare the ASE with another developed market to see what the ASE can learn and benefit from developments in that system. It has selected as the comparator, the Australian Securities Exchange (ASX). Australia, is currently ranked as the 13th largest economy (measured by GDP) and considered one of the strongest performers among developed countries with real economic growth average of 3% per annum over the past decade. Australia, is home to a well-developed and innovative financial services industry and capital market. Australia’s equity market ranks the eighth largest in the world (based on free-float market capitalization) with $1.2 trillion market capitalization. The bond market ranks third largest debt market in the Asia Pacific. The derivatives market is the largest fixed income derivatives in the Asia-Pacific region. The foreign exchange market is the seventh largest in the world in terms of global turnover. Australia is fourth largest pool of funds under management in the world. ASX, which has demutualised in 1998, was the first exchange to become a publicly traded exchange in the same year. As noted in Chapter 5.3, in comparison, the ASE in Jordan is a small stock exchange with 240 listed public shareholding companies. Despite the difference in size and resources between Jordan and Australia, the Australian ASX is a useful comparator because it provides an example of a transition from a mutual organisation of stockbrokers to an independent publicly listed corporation. The chapter will conclude with recommendations on how to improve the ASE in order to make the Jordanian system internationally competitive and attractive to both domestic and foreign investments. The analysis in this chapter will take the form of a comparison of the legislation, the corporate governance codes and stock exchanges rules.

This chapter is structured as follows. After the introduction 8.2 introduces ASX’s powers and functions, followed by 8.3 which considers ASX’s organisational structure. Sections 8.4, 8.5 discuss ASX’s primary services in the Australian Capital Market. The discussion includes listing securities, trading in securities, clearing and settlement. 8.6 will discuss the ASX role in following and disclosing the listed

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949 There are ten domestic financial markets that have been licensed to operate in Australia in accordance with ch 7 of the Corporations Act; Australian Stock Exchange Limited (ASX), Australia Pacific Exchange Limited, BGC Partners (Australia) Pty Ltd, Chi-X Australia Pty Ltd, FEX Global Pty Ltd, IMB Ltd, Mercari Pty Ltd Limited, National Stock Exchange of Australia, SIM Venture Securities Exchange Ltd and Yieldbroker Pty Limited. This chapter will only consider ASX which is largest stock exchange in Australia. For more information about the licensed markets in Australia see ASIC <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Licensed%20domestic%20financial%20market%20operating%20in%20Australia> (15 July 2013).


951 Poitras, above n 14, 163-64, Otchere et al, above n 182, 514.
entities periodic and continuous disclosures. 8.7 will focus on ASX's administrative enforcement to ensure that its group entities which hold licences to operate markets, clearing and settlement facilities have adequate arrangements for monitoring and enforcing compliance with ASX's operating rules. As ASX is a self-listed public company acting both as participant and as supervisor, its position and relationship to the regulatory system is critically important. This section, 8.7 also discusses the ASX relationship with Australian Securities and Investments Commission (ASIC) through examining the special oversight arrangements which have been undertaken by ASIC to balance ASX commercial and public interest functions and address the potential conflicts of interest arising form ASX self-listing. Section 8.8 will concentrate on ASX's leadership role in developing corporate governance in Australia through establishing the Corporate Governance Council (ACGC) to prepare the Corporate Governance Principles and Recommendations, and enforcing the listed entities to disclose in their annual reports the extent of their compliance with these recommendations. 8.9 will consider the ASX participation in educating investors in securities. 8.10 will provide a summary and conclusions.

8.2. The Powers and Functions of the ASX

The Australian Stock Exchange Limited (ASX Limited) was established in 1987 after the merger of six independent state-based stock exchanges. As mentioned before in Chapter 2.2, Melbourne Brokers' Association established the first exchange in Australia in 1859. Soon after, stock markets were established in each of the other five state capitals (Sydney - New South Wales 1871, Hobart - Tasmania 1882, Brisbane - Queensland 1884, Adelaide - South Australia 1887 and Perth - Western Australia 1889). These independent stock exchanges based on a mutual model; they were private organisations in which major brokers had seats and traded. See Steen et al, above n 24, 4.

952 ASX was demutualised and became a publicly traded exchange in 1998. In July 2006 it was merged with the Sydney Futures Exchange and operated under the name Australian Securities Exchange. From the first of August 2010, ASX launched a new group structure (the ASX Group) to follow the modern financial market environment.

The ASX plays a crucial role in sustaining the health of the Australian Capital Market through helping listed companies raise capital, providing investors with opportunities to build their wealth and enabling buyers and sellers to transact with confidence. ASX works in the Australian Capital Market under the supervision of ASIC and the RBA. ASX's goals are to create confidence in its licensed markets and ensure that its markets are fair, orderly and transparent; ensure that its depository, clearing and settlement facilities comply with Financial Stability Standards and reduce systemic risk; provide market participants with high quality and timely information through a range of different methods and promote standards of corporate governance among listed companies and educate retail investors.

953 Prior to its conversion to a public company, the ASX was a non-profit entity owned mutually by its members and run on behalf of them under its own constitution and operating rules, see Donnan, above n 37, 5-6.


955 Ibid.

ASX meets its main duties through setting clear rules to govern the operation of the market (participants, listing, trading, clearing and settlement) and making adequate arrangements for managing conflicts between its commercial interests and its regulatory obligations. It also oversees compliance with its operating rules. It provides high-quality and high-performance infrastructure through utilising a range of trading, clearing and settlement technologies and operational processes.

8.3. ASX, ASE - Institutional Structure

ASX Group is an umbrella brand, with ASX Limited as the holding company. ASX Limited operates the services in primary, secondary and the derivative markets, and monitors and enforces compliance and operating rules within the group. The subsidiaries of ASX Limited are ASX Clearing Corporation Limited which operates the clearing services, ASX Settlement Corporation Limited which operates the settlement services and ASX Compliance Pty Limited which supervises and enforces compliance with the operating rules.

Diagram 8.1: ASX Group

The ASX organisational structure as a publicly listed company allows ASX to follow the modern financial market environment through managing ASX on a fully commercial basis, developing new products and services and attracting more listings. A 2008 study suggested that the change of governance structure from mutual to publicly traded, self-listed structure has benefited the ASX as a company, as well as the Australian stock market. In particular, it is associated with profitability ratios of ASX doubling in the five years following the conversion, trading activity by foreign investors has increased and the small-cap firms have become more liquid.

961 For more information about the reasons in support of ASX demutualisation see the objectives of privatisation in Chapter 9.3.2 and Donnan, above n 37, 8-9.
962 The period of the study was from 1 July 1993 to 30 June 2004. The study controlled the growth of the Australian economy in order to avoid the influence of the growth on the profitability ratios.
963 Otchere et al, above n 182, 512, 514, 523.
The organisational structure of ASX under the *Corporations Act* limits the overlap between ASX’s and ASIC’s roles in the Australian Capital Market, in particular the regulatory and supervisory functions. It does this by identifying the relationship between them as a relation between a regulator (ASIC) and a licence holder (ASX), and shifting the supervision over the real-time trading activities from ASX to ASIC, see 8.7. The organisational structure also regulates the interrelationship between ASX and its participants and listed entities on a contractual basis, and accordingly clarifies ASX enforcement powers and appeals processes against its decisions (see 8.7).

In contrast, the ASE’s structure as a non-official public institution is subject to extensive control by the Jordanian government and JSC over the ASE’s administrative and financial affairs which prevents the ASE operating effectively. ASE’s financial autonomy particularly its financial position, liquidity and future plans are hindered by the government’s and the JSC’s control. Similarly, the ASE lacks administrative autonomy particularly in its decision making. There are also issues in relation to the ASE staff and its performance, see Chapter 4.

The ASE’s lack of autonomy has prevented the ASE from developing new products and services and enhancing its operations as a regulated exchange to attract more listings and investors, see 8.4. The ASE is also unable to properly perform its functions within the Jordanian capital market because of the overlap between the ASE’s and JSC’s regulatory and supervisory functions and the JSC restrictions over the ASE powers. Similar problems relate to the ASE enforcement powers and appeals processes discussed below 8.7.

As will be explained in Chapter 9, reinforcing the financial and administrative autonomy of the ASE, and improving its strength requires a comprehensive restructuring of the ASE by privatising it from a non-official public institution to a for-profit public shareholding company managed on a commercial basis and then listing it on the ASE market. This will realise the process already foreshadowed in the existing legislation, see 9.3.2. The privatisation project should concentrate on removing the obstacles to the proper functioning of the ASE as a modern stock exchange and clearly delineate the regulatory and supervisory role of ASE within the broader context of the regulatory framework. This will require reregulating the interrelationship between the ASE and JSC, in particular, defining the roles of regulator and license holder. It will also require removal of the JSC restrictions over the ASE’s powers and its financial and administrative independence. The transition from a semi public entity to a listed public company will also require clarity to define the interrelationship between the ASE, and its members (brokerage firms) and listed issuers. As with the ASX the basis of this relationship is contractual rather than statutory. It will also require clarity on the ASE discretionary powers and enforcement actions and whether decisions can be appealed.

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964 See *Corporations Act 2001* pt 7.2.
966 As will be explained later in Chapter 9.3.2, s 793C of the *Corporations Act* grants ASX Listing Rules statutory enforceability that ASX, ASIC and any aggrieved party, who have suffered prejudice by the failure of the listed company to observe the listing rules, could seek judicial enforcement.
A publicly listed ASE would need to balance commercial and public interest functions and address the potential conflicts of interest arising from self-listing. One approach is to establish a separate regulatory department which does not have any involvement in the ASE business and which reports directly to the board of directors and/or to the JSC. If ASE were to become a publicly listed company, this would result in regulatory oversight by the JSC over the ASE as a listed company. The issue is how far regulatory and supervisory roles of the current ASE should reside with the government regulator rather than a publicly listed corporation. One option is to shift the supervision over the real-time trading activities to the JSC. See 8.7.

By following the ASX model, the ASE can also gain valuable insights into the role of a modern exchange in listing and trading in securities.

8.4. ASX, ASE - Role in Listing and Trading in Securities

ASX operates two trading platforms; ASX Trade and ASX Trade 24, with a wide range of listed products including almost 2200 listed companies with different types of shares. The table below shows the listed securities on the ASX.

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967 Cash market Equities, Exchange Traded Options, Interest Rate Securities and Warrants traded in ASX Trade platform on a screen based trading system - remote electronic trading – which allows ASX participants to send their buying/selling orders from the trading terminals in their offices to ASX Trade Platform to be executed automatically on a price/time priority basis, see ASX <http://www.asx.com.au/products/asx-shares-asx-trade.htm> (31 January 2013).

968 Contracts for Difference, futures and options contracts listed over Treasury Bonds, bank bills, cash rates, S&P/ASX Equity Indices, energy and commodities traded in ASX Trade 24 platform on a screen based trading system near 24 hours to make the Australian financial products available for foreign investors all over the world in spite of the time gap, see ASX <http://www.asx.com.au/trading_services/asx-trade24.htm> (31 January 2013).

969 In this regard, there are many New Zealand (NZ) securities listed in ASX such as companies shares, Contracts for difference (CFDs) over based companies, futures and options contracts on interest rates securities and electricity. For more information see ASX <http://www.asx.com.au/products/new-zealand-markets.htm> (15 July 2013).
Table 8.1: Listed Securities on the ASX (as on 30 June 2013)\(^{970}\)

<table>
<thead>
<tr>
<th>Securities</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies shares</td>
<td>Both ordinary shares and preference shares are listed on ASX.(^{971})</td>
</tr>
<tr>
<td>Futures(^{972}) and Options(^{973})</td>
<td>Including futures and options over markets for equities and interest rates as well as agricultural (grain and wool), energy and environmental markets.(^{974})</td>
</tr>
<tr>
<td>Warrants</td>
<td>A warrant is a form of derivative that derives its value from an underlying instrument such as shares or ETFs. Some give holders the right to buy or to sell the underlying instrument to the warrant issuer for a particular price.(^{975})</td>
</tr>
<tr>
<td>Contracts for difference (CFDs)</td>
<td>A CFD is an agreement between a buyer and a seller to exchange the difference in value of a contract, between when the contract is opened and when it is closed. The difference is determined by reference to ‘underlying’ instruments - such as shares, indices, commodities and currencies.(^{976})</td>
</tr>
<tr>
<td>Interest Rate Securities (IRS)</td>
<td>An interest rate security is a security that pays a fixed or floating rate of return in the form of interest or dividends. The three main types of interest rate securities currently traded on ASX include Bonds (Corporate Bonds and Government Bonds), Floating Rate Notes and Convertibles.(^{977})</td>
</tr>
<tr>
<td>Indices</td>
<td>Indices allow investors to gain an insight into the performance of an asset class or a segment of that asset class. Listed indices in ASX include capitalisation indices, fixed income indices, residential property indices, sector indices, strategy indices and volatility indices.(^{978})</td>
</tr>
<tr>
<td>Investment Funds</td>
<td>The five main types of funds listed in ASX include managed fund, exchange traded fund (ETF), infrastructure fund, Self Managed Super Fund (SMSF), and Real Estate Investment Trust (REIT).(^{979})</td>
</tr>
</tbody>
</table>


\(^{972}\) Futures are contracts to buy or sell a particular asset (or cash equivalent) on a specified future date. For more information see ASX <http://www.asx.com.au/products/asx-futures-and-options.htm> (15 July 2013).

\(^{973}\) The option is a contract to buy or sell a financial product. It establishes a specific price, called the strike price, at which the contract may be exercised, or acted on. It has also an expiration date. When an option expires, it no longer has value and no longer exists. Options come in two varieties, calls and puts, and you can buy or sell either type. For more information see ASX <http://www.asx.com.au/products/asx-futures-and-options.htm> (15 July 2013).


\(^{979}\) Managed funds hold and manage a portfolio of assets on behalf of their investors and can include a variety of assets such as shares, fixed income securities and unlisted private companies. There are three types of managed funds trading on ASX: Absolute Return Funds (Hedge Funds), Listed Investment Trusts and Listed Investment Companies. For more information see ASX <http://www.asx.com.au/products/about-managed-funds.htm> (15 July 2013).

\(^{980}\) ETFs are typically passive index tracking investments and in most instances are either physically backed or adopt a representative sampling approach. For more information see ASX <http://www.asx.com.au/products/about-etps.htm> (15 July 2013).

\(^{981}\) Infrastructure funds invest in essential public infrastructure assets such as toll roads, airports and gas pipelines. For more information see ASX <http://www.asx.com.au/products/infrastructure_funds_product_description.htm> (15 July 2013).

\(^{982}\) People, who want to have control of how their superannuation funds are invested, are the trustees of their own fund rather than relying on someone else to make investment decisions. For more
To ensure the reputation of the market, quality of listed entities, orderly and liquid market in these entities’ securities, the ASX sets conditions for admission to its official list relating to the entity's structure, size, number of shareholders and infrastructure for communication with ASX. Entities should satisfy either the profit test or the asset test in the listing rules. Alongside these major requirements the entity must meet a wide range of conditions such as the appointment of a compliance officer with ASX in relation to listing affairs. As well, the entity must establish the necessary infrastructure to correspond with ASX electronically in relation to the obligation to provide ASX with the required documents.

Furthermore, to maintain entities listing on ASX and ensure that there is an orderly and liquid market in these entities’ securities, ASX monitors the entities compliance with the on-going listing requirements in relation to the listed entities' structure, operations, financial condition and operating results, proportion of assets in cash and level of spread of security holdings. In this connection, ASX exercises broad discretionary powers in following the on-going requirements; ASX decides in each situation, as it deems appropriate, the adequacy and entity compliance with the requirements.

ASX also has discretionary powers to suspend and de-list the listed entities’ securities. According to ch 17 of ASX Listing Rules listed entities’ securities on the ASX must be suspended and de-listed if the listed entity fails to pay listing fees as required. Chapter 17 also gives ASX discretionary powers to suspend for the period it deems appropriate and remove from the official list, where the entity is unable to comply with the Listing Rules or any other reason ASX deems appropriate. There are, appellate procedures set out in the ASX Enforcement and Appeal Rulebook discussed below.

For more details see ASX, Listing Rules (at 1 May 2013) ch 1.

REITs allow investors to purchase an interest in a diversified and professionally managed portfolio of real estate which can include commercial, industrial, retail or a mix of real estate assets. For more information see ASX <http://www.asx.com.au/products/about-a-reits.htm> (15 July 2013).

For more information about the on-going requirements on ASX, see ASX Listing Rules ch 12.


984 For more details see ASX, Listing Rules (at 1 May 2013) ch 1.

985 The profit test is usually applied where the company to be listed has been operating successfully for a number of years. To satisfy the profit test, the company must: Be a going concern or a successor of a going concern; have conducted the same main business for the past three full financial years; provide to ASX audited financial statements for the last three full financial years; have aggregated profit from continuing activities over the past three full financial years of at least A $1 million; and provide confirmation by the directors that consolidated profit from continuing activities over the past 12 months ending two months prior to applying for admission exceeds A $ 400,000 (ASX Listing Rules r 1.2).

986 The asset test is applied where the company is a start-up or a newly established fund. To satisfy the asset test, the company must: have at the time of admission: net tangible assets of at least A $2 million after deducting the costs of the float or a market capitalisation of at least A $10 million; confirm that it has enough working capital to carry out its stated objectives; working capital of at least A $ 1.5 million; have less than half the company's total tangible assets (after raising any funds from float) in cash or if half or more of the company's total tangible assets are in cash, have commitments to spend at least half of its cash in a way that is consistent with its business objectives (ASX, Listing Rules r 1.3).

987 For more information about the on-going requirements on ASX, see ASX Listing Rules ch 12.

988 ASX Listing Rules r 17.6, 17.15.

989 Ibid rr 17.3.1, 17.12.

990 Ibid rr 17.3.4, 17.12.
It is observed that the ASE in Jordan in comparison has a very small list of products and may look to the ASX as a model for its future role. There is no variation on the financial instruments or companies listed on the ASE. There are only four types of securities and one type of company (the Public Shareholding Company) listed on the ASE with a clear absence of the investment funds. As explained in Chapter 5.3, the lack of variation on the financial instruments is considered a major problem that hinders the ASE's efforts to respond to the market needs for raising capital and attract domestic and foreign listings and investments.

The ASE monitors different on-going requirements for listed company’s capital, operating results (profits), number of shareholders and level of spread of security holdings, and according to these requirements the ASE transfers listed companies’ shares between secondary markets. The ASE does not require for admission a profit test or an assets test or conditions concerning the issuer’s structure and number of shareholders, or requirements for corresponding with the ASE such as establishing an electronic infrastructure or appointing a compliance officer. This limits ASE’s ability to implement the Listing Directives, disclosure mechanisms (see Chapter 5) and the quality of listed companies and market liquidity. In 2011 following the amendment of the ASE Listing Directives, ASE de-listed 32 companies (representing approximately 11.5% of the total listed companies) which were suspended from trading for a period exceeding two years. Further, there is no doubt that the market liquidity influenced by suspended companies which are 20 companies (representing approximately 8% of the total listed companies as at 31 December 2013).

Although, the ASE exercises discretionary powers concerning admission, the ASE does not have wide discretion in relation to transfer between markets, or to suspend and de-list the listed issuers’ securities. The flexibility allowed to ASX in this regard is not available to the ASE. The ASE does not exercise any discretionary powers in transferring and de-listing the securities and its role is limited to implementing the provisions of the Listing Directives. As well, the ASE discretionary powers in relation to suspending issuers’ securities are restricted by art 14 of the Listing Directives, see Chapter 5.3. Further, in spite of the impact of ASE's discretionary powers on the listed companies business and investors in securities, the appellate processes against the ASE's decisions on the Listing Directives are not regulated. These deficits need to be remedied if the ASE is to be effective in a modern securities market.

991 The ASE has 240 listed Public Shareholding Companies.
992 For more details see Chapter 5.3.
993 Article 14 of the repealed Directives for Listing Securities on the ASE 2004 states that "The listing of a company's shares on ASE shall be cancelled by a decision from the Board of Directors in the following cases: D- The continued suspension of trading for a period exceeding two years.” The ASE's registers show that these companies were suspended for more than two years for different reasons; some were under compulsory or voluntary liquidation, some did not comply with the disclosure requirements, some faced serious financial and administrative difficulties that endanger its financial position and the rights of the shareholders and stakeholders, and some in emergency situations to protect the market and interests of investors in securities. Information has been collected from the ASE. Information has been collected from the ASE.
994 The ASE's registers show that these companies are suspended from trading for different reasons; some did not comply with the disclosure requirements, some face serious financial and administrative difficulties that endanger its financial position and the rights of the shareholders and stakeholders, and some in emergency situations to protect the market and interests of investors in securities. Information has been collected from the ASE.
995 For more details about the ASE discretionary powers in Listing Directives see Chapter 4.4.2.
To reinforce the ASE reputation, quality of listed issuers, an orderly and liquid market and accordingly attract more listing and investments, this requires the ASE to cooperate with other regulatory bodies in the capital market particularly the JSC to create new financial instruments. In this regard, the legal basis should be set to facilitate the establishment of mutual funds and derivatives, and registration the issuance of securities of the private shareholding company through a public offer. Other features which will enhance the effectiveness of the ASE include changes to the listing rules such as requiring for admission a profit test, an assets test, and some other conditions concern the issuer’s structure and number of shareholders. The tests need to adapt to the needs of a small, developing economy but setting minima for admission may help avoid the situation where a significant number of listed companies have been delisted when they became insolvent. A modern ASE needs appropriate electronic infrastructure and the appointment of a compliance officer by the listed issuers to enhance disclosure mechanisms and the listed issuers’ compliance with the Listing Directives.

The adequacy of the ASE’s discretionary powers to administer the Listing Directives, particularly in relation to the on-going requirements, suspension and de-listing the listed issuers’ securities, should be reviewed and extended to empower the ASE to suspend and remove the listed issuer explicitly such as for failing to pay annual listing fees when due. This is also an important backdrop to the later argument in Chapter 9.3.2 about the future of the ASE, see 8.7.

8.5. ASX Clearing and Settlement Services - The Australian Payments System

The ASX maintains market integrity and protects participants’ and clients’ interests through providing its participants, via its subsidiaries Australian Clearing House Pty Limited (ACH) and SFE Clearing Corporation Pty Limited (SFECC), with central counterparty facilities, risk management (market risk and credit risk) and securities collateralisation services to perform their clearing activities.

The ASX also provides a 'delivery versus payment' settlement service (exchanging cash for securities irrevocably) and secure asset holding service through its subsidiary ASX Settlement and Transfer Corporation Pty Limited (ASTC). ASTC operates two settlement facilities; ASX Settlement and ASX Austraclear. ASX Settlement provides the settlement facility and a fully electronic securities depository for equity

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996 According to art 66.C.bis of the Companies Law 1997 the private shareholding companies may issue shares and bonds through a public offer, and have the right to list their securities in a stock exchange as they deem appropriate.

997 According to s 7 of the Payment Systems (Regulation) Act (No 58) 1998 (Cth) the payment system means "A funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system”.


and equity-related securities through administering the Clearing House Electronic Subregister System (CHESS). Austraclear Limited Clearing and Settlement Facility provides the settlement facility and is a central securities depository of debt securities. Both CHESS and Austraclear are licensed by ASIC under the Corporations Act 2001 and regulated by the RBA in relation to Financial Stability Standards for Clearing and Settlement Facilities.

Depending on its powers under s 827D (1) of the Corporations Act, the RBA issued on 10 December 2012 the Financial Stability Standards for securities settlement facilities and central counterparties. The Securities Settlement Facilities Standards (SSF Standards) and Central Counterparties Standards (CCP Standards) set out requirements to ensure that clearing and settlement facility licensees conduct their business consistently with stability in the Australian financial system. The SSF Standards and CCP Standards oblige the licensees to meet a wide range of requirements in relation to their license and activities, the legal basis of the activities, governance arrangements, risk management framework (credit, liquidity, physical deliveries, participants default, custody and investment, and operational risks), margin system, settlement system, and disclosure policy. The licensees including ASX Settlement and ASTC must comply with these standards and inform the RBA if they fail or likely to fail to comply with these standards as soon as practicable.

If the ASE is to be modeled on the ASX, it will need to be more efficient and competitive. In addition to the necessity of creating new financial products and dealing with the problems created by the ASE being both regulator and participant in the market, a restructured ASE needs to put in place special provisions for clearing and settlement. In order to protect those trading in securities, this requires, as ASX as

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1002 The RBA is responsible for maintaining a strong financial system in Australia by reducing risk and promoting the efficiency of payments system (see Reserve Bank Act 1959 s 11(1).b). The payment system arrangements include cash through automated teller machines (ATMs); non-cash payments (cheques, direct debit for bills payment, credit and debit cards); payments clearing and settlement for securities. Most payment instruments are coordinated by Australian Payments Clearing Association (APCA) which manages clearing and settlement for cheques, direct entry payments, ATMs, debit cards and high-value payments. The RBA's responsibilities and powers in relation to payments system are set out in four separate Acts. These are: Reserve Bank Act (No 4) 1959 (Cth); Payment Systems (Regulation) Act (No 58) 1998 (Cth); Payment Systems and Netting Act (No 83) 1998 (Cth) and Cheques Act (No 145) 1986 (Cth).
1006 Corporations Act 2001 ss 821A(aa), 821BA(1).
done, providing clearing and settlement services in accordance with special standards issued for this purpose as the SSF Standards and CCP Standards which have been adopted in Australia by the RBA. A comprehensive plan should be developed by the government in cooperation with the JSC, SDC, CBJ and ASE to restructure the payment system in related to clearing and settlement services for securities transactions conducted in the Jordanian Capital Market by the SDC and CBJ referred to in Chapter 6 so that the ASE can provide clearance and settlement services. The suggestion to merge the SDC with the ASE could be suitable in this period since this merger responds to the government program that aims to restructure the public sector as explained in Chapter 4.4.4. Another suggestion is to cancel the SDC's exclusive licence and allow the ASE to obtain a licence by the JSC and/or CBJ to conduct clearing and settlement activities in the market in accordance with special standards issued for this purpose as the SSF Standards and CCP Standards which have been adopted in Australia by the RBA.

8.6. ASX, ASE - Role in Disclosure of Information

ASX has established a dynamic disclosure mechanism and infrastructure to fulfill its role in disclosing market data, corporate actions and companies' announcements. From the first of July 2003, ASX required electronic submission and disclosure of documents prepared for release to the market by listed entities. The ASX also delegated to the Company Announcement Office the duty to receive entities' documents that are for release to the market. ASX has launched a modern website and three information systems MarketSource, Reference Point and ComNews to offer market data and listed entities' disclosures direct from the sources in an accurate and timely basis.

1007 Although Securities Law 2002 art 77.B authorises the SDC to conduct exclusively clearing and settlement for securities in the Jordanian Capital Market, the CBJ performs clearing and settlement for governmental Treasury Bonds and Treasury Bills.

1008 ASX Listing Rules r 15.3(b). According to r 15.3.1 of the Listing Rules providing ASX electronically is acceptable if each of the following requirements is met. There is an underwriting agreement with ASX to give documents to ASX electronically, ASX receives the document electronically and the listed entity satisfies the requirements set and published by ASX for this purpose.

1009 ASX delegated the Home Branch to receive entities' documents which are not for release, see ASX Listing Rules r 15.2.1, 2.

1010 ASX websites include different types of information: general information, companies data, historical market statistics, for more details see (www.asx.com.au) and (www.asxgroup.com.au).

1011 This system provides subscribers with market data for both ASX’s Trading Platform and ASX’s 24 Trading Platform. In this system the trading information is available into the following different types: real-time trading information, delayed trading information and end of day information, see ASX, Market Information Products and Services Guide (March 2013) <https://www.asxonline.com/marketinfo/Doco/market_data_products_services_guide.pdf> (30 July 2013).

1012 This system provides subscribers with corporate actions data and covers a range of reference products. Data in this system is available into the following different types: 1- Corporate actions and announcements 2- Securities reference information - Master List that provides full reference details on issuers and instruments traded on ASX's integrated Trading System. 3- End of day prices for equities, warrants and options, see ASX, Reference Point Brochure 2 <https://www.asxonline.com/marketinfo/Doco/referencepoint_brochure.pdf> (30 July 2013).

1013 This system provides subscribers with companies’ announcements made by listed companies on the ASX. As well, it may offer display services (real-time trading information, delayed trading
According to the ASX Listing Rules, the listed entities on ASX have to provide ASX with periodic disclosures (preliminary, annual, half-year and quarterly reports) at the same time they are lodged with ASIC or security holders.\textsuperscript{1014} In this connection, the ASX Listing Rules require additional information in the annual report concerning the compliance with the recommendations of the ASX Corporate Governance Council,\textsuperscript{1015} and mining entities activities.\textsuperscript{1016} The Listing Rules also require continuous disclosure. Rule 3.1 of ASX Listing Rules obligates listed entities to inform ASX immediately of any information concerning them that a reasonable person would expect to have a material effect on the price or value of the entities’ securities.\textsuperscript{1017} In this regard the ASX listing Rules define clearly the continuous disclosure by setting out the exceptions in which this duty does not apply,\textsuperscript{1018} and specifying some types of continuous disclosure in r 3 which facilitate the listed entities compliance with continuous disclosure requirements.\textsuperscript{1019}

Furthermore, the ASX Listing Rules direct that the information which is for release to the market must not be given to any party before it has been given to ASX and received an acknowledgement from ASX that this information has been released.\textsuperscript{1020} It also empowers the ASX to ask entities for more information to correct or prevent a false market,\textsuperscript{1021} the latest accounts of the unlisted entity which securities are included in their assets,\textsuperscript{1022} and additional information about the loans which are included in their assets.\textsuperscript{1023}

\textsuperscript{4, 20.}{1014} For more details see ASX Listing Rules r 4.2, 3, 5, 7.
\textsuperscript{4.10.3}{1015} For more information see 8.8.
\textsuperscript{1016} The nature of the mining exploration activities and its significant contribution in the Australian economy has resulted in the promulgation by ASX of additional disclosure requirements that mining entities must satisfy. The disclosure requirements for mining entities in ch 5 may summarised into three groups. Mining producing and exploration entities have to provide ASX with a quarterly report after one month of the end of the relevant quarter, the contents of the quarterly report and qualification of the persons who collect information about minerals.
\textsuperscript{1017} Section 677 of the Corporations Act defines material effect on the price or value:

“A reasonable person would be taken to expect information to have a material effect on the price or value of securities, if the information would, or would be likely to, influence person who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first mentioned securities”.
\textsuperscript{1018} This duty does not apply if a reasonable person would not expect the information to be disclosed; if the information is confidential or a trade secret; if disclosing the information breaches a law; if the information concerns an incomplete proposal or negotiation or involves an assumption or insufficiently definite to warrant disclosure or if the information created for internal purposes, see ASX Listing Rules r 3.1A.
\textsuperscript{1019} For example, listed entities have to provide ASX with the following types of continuous disclosures:- the details of changes to be made to entity’s capital; underwriting agreements for the exercise of options, and any change related to exercising these options; details of the securities holders meeting related to the election of the board directors. Other matters that need to be disclosed include changes to the listed entity’s contact details; changes of entity’s chairperson, director, chief executive officer, secretary and auditor; directors’ interests on the date of admission to the official list and directors’ appointment and any changes occur, see ASX Listing Rules r 3.11-19A.
\textsuperscript{15.7}{1020} ASX Listing Rules r 3.1B.
\textsuperscript{1021} ASX would consider there is or is likely to be a false market in different circumstances such as that there is evidence that the rumour or comment is having an impact on the price of the entity’s securities. For more information about the false market see ASX Listing Rules r 3.1B.
\textsuperscript{4.9}{1022} ASX Listing Rules r 4.9.
\textsuperscript{3.18}{1023} Ibid r 3.18.
In relation to the ASE, it has made considerable efforts in the disclosure field through adopting a mandatory disclosure and transparency policy, providing the modern essential infrastructure for disclosure through its website and Intranet, and efforts in disseminating companies' information. The ASE does not, however, have a special department or even a special division in any department to manage the disclosure issues. It depends upon cooperation between the ASE's departments. Further, the ASE has not yet adopted an electronic disclosure system to correspond with the listed companies and receive their disclosures electronically. Currently it receives and downloads them manually on the ASE's Intranet and website.\textsuperscript{1024}

Currently the \textit{ASE Listing Directives} obligate listed companies on the ASE to provide the ASE with periodic disclosures requiring annual, semi-annual and quarterly reports and continuous disclosures relating to material information and decisions that might affect its securities' prices upon their occurrence and general assemblies activities. But the reality is that the ASE only follows the quarterly reports for listed companies and general assemblies activities. The JSC, according to its powers in the \textit{Securities law 2002 no.(76)} and \textit{Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004}, follows companies’ periodic disclosures (annual and semi-annual reports) and continuous disclosures (material information and decisions that might affect securities' prices) in different time frames in comparison with the ASE. Then the JSC sends the companies disclosures to the ASE to publish them via its website and Intranet.\textsuperscript{1025}

The continuous disclosure definition in the \textit{ASE Listing Directives} does not provide exceptions or specification for some types of continuous disclosure. This does not assist the listed companies in complying with continuous disclosure requirements. Nor does the ASE have authority to ask for the preliminary final report, more information to correct or prevent a false market, or the latest accounts of the unlisted company which securities are included in the listed company's assets.

To improve the efficiency of the ASE's disclosure mechanism and accordingly enhance the quality of disclosure in the capital market, the ASE should adopt the electronic disclosure regime in cooperation with the capital market participants. It should also establish or delegate a certain department or division in the ASE to manage the disclosure issues. It would also require the review of legislation relating to the ASE to ensure consistency with the timing for companies' disclosures with the JSC. It should also be vested with further powers to request a preliminary final report, information to correct or prevent a false market, and the unlisted company's accounts which securities are included in the listed company's assets. There also needs to be clarity concerning the main factors of the continuous disclosure.

The JSC restrictions over the ASE role in the disclosure (see Chapter 5.6.4) should be removed and a Memorandum of Understanding between both parties should be prepared to reinforce collaboration and communication between them in this field.

The Australian experience in dealing with the supervisory role of the ASX provides a model for the ASE.

\textsuperscript{1024} For more details about the ASE's disclosure mechanism see Chapter 5.6.5.
\textsuperscript{1025} For more information see Chapter 5.6.4.
8.7. ASX, ASE - Supervisory Role

ASX Compliance Pty Limited is a wholly owned subsidiary of the ASX Group. It is responsible to ensure that ASX group entities which hold licences under the Corporations Act to operate markets or clearing and settlement facilities have adequate arrangements for monitoring and enforcing compliance with ASX’s operating rules.\(^{1026}\)

The ASX’s monitors compliance with the Listing Rules and Operating Rules.\(^{1027}\) The monitoring activities include the appointment of a compliance advisor, monitoring electronically trading activities on a real time basis.\(^{1028}\) It also requests information and documents in relation to both listed entities and participants.\(^{1029}\) The ASX can investigate and conduct different types of compliance reviews against participants such as, the scheduled and ad hoc risk-based thematic review, and the participant-specific review.\(^{1030}\) In relation to sanctions, the ASX may impose different types of sanctions against listed entities which breach the Listing Rules such as suspension of its securities, removal from the official list and taking legal action to obtain a court order to force the listed entity to comply with the Listing Rules.\(^{1031}\) It can also impose sanctions against participants who breach the Operating Rules such as restricting, suspending or revoking the participant’s right to deal in particular products or its admission or access to a particular market or facility.\(^{1032}\) When the ASX suspects that the participant committed a significant contravention of the Operating Rules, it refers the matter to the Enforcement Unit to start formal enforcement proceedings under the ASX Enforcement and Appeals Rulebook.\(^{1033}\) Under the Rulebook, ASX may impose strict sanctions against the participants such as a monetary fine up to $250 000 for a

\(^{1026}\) ASX Compliance organisational structure is composed of a separate board of directors. It has four directors. A Group Executive and Chief Compliance Officer, is in charge of the ASX Compliance company and reports directly to the ASX Compliance Board. It comprises three units: Listing Unit, Participants Unit and Executive Office, see ASX Group <http://www.asxgroup.com.au/asx-compliance.htm> (15 July 2013).


\(^{1028}\) Compliance with ASX’s Listing Rules, above n 1027, 1-2; Compliance with ASX’s Operating Rules, above 1027, 1.

\(^{1029}\) Compliance with ASX’s Listing Rules, above n 1027, 1-2; Compliance with ASX’s Operating Rules, above n 1027, 1.

\(^{1030}\) ASX, Operating Rules (at 1 August 2010) rr 5010, 5013, 5020; ASX, 24 Operating Rules (at 1 January 2012) rules 5010, 5013, 5020. The Participants Unit conducts three types of compliance reviews. A scheduled and ad hoc risk-based thematic review, across all participants affected by a particular rule requirement or selected participants on a “sample and test” basis, to monitor the level of compliance by participants with particular obligations under the Operating Rules. A participant-specific review (onsite review) to test the implementation and functioning of a participant’s compliance processes. Periodic reviews to test compliance with specific requirements under the Operating Rules such as short sale reporting and crossing transactions, see Compliance with ASX’s Operating Rules, above n 1027, 1-2.

\(^{1031}\) Compliance with ASX’s Listing Rules, above n 1027, 2.

\(^{1032}\) See ASX Operating Rules rr 5110, 5120, 5130, 5140, 5160.

\(^{1033}\) Compliance with ASX’s Operating Rules, above n 1027, 2.
breach of the ASX or ASX 24 Operating Rules and up to $1 000 000 for a breach of the ASX Clear or ASX Settlement Operating Rules.\(^{1034}\)

The Rulebook protects the aggrieved participants and listed entities by allowing appeals against ASX's decisions and enforcement actions. The appeal extends to the types of sanctions and the criteria in determining sanctions;\(^{1035}\) the procedures followed by ASX in respect of enforcement action;\(^{1036}\) appeals available to the aggrieved parties and ASX's decisions that may be appealed.\(^{1037}\) It also sets out processes for appeal to an Appeal Tribunal,\(^{1038}\) and the establishment, composition and powers of the Appeal Tribunal.\(^{1039}\) As well, the Rulebook clarifies the recording and announcement of actions and determinations made by ASX and the Appeal Tribunal.\(^{1040}\)

In Australia there is a debate whether ASX's decisions are absolute and unreviewable or whether ASX's decisions fall within the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act) or only subject to judicial review at common law under the principles in the Datafin case and similar cases. ASX performs a critical role in the regulation of listed entities and participants and exercises public powers through the listing rules and operating rules.\(^{1041}\) It is likely that the exercise of discretionary powers by the ASX in the administration of the listing and operating rules affect the listed companies, participants, third parties and the community so it is necessary to subject ASX decisions to judicial review.\(^{1042}\)

ASX administrative decisions issued under listing rules and operating rules are subject to judicial review under common law administrative law principles, under the Constitution s 75(v) and Judiciary Act s 39B which gives Federal Court jurisdiction in any matter arising under any laws made by the Parliament.\(^{1043}\) Judicial review of stock exchanges decisions at common law would come under the principles set out in Datafin case which permitted judicial review of private bodies which exercises public

\(^{1034}\) ASX, Enforcement and Appeals Rulebook (1 August 2010) s 2.2.

\(^{1035}\) For more information about the types of sanctions that may be imposed by ASX and the factors that ASX should consider in imposing sanctions, see ASX Enforcement and Appeals Rulebook (Enforcement and Appeals Rules Procedures Annexure A).

\(^{1036}\) For more information about the procedures followed by ASX in respect of enforcement action see ASX Enforcement and Appeals Rulebook (Guidance Note 1 – Enforcement Action and Appeals from Enforcement Decisions).

\(^{1037}\) For more information about ASX's decisions that may be appealed see ASX Enforcement and Appeals Rulebook s 3.1.

\(^{1038}\) For more information about the appeal procedures see s 3.6 of the ASX Enforcement and Appeals Rulebook.

\(^{1039}\) For more information about the composition and powers of the Appeal Tribunal see ss 3.5, 6 of the ASX Enforcement and Appeals Rulebook.

\(^{1040}\) For more information about ASX announcement see s 4.1 of the ASX Enforcement and Appeals Rulebook.


\(^{1042}\) Brewster, ‘Decisions Under the ASX Listing Rules’, above n 209, 378, 380, 381; Latimer, above n 1041, 158.

According to Kyrou J the Datafin principle is essential in enabling superior courts to continue their vital role of protecting citizens from abuses in the exercise of powers which are governmental in nature in the light that modern government practices recently have seen a growing tendency by the legislature and the executive to out-source important governmental functions to private organisations.

On the other hand, the Federal Court in Chapmans’ case held that the listing rules or the listing agreement between ASX and the listed entities are not an enactment within the meaning of the ADJR Act. According to the appeal court decision in Chapmans’ case, ASX listing powers derived its validity from contract; the listing rules are not an enactment, so ASX decisions under the listing rules are not decisions under an act.

ASX decisions to enforce the listing rules and operating rules are likely to fall within the ADJR Act and be amenable to review by the court if the decision is not specifically exempted from review; there is a decision made under an enactment (or refusal to make a decision) that is of an administrative character. ASX decisions relating to listing and operating rules may satisfy these requirements. First, ASX decisions have an administrative character; involve the exercise of government functions under the Corporations Act and seriously affects third parties. There is no requirement that the decision maker (ASX) is a government authority, the ADJR Act applies equally to a private body exercising public powers as to a public body in exercising public power; each of them should comply with the same standards in making decisions which affect third parties. The High Court in this regard focuses on the source of power for a decision not on the identity of the decision maker in the light that s 5 of the ADJR Act "a decision of an administrative character made under an enactment" directed attention away from the decision maker.

Second, ASX decisions under listing rules can also be considered decisions under an enactment. There is extensive case law for the meaning of "under an enactment". The term includes an Act, Ordinance of a Territory and an instrument (including rules, regulations or by-laws) made under acts and ordinances. Courts have given the term instrument a wide interpretation; a document may fall within the term instrument where it has the capacity to affect the legal rights and obligations of a

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1044 Datafin case is a common law judicial review case in UK premised for judicial review in the absence of a statute, see Latimer, above n 1041, 144; Brewster, 'Decisions Under the ASX Listing Rules', above n 209, 383-385.
1045 R v Panel on Take-Overs & Mergers; Ex parte Datafin plc [1987] QB 815.
1048 Judicial review of the version in place in 1991 was supported by Brewster and judicial review of the version in place in 2010 was supported by Latimer.
1051 Griffith University v Tung (2005) 221 CLR 99.
1053 Brewster, 'Decisions Under the ASX Listing Rules', above n 209, 386, Latimer, above n 1041, 150.
person, and can be altered unilaterally by the authority by which it has been produced.\textsuperscript{1054}

The source of ASX powers to enforce rules derives not only from contractual agreements but also from the \textit{Corporations Act} under which listing rules and operating rules are enforceable as will be discussed later in Chapter 9.3.2 (see \textit{Corporations Act} s 793C).\textsuperscript{1055} The \textit{FAL Insurance Ltd v Pioneer Concrete Services Ltd} highlights the listing rules statutory significance:

“… the Corporations Act, as enacted by the Parliament, appears to be one which elevates the listing requirements to a statutory importance which they did not previously have. They are now more than the private rules of a private body… they are given statutory significance, doubtless in recognition of the fact that they necessarily affect large transactions, potentially involve the movements of very considerable funds and concern the public interest as well as the private interests of shareholders”.\textsuperscript{1056}

ASX’s power to draft listing rules and operating rules is a power delegated to it by the \textit{Corporations Act} (see \textit{Corporations Act} s 793D-E). These rules are written by ASX, approved by the Minister (Commonwealth Government) and can only be altered with the permission of the Minister.\textsuperscript{1057} They have the capacity to affect the legal rights and obligations of a person. To sum up, ASX which operates like a delegate of the government under the \textit{Corporations Act} for the public interest has sufficient public character to attract judicial review under \textit{ADJR Act}.

In Jordan, the ASE's decisions, as one of the administrative law agencies, fall within the \textit{High Court of Justice Law} and are amenable to judicial review by the High Court of Justice as other administrative decisions, see Chapter 4.4.2. This is an important backdrop to the later argument in Chapter 9.3.2 whether the ASE's decisions as a public shareholding company after the privatisation should be appealed to the High Court of Justice, which may be given jurisdiction by its law or another law, to ensure application of administrative law values like accountability, fairness, openness and procedural fairness.

A critical issue in the supervision of listed companies is that ASX has a dual role as a market supervisor and as a publicly listed company leading to significant risks of conflict of interests.\textsuperscript{1058} The key area where conflicts of interest are likely to arise is in the supervision of trading.\textsuperscript{1059}


\textsuperscript{1055} Latimer, above n 1041, 149-150.

\textsuperscript{1056} (1986) 120 NSW 11.

\textsuperscript{1057} \textit{Corporations Act} 2001 s 793D, E.


\textsuperscript{1059} Eyers, above n 1058, 10.
Australia which relies more on market participants and grants them flexibility in regulating many aspects of their activity (see Chapter 9.3.2), reformed its regulatory framework using a combination of the following techniques to balance ASX's commercial and public interest functions and to avoid conflicts of interest. Firstly, the ASX has separated its regulatory functions in a way that permits it to operate with as much independence as possible from its own commercial interests. The ASX Compliance Pty Limited is a wholly owned subsidiary within the ASX Group. It is managed by a separate board of directors, to perform the supervisory functions. Moreover, as will be discussed below some special oversight arrangements have been taken by ASIC and some supervisory responsibilities have been transferred from ASX to ASIC to address the potential conflicts of interest arising from ASX self-listing and provide greater clarity in supervisory responsibilities and reduce duplication of work respectively.

In August 2010 as a part of the government's plan for ASIC to become the whole of market regulator for licensed financial markets in Australia, ASIC took over responsibility from ASX for supervising the ASX and ASX 24 markets and brokers participating in those markets pursuant to the Corporations Amendment (Financial Market Supervision) Act 2010. According to this amendment most matters to do with the conduct of brokers on markets or towards their clients such as misleading conduct in relation to securities, market manipulation, short selling and insider trading are now regulated by ASIC under the Corporations Act or the Market Integrity Rules rather than by ASX under the Operating Rules or the Listing Rules.

The demarcation in ASX's and ASIC's functions limits any major overlaps between their supervisory roles, although there are some minor matters where there is dual jurisdiction. Some matters are regulated by ASIC under the Corporations Act and Market Integrity Rules and also by ASX under the Operating Rules such as the broker's obligation to maintain a client segregated account. Similarly, there is overlap between ASIC and ASX supervisory responsibilities in relation to listed entities on the ASX and ASX 24 markets, some matters regulated by ASIC under the Corporations Act and also by ASX under the Listing Rules such as continuous disclosure (Listing Rule 3.1 and Section 674 of the Corporations Act). In order to promote a co-operative approach, a Memorandum of Understanding between the ASX and the ASIC was signed to deal with the common issues including the supervision over the listed issuers and brokerage firms. Under this Memorandum, where ASX or ASIC receive a complaint that falls within their joint regulatory


1062 For more information about the matters regulated by both parties, see Matters Regulated by Corporations Act and Operating Rules, above n 1060, 2.

1063 For more information about the matters regulated by both parties, see Matters Regulated by Corporations Act and Listing Rules, above n 1061, 2.
responsibilities, they will discuss which of them is best placed to take any investigation or enforcement action in relation to the matter.\textsuperscript{1064}

To address the potential conflicts of interest arising from ASX self-listing, the \textit{Corporations Act 2001} authorises ASIC to act, towards ASX as a listed entity and market participant, as a securities exchange with all the rights and obligations that the market operator has in relation to another listed entity and participant.\textsuperscript{1065} For this purpose \textit{ASX Listing Rules} delegate ASIC all the rights and obligations in relation to the ASX that the ASX has in relation to another listed entity such as making decisions and taking actions in relation to ASX's admission to, removal from, listing and granting, stopping or suspending the quotation of ASX's securities.\textsuperscript{1066} Further, it authorises ASIC to take the actions it deems appropriate in relation to any potential conflict situations between the commercial interests of ASX and its duties as a market operator in s 792A (a) of the \textit{Corporations Act}.\textsuperscript{1067} In addition, ASIC has imposed extra terms and conditions on ASX such as providing ASIC with an annual report within three months after the end of its financial year identifying the extent of its compliance with its obligations in Pts 7.2 and 7.3 of the \textit{Corporations Act}.\textsuperscript{1068} This requirement may be criticised on the ground that a report by ASX on its own performance may be likely to avoid substantive matters that reveal deficiencies in ASX's performance and therefore may have limited uses.\textsuperscript{1069} Another limitation arises that matters considered in the report provided within three months after the end of ASX's financial year maybe considerably out of date by the time ASIC receives it.\textsuperscript{1070} The \textit{Corporations Act} has responded to criticisms by obligating ASX to inform ASIC if it fails to comply with its obligations in s 792A or s 821A of the \textit{Corporations Act} (in relation to maintaining adequate arrangements to handle conflicts of interest between its commercial interests and its duties as a market operator) or may no longer be able meet them;\textsuperscript{1071} or if it takes any disciplinary action against a participant, or there is any matter may affects the participants ability as financial service licensee or a significant contravention of the \textit{Operating Rules or Corporation Act}.\textsuperscript{1072}

The Australian experience suggests that the major supervisory role over market participants should lie with the regulator. What is apparent also is that demarcation disputes where both the ASX and the regulator ASIC have authority to act have been effectively resolved. This is an important backdrop to the later argument in Chapter 9.3.2 relating to the reform of the ASE from a non official public entity to a publicly listed company.

\begin{footnotesize}
\begin{enumerate}
\item[1064] \textit{Matters Regulated by Corporations Act and Operating Rules}, above n 1060, 1.
\item[1065] \textit{Corporations Act 2001} s 798C, DA.
\item[1066] \textit{ASX Listing Rules} r 20.5.
\item[1067] \textit{Corporations Act 2001} s 798E.
\item[1068] \textit{Corporations Act 2001} ss 792F(1), 821E (1).
\item[1069] Donnan, above n 37, 27.
\item[1070] Ibid.
\item[1071] \textit{Corporations Act 2001} ss 792B (1), 821B (1). According to these sections the ASX must have:
- Adequate arrangements to handle conflicts of interest between its commercial interests and obligation to ensure that market is fair, orderly and transparent; comply with Financial Stability Standards and necessary procedures to reduce systemic risk; and monitor the market participants and enforce the operating rules;
- Sufficient financial, technological and human resources;
- Compensation arrangements in relation to pt 7.5 of the \textit{Corporations Act 2001}.
\item[1072] \textit{Corporations Act 2001} ss 792B(2)-(3), 821B(2).
\end{enumerate}
\end{footnotesize}
The ASE Listing Directives and Internal By-Law give the ASE broad discretionary powers which include enforcing rules relate to listing and trading in securities.\textsuperscript{1073} The ASE can undertake a broad range of sanctions and disciplinary actions against listed issuers on the ASE and its members who breach Listing Directives, and the ASE's by-laws, instructions and decisions. The ASE Internal By-law empowers the ASE to monitor to ensure compliance with business rules; the ASE can carry out investigations, supervise trading operations electronically via advanced surveillance programs, and request corrective action. However, the Listing Directives do not include any monitoring activities to ensure compliance with the listing rules such as requesting access to documents or conducting any investigation. In this connection, in spite of the key role of the compliance advisor, appointed by the exchange, in reinforcing the exchange interrelationship with listed issuers and brokerage firms and enhancing their compliance, the ASE monitoring actions do not include appointing a compliance advisor.

One of the serious problems in relation to the ASE’s discretionary decisions and enforcement actions is that the ASE has not set yet any procedures to clarify the enforcement actions, and there is uncertainty of the appeal process against the ASE decisions. For example, in the Listing Directives, the process of appeal is not regulated; there is nothing about the decisions that may be appealed, to whom they can be appealed and the appellate period. In the ASE Internal By-Law, the process of appeal is not well defined; only aggrieved brokers by a disciplinary sanction or a precautionary action taken by the ASE can appeal to the JSC’s Board of Commissioners and the ASE’s board of directors respectively - which are not judicial authorities - and the appellate period is not clear. Another problem prevents the ASE from fulfilling its supervisory duties and attaining international standards as an organised exchange, appears in the intersection between the ASE's and JSC’s supervisory functions and the JSC restrictions over the ASE supervisory powers as explained before in Chapters 5.2 and 6.8.2.

The ASE can operate more effectively if there are defined procedures for appeal. This could be achieved by setting an enforcement and appeals rulebook to clarify the ASE enforcement actions (monitoring activities and sanctions) including the procedures followed by the ASE in respect of these actions and the main factors in determining the sanctions. It should also set out an appeal process including the ASE's decisions that may be appealed, appeals available to the aggrieved parties.

In this connection, as ASX does, the ASE should appoint compliance advisors to the listed issuers and brokerage firms in relation to listing and brokers affairs to strengthen its interrelationship with them and enhance their compliance with the ASE's requirements.

The ASE and JSC supervisory roles in relation to listing, trading in the market and brokers participating in it should be reframed through shifting the supervision over the real-time trading activities to the JSC, removing the JSC restrictions over the ASE enforcement powers, and preparing a Memorandum of Understanding to regulate all the common issues and improve the collaboration between them. In reality as mentioned in Chapters 5.2 and 6.8.2, the JSC is the sole supervisor of the trading

\textsuperscript{1073} For more information about the ASE administrative enforcement see Chapter 5.2.
activities in the market. This is objectionable now since the JSC ignores the ASE supervisory powers in *Securities Law* and related regulations as a governmental regulator, but after privatisation this is recommended since it will help to balance the ASE's commercial and public interest functions as a publicly listed company as will be discussed in Chapter 9.3.2.

### 8.8. ASX, ASE - Role in Corporate Governance

The ASX plays a leadership role in developing Australian corporate governance. ASX established a Corporate Governance Council (ACGC) in August 2002 drawn from business, shareholder and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders, to develop the corporate governance best practice. In 2003 the ACGC released *ASX Corporate Governance Principles and Recommendations*. The Recommendations target all the listed entities on ASX including companies, managed investment schemes, stapled entities and foreign entities. These Recommendations are not mandatory, they are guidelines. The ACGC encourages the listed entities to comply with the Recommendations through adopting "if not, why not" approach. Further the ACGC grants the listed entities more flexibility to adopt alternative corporate governance practices, if they consider those to be more suitable to their particular circumstances. ASX role in corporate governance implements the Recommendations through the *Listing Rules*. The rules require listed entities to disclose in their annual reports the extent of their compliance with these Recommendations in accordance with "if not, why not" approach.

In order to help the listed entities to implement the Recommendations, the ASX has dedicated a section of its website with links to useful material and websites. Further, the ASX conducts statistical analysis of the listed entities' corporate governance disclosures in their annual reports and publishes the aggregated results of the review. ASX effectiveness in enforcing the Recommendations in accordance

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1077 *Ibid* 5, 6. According to *ASX Corporate Governance Recommendations* the "if not, why not” approach based on identifying the recommendations the listed entity has decided not comply with, and then explaining the reasons for non compliance with the relevant recommendation or explaining how the alternative practices accord with spirit of the relevant principle. It is worth adding that this alternative approach is known in the OECD countries, see *Role of Stock Exchanges report*, above n 36, 3, 12.

1078 *ASX Listing Rules* r 4.10.3.

1079 For more information about the useful material and websites see ASX. <http://www.asxgroup.com.au/diversity-resources.htm> (20 July 2013).

with the ‘comply or explain rule’ appears in the report that was released by ASX Compliance in March 2013 about listed companies’ adoption of the ASX Corporate Governance Council’s Recommendations relating to gender diversity in 2012.\textsuperscript{1081} The report, which analysed compliance by 600 listed companies, shows that 96% of the listed companies comply with gender diversity recommendations by adopting a diversity policy or explaining the reasons for non-compliance.\textsuperscript{1082} The report provides a strong indication of the effectiveness of the Corporate Governance Principles and Recommendations, the corporate governance framework is flexible enough to benefit companies that are pursuing diversity by providing a consistent set of criteria against which to report, while also allowing those companies not adopting the recommendations to explain their reasoning to their stakeholders.\textsuperscript{1083}

In Jordan, as noted in Chapter 6.8.4, there is more than one code and specialised instructions for corporate governance in the market with different means to enforce them by different regulatory bodies. Further the absence of the effective mechanism to enforce the ‘comply or explain’ rule has negative influence on the compliance with the corporate governance rules.\textsuperscript{1084} Although, the JSC adopts the soft law form to enforce the Code of Corporate Governance for listed Shareholding Companies on the ASE 2008 through asking the listed companies to comply with it by disclosing in their annual reports the extent of their compliance with the Code according to ‘comply or explain’ rule. The JSC has not implemented any mechanism to enforce the Code in accordance with this approach. The JSC also ignored the importance of the ASE role in imposing the corporate governance requirements on listed companies through its ability to condition the right to trade on compliance with the listing standards. As explained before in 7.6, the JSC’s failure in enforcing the Code in accordance with the ‘comply or explain rule’ resulted in very poor quality of disclosure, for instance 63 listed companies (representing approximately 26% of the total listed companies) failed to apply the ‘comply or explain’ rule.

The flexibility allowed to Australian listed entities is not available to Jordanian listed companies. The JSC does not provide listed companies with useful methods to facilitate implementation of the Code such as support material on its websites, nor

\textsuperscript{1081} 2012 was the first full year in which companies were required to comply, on an if not why not basis, with the diversity recommendations.


\textsuperscript{1083} The report shows that there is a strong commitment to report on the gender diversity among the vast majority of listed companies; large companies are more likely to have diversity policies in place, small companies that do not have policies in place indicated that their size and stage of development was a barrier to establishing the diversity policy, see ASX Corporate Governance Recommendations on Diversity, above n 134. 3. ASX, ‘Report Finds Majority of Australia's Listed Companies Adopt Gender Diversity Policy’ (Media Release, 8 March 2013) 1-2 <http://www.asx.com.au/documents/media/media-release-asx-cgc-diversity-report-2013-final.pdf> (18 January 2014).

\textsuperscript{1084} For more details see Chapters 6.8.4 and 7.6.
make available statistical information concerning compliance. Because of multiple types of codes there is overload disclosure for banks and insurance companies that have to comply with the codes and specialised instructions for corporate governance issued by JSC, CBJ and IC.

Responding to the best practices in corporate governance requires a leadership role by the ASE in Jordanian corporate governance. Depending on the ASE’s ability to condition the right to trade on compliance with its Listing Directives, the ASE should be empowered, instead of the JSC, to enforce the Code of Corporate Governance for Listed Shareholding Companies as a listing condition. The Listing Directives should require disclosure in companies annual reports the extent of their compliance with the Code as ASX does. In March 2013 the JSC proposed to enforce some rules of the corporate governance code as listing conditions for listed companies in the First Market on the ASE, such as splitting the role of the chairman of the board from any executive position in the company, establishment of the permanent Nominations and Remunerations Committee, and prohibiting the company’s external auditor from performing any additional services to the company - administrative and technical consultations, but the proposal has not applied yet. In order to gain input, the ASE could establish an external advisory corporate governance council which includes various business, shareholder and industry groups to help the ASE in reviewing, updating and maintaining the Code. In relation to banks and insurance companies, greater flexibility would allow them to adopt alternative corporate governance practices to avoid any conflict that may arise from the duplicate implementation of the corporate governance codes and specialised instructions.

Moreover, to enhance the listed companies compliance with Code, the ASE should provide support to entities such as training, support material on its website and statistical information.

8.9. ASX, ASE - Role in Education and Awareness

ASX plays a leadership role in educating the investors in securities through providing them with a broad range of education resources to understand ASX’s products and start trading via face-to-face seminars in several locations in Australia, documents and publications, and ASX’s website on the Internet. ASX significant contribution in this field appears in offering high-quality online education resources (some of them with an interactive opportunity) in its website on the internet such as the online

\[1085\] The JSC only published a guidance – to distinguish between compulsory provisions and voluntary provisions in the Code - to help listed companies to comply with the Code.


\[1088\] ASX’s documents and publications include education booklets and brochures; ASX rules; researches and surveys which are available in ASX’s website in PDF format, see ASX \(<http://www.asx.com.au/resources/documents-and-publications.htm>\) (31 December 2012).

\[1089\] For more information about the online education resources visit ASX \(<http://www.asx.com.au/resources/shares-education.htm#>\) (30 July 2013).
courses, video tutorials, podcasts, videos, live webinars, web-based seminars, and sharemarket games. In addition, the ASX has established in 2007 the Education and Research Program (ERP) to arrange education events and research projects for its participants and listed entities to promote the compliance culture in the market.

In this connection, it is notable that the ASIC in cooperation with government agencies, financial institutions and other financial literacy partners and stakeholders has launched in March 2011 the National Financial Literacy Strategy. The strategy is about understanding money and finances and being able to apply that knowledge to make financial decisions. Alongside, the background of the GFC, the significant development in the Australian financial system requires the preparation of this strategy to help people to achieve their financial aims and accordingly contribute to national economy. The strategy aims to build the financial literacy and meet its goals through using education and training pathways by focusing on strengthening financial literacy education at schools and workplaces; providing people with necessary information and on-going support by establishing consumers websites; collaborating with other financial literacy partners and stakeholders to enhance best practices.

The ASE has made a remarkable contribution in this field as described before in Chapter 5.7. However, the ASE's role in education and awareness suffers seriously from the absence of interactive online education resources in its website and sustainable policy for continuous education and awareness programs.

In order to improve its role in education and awareness, the ASE should develop its website on the Internet by creating interactive online education resources such as

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1090 The courses provide investors with the basic information they need to understand the ASX's products and start trading. Further, these courses include interactive exercises and activities (ASX〈http://www.asx.com.au/resources/online-courses.htm〉 (31 December 2012)).
1091 The tutorials assist investors to understand sharemarket topics and the role of market participants (ASX〈http://www.asx.com.au/resources/clips.htm〉 (31 December 2012)).
1092 There are many presentations from industry experts to assist investors to understand sharemarket investing (ASX〈http://www.asx.com.au/resources/asx-podcasts-2012.htm〉 (31 December 2012)).
1094 These webinars offer an interactive opportunity via the Internet with experts and specialists in ASX to ask questions and get immediate answers see ASX〈http://www.asx.com.au/resources/webinars.htm〉 (31 December 2012).
1095 These seminars broadcast live to allow an interactive opportunity with the presenters see ASX〈http://www.asx.com.au/resources/calendar.htm〉 (31 December 2012).
1099 Ibid 5, 8.
1100 National Financial Literacy Strategy 6, 7, 8.
sharemarket games, online courses, and webinars as well as set a methodology to hold education and awareness programs for all the stakeholders on a regular basis. It also should cooperate with the JSC and other regulatory bodies in the capital market to set a National Financial Literacy Strategy to help Jordanian people to achieve their financial aims and accordingly contribute to the national economy. Jordanian individuals' ownership in listed companies by the end of December 2013 was approximately 23.8% of the total market capitalization of the ASE.  

8.10. Summary and Conclusions

Continuing the governmental reforms in the Jordanian Capital Market to maintain the market's important contribution in reinforcing the national economy requires at this stage a comprehensive project to restructure the ASE from a non-official public institution to a public listed company. It is argued in Chapter 9 that this is the best outcome for the ASE. It brings to fruition a process the first steps of which have already incorporated into existing legislation, see chapter 4.

Some recommendations such as reframing the ASE and JSC supervisory roles and removing the JSC restrictions over the ASE enforcement powers might be more easily achieved through a privatisation program. The delineation of the regulatory and supervisory role of ASE after the privatization, balancing the ASE's commercial and public interest functions and addressing the potential conflicts of interest arising from self-listing will be discussed in Chapter 9.3.2. Independently of a restructure of the ASE, the operation of the ASE can be significantly improved.

To reinforce the ASE's reputation, quality of listed issuers and an orderly and liquid market, this requires the ASE to cooperate with other regulatory bodies in the capital market particularly the JSC to create new financial instruments. A modern ASE needs changes to the *Listing Directives* such as requiring for admission a profit test and an assets test. The appointment of compliance officers and advisors to enhance the listed issuers compliance with the *Listing Directives* is also required. In this connection, the ASE's discretionary powers to administer the *Listing Directives*, particularly in relation to the on-going requirements, suspension and de-listing the listed issuers' securities, should be reviewed and extended to empower the ASE to suspend and remove the listed issuer explicitly in some situations such as failing to pay annual listing fees within the time frames. The ASE can operate more effectively if there are defined procedures for appeal. This could be achieved by setting an enforcement and appeals rulebook, see 8.7.

The effectiveness of the ASE will be enhanced by the adoption of an electronic disclosure regime and the establishment of a separate ASE department to manage the disclosure issues. It would also require the review of legislation relating to the ASE to ensure consistency with the timing for companies disclosures with the JSC. In this connection, the information which is for release to the market must not be given to

[1004] SDC  
<http://www.sdc.com.jo/english/index.php?report_type=12&option=com_public&Itemid=28> (18 February 2014). Total Jordanian ownership in listed companies by the end of December 2013 was approximately 50.1% of the total market capitalization of the ASE, see ASE  
any party before it has been given to the ASE and received an acknowledgement from ASE that this information has been released.

A leadership role by the ASE in Jordanian corporate governance is required. Depending on the ASE’s ability to condition the right to trade on compliance with its Listing Directives, the ASE should be empowered, instead of the JSC, to enforce the Code of Corporate Governance for Listed Shareholding Companies as a listing condition. The Listing Directives should require disclosure in companies annual reports the extent of their compliance with the Code. The ASE can operate more effectively if there is an external advisory corporate governance council assists the ASE in reviewing, updating and maintaining the Code, see 8.8.
Chapter 9

The Way Forward

9.1. Introduction

This chapter evaluates the key findings of the thesis and makes recommendations to enhance the performance of the ASE with a view to ensuring that the Jordanian system is internationally competitive and attractive to both domestic and foreign investment.

9.2. Key Findings

The reforms adopted by the Jordanian government between 1997 and 2003 to promote and globalise the securities market in Jordan have contributed directly to the significant improvements that the ASE witnessed in all market indicators in the last decade and accordingly reinforcing the ASE’s role in boosting the Jordanian economy through mobilising public funds for listed companies. The statistics are set out in Chapter 3.5. The sluggish performance of the ASE like other stock exchanges worldwide following the 2008 GFC and market crash to date highlights the need to review all the securities regulators roles in the Jordanian Capital Market and corporate governance. The emphasis in this thesis is on whether the ASE needs to be reformed so as to effectively contribute to the Jordanian economy.

It has been argued that the current structure of the Jordanian regulatory system established in 2002 inhibits the effective operation of the ASE and its future growth. The hybrid nature of the ASE with some features of the non-official public institution and some features of a private body strengthens the government and JSC control over the ASE as explained in Chapter 4.4.\footnote{1002} The financial and administrative procedures of the government affect the administrative and financial autonomy of the ASE. Similarly, the significant level of control by the JSC over the ASE’s management and financial issues weakens the decision making process and decision makers in the ASE.

Within the current system, one of the primary problems has been the ASE’s interrelationships with other regulatory bodies in the capital market. There are many regulatory bodies in the Jordanian Capital Market (CCD, JSC, SDC, CBJ and IC) which monitor the implementation of corporate governance rules. There are overlaps in the regulatory bodies' roles, intersection between their functions and lack of demarcation in these functions, cooperation and communication between them. The ASE is hampered in its operation by JSC slow performance in examining the ASE’s and other regulator’s by-laws, instructions and drafts, see Chapter 6.8.1. This is a source of confusion both for the ASE but also for market participants. The ASE’s supervisory role is compromised by the conflict of supervisory powers with the JSC as well as restrictions by the JSC in relation to the ASE’s exercise of these powers, see Chapter 6.8.2. There are also significant deficits relating to the ASE’s inspection

\footnote{1002} See the Special Tribunal decision no. 1/2012 in Chapter 4.4.1.
and investigation procedures. The ASE has not set procedures to clarify how it exercises its enforcement actions (monitoring activities and sanctions). As noted early there are also difficulties with appellate procedures against the ASE’s decisions in relation to listing and trading directives.

The problems of conflicting and overlapping roles and time frames also occur in relation to periodic disclosure and continuous disclosure of the listed companies, see Chapter 6.8.3. Further, some of regulatory bodies (JSC and CCD) do not review the companies’ financial statements before publishing them or allowing the companies to do that. In order to operate as a modern exchange, the ASE needs to modernise its regime for disclosures. As indicated in Chapter 5.6.1, it needs modern infrastructure and appropriate funding to work efficiently in disseminating information. This includes establishing an efficient system of electronic disclosure. The relationship between the ASE and JSC in managing disclosures needs to be clarified, see 5.6.4.

A modern stock exchange such as the ASE needs to respond to market needs for differing types of instruments for raising capital. The lack of variation on the listed companies and financial instruments on the ASE particularly the absence of the mutual funds inhibits further development of trading activities, market depth and stability. Although these restrictions may have to some degree protected the Jordanian market from the worst excesses of innovative debt instruments experienced in other jurisdictions during the GFC, it needs, at least to consider the development of new forms of capital raising which meet market needs.

The ASE’s capacity to ensure efficiency in the market may also be hampered by lack of listing requirements to the ASE official list. It was noted in Chapter 8.4 that the principal situations where companies were de-listed was insolvency. Unlike ASX, the ASE does not require for admission a profit test or an assets test, which sets minimum requirements for listing, or requirements for corresponding with ASE such as appointing a compliance officer which affects negatively the quality of listed companies on the ASE and market liquidity.1103

There are other deficits in relation to trading which need to be remedied in order for the ASE to operate effectively in the market. These might appear to be quite minor matters but they reflect on the ASE’s ability to operate as a modern exchange. For example the difficulties relating to telephone authorisations (see Chapter 5.4.4). There are also deficits in operational standards relating to pricing of bonds.

Another important issue examined was the ASE’s role in promoting corporate governance. First, the structural issue, what should be the role of a modern stock exchange in promoting corporate governance? Jordan, as other regulatory systems has opted for a non mandatory system of comply or explain. The purpose is to allow companies flexibility in determining how they would meet good corporate governance principles. But as observed in Chapter 7.6, the comply or explain rule is only likely to work to promote corporate governance if the financial environment exerts pressure on

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1103 The ASE only examines that the securities are registered and deposited with the JSC and SDC respectively, and transferable without restrictions on them. It also verifies that the issuer of securities has filed the listing application for the entire subscribed shares, established an audit committee in accordance with the Securities law, and signed the Listing Agreement with the ASE, see Chapter 5.3.
corporations to comply. This can include an active financial press and pressure from institutional investors. In Jordan, there is no evidence that this form of pressure to comply has had any impact on corporate governance. As noted in Chapter 7.2, Jordanian listed companies are dominated by family owned companies and the Jordanian government. As discussed earlier these dominant shareholders may be less interested in corporate governance than in achieving financial outcomes.

Secondly, under the existing system, the evidence thus far suggests that the comply or explain rule has not had any disciplinary effect on listed companies. Chapter 7.6 in its examination of Jordanian listed companies found significant failure to comply. In addition, there are many serious legal obstacles to companies’ compliance with the Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008, see Chapter 7.6. There is the additional problem of lack of appreciation of what corporate governance rules require. A further more general problem relating to corporate governance is that the Jordanian judicial and legislative regime has not yet fully recognised the important role of directors as fiduciaries, see Chapter 7.5.1.

Thirdly, compliance with corporate governance codes is hampered by the failure to institute a system for monitoring compliance with the corporate governance code. The JSC has not implemented any mechanism to enforce the Code in accordance with the 'comply or explain' rule. The ASE ability to impose corporate governance requirements on listed companies through the listing standards is not considered by the JSC. The JSC does not provide listed companies with useful methods to facilitate implementation the Code, nor follow the results of the listed companies' disclosures for enhancing their compliance in the future, see Chapters 6.8.4, 7.6 and 8.8.

9.3. The Future of the ASE

What is needed are measures to improve the ASE efficiency and strength, and enhance its and other regulatory bodies' roles in the Jordanian Capital Market. The privatisation of the ASE is a potential solution for some of the problems relating to the ASE's institutional structure. The privatisation will assist the ASE to remove the government's and JSC's control over its financial and administrative affairs and accordingly reinforce its independence. But the privatisation does not solve all the overlap between the regulatory bodies’ roles in the capital market and the failures which impact the ASE performance in the listing, trading and disclosure fields

9.3.1. An Efficient Market in Securities

The capital market's legislation should be reviewed and reframed to enhance the regulatory bodies' roles in the capital market and corporate governance. It is necessary to establish the legal basis for cooperation and communication between the market regulators, and set the legal background for the merger between regulatory bodies and establishment of an advisory co-ordinating body for Jordan's main financial regulatory bodies to enhance the efficiency and effectiveness of the financial regulation in Jordan, see Chapter 6.9.
Providing the market participants with timely and accurate disclosures and reinforcing the dissemination of information and the market efficiency, could be achieved by the regulatory bodies through adopting the electronic disclosure regime, examining the companies’ disclosures before publishing them and unifying the time frames for companies’ disclosures, see Chapter 6.8.3. In this regard, there are some suggestions to improve the disclosure mechanism in the ASE such as the establishment of a special department or division to manage the disclosure affairs, see Chapters 5.6 and 8.6.

It is also argued that what is necessary is to restructure and reregulate the supervisory roles of the regulatory bodies. The ASE and JSC supervisory roles in relation to listing, trading in the market and brokers participating in it, should be reframed through shifting the supervision over trading activities to the JSC, as was done with ASIC, removing the JSC restrictions over the ASE enforcement powers, and regulating all the common issues between them in a Memorandum of Understanding, see Chapters 6.8.2 and 8.7. It is notable that, the ASE can operate more effectively if there are defined procedures for appeal and some compliance advisors to the listed issuers and brokerage firms, see Chapter 8.7.

New financial instruments should be created in cooperation with JSC to reinforce market’s depth and liquidity, and attract more investors. As noted earlier reforms are required in relation to trading activities in the bonds market particularly with reference to pricing. In this connection, amending the ASE Listing Directives is required to adopt admission conditions such as the profit test and assets test to enhance the reputation of the market and quality of listed issuers. The ASE also needs to adopt modern methods and technologies to deal with disclosure, telephone authorisation and clients’ identification, see Chapters 5 and 8.

The ASE should be able to impose corporate governance requirements on listed companies through their authority to condition the right to trade on compliance with the listing standards, as ASX does. The ASE should be empowered, instead of the JSC, to enforce the Code of Corporate Governance for Listed Shareholding Companies as a listing condition by obligating these companies, via the Listing Directives, to disclose in their annual reports the extent of their compliance with the Code in accordance with 'comply or explain' rule. Moreover, to enhance the listed companies compliance with Code the ASE could adopt the ASX model by establishing an external advisory corporate governance council to maintain the Code in accordance with market needs; providing on its website links to useful material and publishing the listed companies' disclosures in an accumulated statistical method, see Chapters 6.8.4 and 8.8.

The next section will consider whether the ASE would be better able to perform an effective role by converting from a non-official public entity to a publicly listed company.
9.3.2. Self-Regulation and the Privatisation of the ASE

In order to avoid some difficulties and problems in the ASE institutional structure and meet international best practices, the ASE should in cooperation with the Jordanian government and JSC, take steps towards privatisation so as to change its status from a non-official public institution (public model) to a listed public shareholding company (business model).  

According to the Privatisation Law 2000 no. (25) privatisation means

"The adoption of an economic methodology which enhances the role of the private sector in the economy to include the public sector enterprises the nature of which requires that they be managed on a commercial basis".  

The privatisation is characterised by two key elements: a change in the ownership structure, and a change in the final objective. A stock exchange is then privatised when it is no longer exclusively owned and controlled by the government, but also by outside investors looking for profit maximisation as their final objective.  

In general, the adoption of the business model enhances the efficiency, effectiveness and accountability of economic activities. Thus, the privatisation improves the economic enterprises productivity and competitiveness, (see below) and enhances the capital market and national economy through attracting local and foreign investments by offering an appropriate investment environment. As mentioned before in Chapter 3.3 the privatisation process in Jordan which commenced in 1996 was one of the major factors associated with significant improvements in all market indicators the ASE witnessed in the last decade.  

Privatisation of the stock exchange facilitates a number of objectives: First, the exchange is managed on a fully commercial basis; the private exchange has one objective which is profit maximisation. For the ASE this would be beneficial as it has been subject to the Surpluses Law which clawed back profits to government leaving the ASE without sufficient funding to support infrastructure improvements and adequate staffing, see Chapter 4.4.4. As a result, there are sound motivations to consider conversion of the ASE to a publicly listed company. The for-profit model assists the exchange in shedding the shackles imposed by the JSC which prevented it

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1104 The term privatization is used when the exchange is owned by government, and the term demutualization is used when the exchange is owned by brokers.
1107 Grantham, above n 58, 184.
1109 London Stock Exchange, Strategic Action Plan to Assist the ASE with its Privatisation Process (July 2008), 5-6 unpublished report (‘ASE Privatisation Process Report’) The report has been collected from the ASE. Donnan, above n 37, 1, 4, 9.
from developing new products and services and attract a higher volume of listings. Moving from a government controlled model, the ASE’s objectives are purely commercial.

A privatised exchange is better able to respond to changes in the international business arena. The better governance structure affects the exchange’s ability to interact with international alliances, partnerships and acquisitions to face increased competition, globalisation and technology improvements. Listed exchanges have easier access to raise capital at lower costs to finance growth and implement technological developments. The governance structure also assists the government to receive a return from its investment through liquidating its initial investment by selling its shares to other investors. The government can then focus on its own priorities and direct resources to issues where its intervention is most needed. The new exchange will be financed directly by the securities industry and its resources independent of the government budget. Furthermore, the privatisation provides the ability to retain and attract professional employees. The hired management in a for-profit exchange has a clear goal to maximise profits, their success can be easily measured and their compensation linked to the exchange performance.

Empirical studies demonstrate that privatisation enhances the value of the exchange. An analysis of the performance of 11 exchanges during the period 1996-2008, found that privatisation increases exchange financial performance, size and liquidity, and lowers the level of debt. Another study in 2006 analysed the performance of 20 exchanges for five years following the IPO, found that most exchanges performed well with a positive median annual growth for both sales and operating income. A 2008 study also suggested that the change of governance structure from mutual to publicly traded, self-listed structure has benefited ASX as a company, as well as the Australian stock market. In particular, the bid-ask spreads of the small-cap firms have improved markedly, trading activity by foreign investors has increased and profitability ratios of ASX doubled.

The new governance structure after the privatisation could assist the ASE to emerge as an independent body with real administrative and financial autonomy, and managed on commercial basis to face increased competition in the Arab region and

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1110 ASE Privatisation Process report, above n 1109. ASX's new strategy after the conversion to enhance the core of business included increasing the range of products and expanding market place services, see Ochere et al, above n 182, 515.

1111 ASE Privatisation Process report, above n 1109; Gadinis et al, above n 31, 1250; Donnan, above n 37, 8.

1112 Donnan, above n 37, 4; Poitras, above n 14, 173; Gadinis et al, above n 31, 1250; Ajlouni, above n 153, 25.


1114 Gadinis et al, above n 31, 1246; Donnan, above n 37, 23.


1116 Poitras, above n 14, 173-174; Ochere et al, above n 182, 513-514.


1119 Ochere et al, above n 182, 512, 514, 523. The period of the study was from 1 July 1993 to 30 June 2004. The study controlled the growth of the Australian economy in order to avoid the influence of the growth on the profitability ratios.
the Middle East. As a public shareholding company the ASE would be managed by a board of directors elected by the shareholders in the company's general meeting. As a result, the government control over the ASE independence will be removed. As well, the JSC will lose its control over the ASE management; the JSC's powers will be only limited to review the trading activities to guarantee their compliance with Securities Law. The privatisation of the ASE is required to pass through two main stages as will be discussed in details below. The first stage is the conversion of the ASE from a non-official public institution to a public shareholding company. The second stage requires the sale of all or part of the Jordanian government’s shares in the ASE Public Shareholding Company to the public and/or specific strategic partner/partners.

On the negative side, going public imposes heavy regulatory compliance and disclosure requirements. Going public also affects shareholders' ownership and the control of the company, it imposes extra expenses such as offering and listing expenses as well as the marketplace pressure may force the company to focus on short term results to maintain stock prices instead of long term goals.\footnote{1120}

The ASE transfer to the business model raises three key issues about the appropriate regulatory role of the ASE. First, balancing commercial and public interest functions.\footnote{1121} The risk of the imbalance may be greater in a for-profit entity; commercial pressures may lead the ASE to focus on in earnings growth and ignore the market interests.\footnote{1122} The risk of imbalance lies in three areas. The incentives faced by exchanges to establish and maintain high regulatory standards might be weakened; the exchange may lower the standards to avoid a competitive disadvantage.\footnote{1123} For this purpose exchanges may reduce the listing standards to attract new listings. For example, the American Stock Exchange (AMEX) used to attract issuers which failed to comply with NYSE Listing Rules.\footnote{1124} Exchanges may also choose a more lax enforcement policy with less frequent investigations and lower penalties to avoid losing listings to a competing market.\footnote{1125} For example, the Deutsche Borse has decided not to de-list Porsche, despite the latter's refusal to comply with the disclosure requirements for over seven years.\footnote{1126} Further, the ASE may reduce the resources which are devoted to supervision.\footnote{1127}

The second key consideration is in the potential misuse of the regulatory powers for commercial purposes.\footnote{1128} The ASE may misuse its position through taking regulatory actions that unreasonably disadvantage its competitors such as imposing high standards or monetary fines to generate its revenues to finance its commercial operations.\footnote{1129} Third, there are potential conflicts of interest due to self-listing. The

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\footnote{1120}{Ajlouni et al, above n 153, 25.}
\footnote{1121}{Exchange Evolution report, above n 31, 8-9; Role of Stock Exchanges report, above n 36, 3, 18.}
\footnote{1122}{Gadinis et al, above n 31, 1241, 1251; Donan, above n 8, 12, 14, 22.}
\footnote{1123}{Exchange Evolution report, above n 31; Gadinis et al, above n 31, 1250-51; Role of Stock Exchanges report, above n 36, 18.}
\footnote{1124}{Role of Stock Exchanges report, above n 36, 18.}
\footnote{1125}{Ibid 19-20.}
\footnote{1126}{Ibid 20.}
\footnote{1127}{Exchange Evolution report, above n 31; Gadinis et al, above n 31, 1250-51, Donnan, above n 37, 13, 26.}
\footnote{1128}{Role of Stock Exchanges report, above n 36, 20; Exchange Evolution report, above n 31, 10; Gadinis et al, above n 31, 1241, 1250.}
\footnote{1129}{Exchange Evolution report, above n 31, 10.}
key issue when the ASE self lists is whether it can function effectively as its own regulator; once it reviews and approves its listing documents and once its shares have commenced trading.\textsuperscript{1130}

Most jurisdictions, including Australia, (see Chapter 8.7), have modified regulation and/or enhanced oversight to ensure that exchanges continue to fulfil their roles in a manner consistent with public interest objectives. Gadinis et al argue that three models shaped the direction of post-demutualization reforms in each jurisdiction.\textsuperscript{1131} Countries in the 'Government-led Model' such as Germany and Japan, which provide central governments with direct channels of influence over securities markets regulation, seek to enhance the efficiency of government supervision by reorganising their administrative agencies and reinforcing their already strong regulatory powers.\textsuperscript{1132} The 'Flexibility Model' countries such as UK and Australia, which relied more on market participants and granted them flexibility in regulating many aspects of their activity, reduced the powers of exchanges and enhanced oversight by administrative agencies.\textsuperscript{1133} Finally, the 'Cooperation Model' countries such as USA, where the regulatory powers of stock exchanges extend over most issues under close supervision by government agencies, developed mechanisms to segregate stock exchange regulatory activity from the operation of the markets.\textsuperscript{1134} In response to stock exchange demutualisation, most jurisdictions reformed their regulatory framework using a combination of the following techniques. First, separation of commercial and regulatory functions within an exchange.\textsuperscript{1135} In a for-profit business exchange the regulatory function should be organised in a way that permits it to operate with as much independence as possible from commercial interests of the management and shareholders.\textsuperscript{1136} The separation could take place by

\begin{itemize}
  \item \textsuperscript{1130} Exchange Evolution report, above n 31, 11; Gadinis et al, above n 31, 1252; Donnan, above n 37, 32; Role of Stock Exchanges report, above n 36.
  \item \textsuperscript{1131} Gadinis et al, above n 31, 1253, 1257-58.
  \item \textsuperscript{1132} The allocation of regulatory powers in Government-led Model jurisdictions favors administrative agencies and central government officials over market infrastructure institutions. Laws in this pattern tend to require greater involvement of central governments in certain key actions and regulatory measures than is required under other models. The regulatory powers of exchanges are specific, carefully defined, and relate to areas, such as the regulation of the trading process, where the involvement of market institutions is strictly necessary. Even in these limited areas, the exercise of regulatory powers by market institutions is often subject to approval by an administrative agency, see Gadinis et al, above n 31, 1258-1263.
  \item \textsuperscript{1133} Similar to the Government-led Model, the allocation of regulatory powers in the Flexibility Model is issue-specific; the exchanges have distinct responsibilities for regulatory oversight. But unlike the Government-led Model, the exchanges enjoy greater responsibilities that the Flexibility Model favors allowing them initiatives to shape regulatory policy and enforcement. The volume of regulatory powers, the allocation of powers beyond the 'bare minimum', and the exclusivity exchanges enjoy in some areas illustrate the greater flexibility this pattern allows to market participants. see Gadinis et al, above n 31, 1263-68.
  \item \textsuperscript{1134} This regulatory approach sought to maintain exchanges as the front line regulators under the eye of a public-interest-minded agency. The main characteristic that distinguishes the Cooperation Model from other models is the pervasiveness of the self-regulatory structure, which provides exchanges with wide powers as well as extensive responsibilities for the fair and efficient operation of securities markets. Exchanges have a role in almost all aspects of securities markets regulation, devote significant resources to assist and support agencies' efforts, and undertake their own independent regulatory initiatives. The involvement of exchanges is also strong at the enforcement stage, often sharing jurisdictions with governmental agencies and pursuing independent enforcement actions, see Gadinis et al, above n 31, 1268-72.
  \item \textsuperscript{1135} Role of Stock Exchanges report, above n 36, 9, 17; Gadinis et al, above n 31, 1253.
  \item \textsuperscript{1136} Exchange Evolution report, above n 31, 14.
\end{itemize}
establishing a separate regulatory division that does not have any involvement in business of the exchange and report directly to the board of directors such as in Canada (Bourse de Montréal).\textsuperscript{1137} In Australia, ASX Limited has empowered ASX Compliance Pty Limited, which is a wholly owned subsidiary within the ASX Group, to ensure that ASX group entities that hold licences under \textit{Corporations Act} to operate markets or clearing and settlement facilities have adequate arrangements for monitoring and enforcing compliance with ASX's operating rules.\textsuperscript{1138} The twin corporate structure of the model will help bring some separation between the two functions, as the two entities will have separate personnel and a clearer division of functions. Both entities, however, will still be under common management and will be receiving funding by common sources.\textsuperscript{1139}

Second, to address the potential conflicts of interest arising from self-listing, many exchanges have set special oversight arrangements.\textsuperscript{1140} For instance, in Australia, in relation to ASX as a listed company, ASIC has all the rights and obligations that the market operator has in relation to another listed issuer. In this regard since August 2008, ASIC is responsible for monitoring trading of all listed entities, it continues to perform this function with respect to ASX's securities. Moreover, ASIC has increased the level of oversight by requiring an annual report to identify the extent of ASX compliance with its regulatory obligations. In different jurisdictions extra terms and conditions have been imposed to deal with specific issues. In UK, Germany and Singapore adequate financial resources to address financial viability concerns have required.\textsuperscript{1141} In Canada and Australia the regulatory income for exchanges from monetary fines and fees imposed by disciplinary actions cannot be used to finance commercial operations.\textsuperscript{1142}

Third, transferring the regulatory responsibilities from the exchanges to securities commissions or different bodies.\textsuperscript{1143} The exchanges would still maintain their regulatory powers, but only with respect to matters related to the operation of their markets. This structure would achieve the parallel goals of ensuring greater independence for member regulation and providing greater clarity in supervisory responsibilities as well as avoiding duplicative regulatory measures.\textsuperscript{1144} In Canada a self regulatory body was established to perform the regulation functions including day-to-day surveillance of trade activity in the markets.\textsuperscript{1145} To keep close to the market needs, half the directors in the SRO board are independent, while the remaining directors represent the market operators and the broker-dealer industry association.\textsuperscript{1146} In Australia the supervision over the real-time trading activities was

\textsuperscript{1137} \textit{Exchange Evolution report}, The Special Regulatory Division in Bourse de Montréal reports to an independent committee of the board.

\textsuperscript{1138} ASX Group <http://www.asxgroup.com.au/asx-compliance.htm> (15 July 2013). For more information about the arrangements of ASX Compliance Pty Limited in this regard see Chapter 8.7.

\textsuperscript{1139} Gadinis et al, above n 31, 1253; \textit{Role of Stock Exchanges report}, above n 36, 10.

\textsuperscript{1140} \textit{Exchange Evolution report}, above n 31, 18-20; \textit{Role of Stock Exchanges report}, above n 36, 17.

\textsuperscript{1141} \textit{Exchange Evolution report}, above n 31, 20.

\textsuperscript{1142} \textit{Exchange Evolution report}, above n 31, 20. In 2007 ASX Compliance Board of Directors established the Education and Research Program (ERP) to operate the surplus monies arising from the penalties imposed by the ASX Disciplinary Tribunal. For more information see Chapter 8.7.

\textsuperscript{1143} \textit{Role of Stock Exchanges report}, above n 36, 17.


\textsuperscript{1145} \textit{Exchange Evolution report}, above n 31, 21; \textit{Role of Stock Exchanges report}, above n 36, 17.

\textsuperscript{1146} Gadinis et al, above n 31, 1254.
Another example, in UK all the listing responsibilities were transferred to the Financial Services Authority to address the not only the conflicts of interest related to self-listing, but also to issuers regulation. It is worth adding that all countries in different jurisdictions focus on governance arrangements to ensure that exchanges have adequate methods to maintain a proper balance between their commercial interests and supervisory responsibilities. For example, in Australia, ASX board of directors consists of eight members, seven of them are considered to be independent non-executive directors. Another example, the concept of balanced representation has been adopted by National Association of Securities Dealers (NASD), its board of directors have a majority of non-industry representatives. The concept has been also extended to NASD’s subsidiaries; the boards of the NASD Regulation (NASDR) and Nasdaq Stock Market Inc have a balanced representation; half industry (market makers) and half non-industry (NASD constituencies other than the market makers). In response to the ASE privatisation, Jordan can reform its regulatory framework using a combination of the mentioned above techniques as other jurisdictions did.

In relation to the regulatory role of the ASE after the privatisation, the ASE as a public institution currently does not have the power of enforcement enjoyed by other public institutions, see the Special Tribunal decision no. 1/2012 in Chapter 4. This position will be the same after the ASE converts to a publicly listed company. Furthermore, the flexibility allowed to ASX in relation to suspend and de-list the listed companies is not available to the ASE, see Chapter 8.4. This discretion is intended to allow ASX to administer the spirit of rules and on a commercial basis, and to act decisively to remove recalcitrant companies from the public investment arena. The exchange’s power to threaten to suspend or delist may often provide an effective tool to enforce compliance with the rules by listed companies, but suspension or delisting may damage the interests of those which many of the rules are intended to protect, in other words suspension or delisting may have a more harmful effect on shareholders than the company by affecting the liquidity of their investments. In order to avoid this problem, the Corporations Act 2001 provides statutory recognition for the listing rules to ensure their compliance with these rules, it provides a mechanism whereby the ASX and ASIC or any aggrieved party can seek judicial enforcement of those rules. The listing rules have been enforceable by ASX as a private contract between ASX and the company whose securities are listed on ASX. The private contractual status of the rules however makes their enforcement against listed companies by third parties more problematic. It has been argued that

1147 Christiansen et al, above n 793, 3.
1150 Donnan, above n 37, 17-18. NASDR plays the role of primary self-regulatory organisation overseeing the activities of member firms and registered securities professionals and the Nasdaq operates the Nasdaq Stock Market.
1151 Brewster, Judicial Enforcement of the Listing Rules’, above n 244, 324.
1152 Brewster, Judicial Enforcement of the Listing Rules’, above n 244, 315.
1153 Corporations Act 2001 s 793C.
actions should be available to investors against listed companies on the grounds that investors are the beneficiaries of the listing agreement.\textsuperscript{1154} The public importance of the ASX listing rules functions in maintaining a stable and fair securities market has led to being regulated by statute, their statutory significant was provided for the first time in \textit{Securities Industry Act 1975} which established the backbone to the current s 793C in the \textit{Corporations Act}. According to this section not only the ASX but also ASIC and any aggrieved party, who have suffered real commercial prejudice by the failure of the company to observe the rules, could seek judicial enforcement; under this section the court is empowered to give directions against any person (including ASX, listed companies and their associates) concerning the observance or enforcement of the listing rules.\textsuperscript{1155} There is no doubt that the ASE can operate more effectively if its \textit{Listing Directives} have statutory enforceability as ASX.

Expanding the ASE's discretion in relation to suspension and removal of the listed companies and brokerage firms to fulfil its functions after privatisation requires providing for appeals against ASE's decisions and enforcement actions to protect aggrieved parties. The ASE may learn from ASX experience in this field, as explained before, ASX clarifies in its \textit{Enforcement and Appeal Rulebook} the appeals available to the aggrieved parties and ASX's decisions that may be appealed.\textsuperscript{1156} It also sets out processes for appeal to an Appeal Tribunal,\textsuperscript{1157} see Chapter 8.7.

As mentioned in Chapter 4.4.2 the ASE's decisions, as one of the administrative law agencies, fall within the \textit{High Court of Justice Law 1992} and are amenable to judicial review by the High Court of Justice as other administrative decisions. After the privatisation, the ASE is supposed to exercise some public powers within a governmental regulatory scheme which would require judicial review to provide some objectivity in regulation in the public interest. To bring the ASE into line with global best practices for judicial review of stock exchanges decisions as explained in Chapter 8.7, the ASE's decisions should retain under the judicial review of the High Court of Justice on administrative law grounds to ensure application of administrative law values like accountability, fairness, openness and procedural fairness. The ASE's legal and statutory structure, after the privatisation, should overcome any uncertainties in relation to the judicial review. According to art 9 of the \textit{High Court of Justice Law} which sets out the Court jurisdiction and the administrative decisions which fall within the court's review, the High Court may be given jurisdiction by the law itself or another law.\textsuperscript{1158} For instance, the \textit{Jordanian Bar Association Law 1972 no. (11)} sets out Association's decisions that may be appealed to the High Court.\textsuperscript{1159} For this purpose, the basis for the administrative judicial review over the ASE's decisions

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{1154} Brewster, `Judicial Enforcement of the Listing Rules', above n 244, 316.
  \item \textsuperscript{1155} Brewster, `Judicial Enforcement of the Listing Rules', above n 244, 319, 332.
  \item \textsuperscript{1156} For more information about ASX's decisions that may be appealed see s 3.1 of the ASX \textit{Enforcement and Appeals Rulebook}.
  \item \textsuperscript{1157} For more information about the appeal procedures see s 3.6 ASX \textit{Enforcement and Appeals Rulebook}.
  \item \textsuperscript{1158} The High Court's jurisdiction has been expanded in art 9 of the \textit{High Court Law 1992} to include, beside reviewing the governmental administrative decisions, the following: 1. Reviewing the election results of the municipalities, associations, clubs and other parties. 2. Reviewing decisions issued under any unconstitutional law or any unconstitutional/illegal regulation. 3. Reviewing any unconstitutional temporary law or any unconstitutional/illegal regulation. For more information about the High Court with jurisdiction see 4.4.2.
  \item \textsuperscript{1159} See art 99 \textit{Jordanian Bar Association Law (No 11)1972}.
\end{itemize}
\end{footnotesize}
should be stipulated in the early steps of the privatisation while amending the Securities Law. ASX experience in relation to the Appeal Tribunal (see 8.7) is not recommended for the ASE, since the Jordanian investors would not accept the idea to appeal the ASE’s decisions to the ASE itself.

The privatisation is usually a gradual transformation and takes place in stages. According to the Securities Law 2002 and Companies Law the privatisation of the ASE from a non-official public institution to a public listed shareholding company managed on commercial basis is required to pass through two main stages as seen in Figure 9.1 below.

Figure 9.1: The Process of Privatisation of the ASE

<table>
<thead>
<tr>
<th>Stage One/Conversion</th>
<th>Stage Two/IPO</th>
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<tbody>
<tr>
<td>(change in governance structure)</td>
<td>(change in ownership structure)</td>
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</table>

The first stage is the conversion of the ASE from a non-official public institution to a public shareholding company. In this stage a number of steps are required. The first step is to obtain the necessary approvals from the Council of Ministers and the JSC. The Council of Ministers decides to convert the ASE from a non-official public institution to a public shareholding company owned by the government upon the recommendation of the Minister of Finance and the JSC. Following this, the Securities Law 2002 requires amendment. All the articles in the Securities Law related to the ASE require review and amendment to allow the ASE to convert from a non-official public institution to a public shareholding company and gives statutory recognition to the ASE’s new constitution, business and listing rules. The amendments of the Securities Law will need to cover a wide range of matters. Significant changes

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1160 Securities Law 2002 art 66.H authorises the JSC to restructure the ASE upon the Council of Ministers approval.

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to the regulatory framework for the conduct of stock markets are needed. It will need to clarify the responsibilities of the ASE and its accountability to the JSC and the government in carrying out its responsibilities to ensure that the market is an orderly and fair market. It will need to determine the relationship between the ASE as (a licence holder operates trading activities in the market) and JSC as a regulator, particularly the licensing requirements for the stock exchanges and the Memorandum of Understanding between them. It would also require the removal of the JSC restrictions over the ASE powers to regulate trading activities, and administrative and financial independence.\textsuperscript{1162} It would need also to identify the ASE relationship with its members (brokerage firms) and listed issuers on a contractual basis. It would need also to make provision for the supervisory role of the ASE, as an exchange and the greater potential for conflicts between its supervisory duties and commercial activities which may require special supervisory arrangements.\textsuperscript{1163} The proposed way forward is a Memorandum of Understanding in cooperation between the ASE and the JSC, to regulate details of their relationship and all common issues such as the legislative environment, separation of the supervisory roles, operation and development of the trading activities, and chargeable fees.\textsuperscript{1164} In addition to the mentioned above matters the Securities Law needs to regulate the ASE self-listing and supervision of the self-listing by JSC. As well, the law may impose the shareholding maximum limit in the ASE after the privatisation.

Privatisation will also involve determining the new company capital through evaluation of the ASE movable and immovable properties.\textsuperscript{1165} For this purpose an evaluation committee including an auditor would need to be established. The ASE could commission any local or international auditing firm to perform the evaluation. In this connection, there are a number of factors affect the evaluation should be considered. These include the diversification of the exchange products between cash; derivatives; clearing and settlement, and its record in creating new products; competition by other exchanges in the same country and/or in the area and the market cycle.\textsuperscript{1166}

The final step would require preparation of the Articles and Memorandum of Association of the new company and registering it as public shareholding company after completing the conversion process.\textsuperscript{1167} The new registered company would be the general successor for the ASE, and all the ASE’s rights and obligations should be transferred to this company.\textsuperscript{1168}

In this last step, the ASE would need to also update its rules and regulations to restructure itself as a public shareholding company,\textsuperscript{1169} meet the licensing requirements for the stock exchanges, and clarify its relationship with its members

\textsuperscript{1162} ASE Privatisation Process report, above n 1109, 43.  
\textsuperscript{1163} Ibid 26.  
\textsuperscript{1164} Ibid 33-35.  
\textsuperscript{1165} Companies Law 1997 art 8.B.  
\textsuperscript{1166} ASE Privatisation Process report, above n 1109, 24-25.  
\textsuperscript{1167} Companies Law 1997 art 8.C.  
\textsuperscript{1169} As a result for the conversion to a public shareholding company, the ASE organisational structure will be changed, that the ASE’s board of directors will be elected by the ASE’s general assembly which will consist of all the shareholders who hold shares in the ASE’s capital.
(brokerage firms) and listed issuers on a contractual basis.\textsuperscript{1170} The establishment of a new company would require the appointment of a board of directors, by the Council of Ministers, to manage the new company.\textsuperscript{1171} It would also require the submission of an application to the JSC to licence the ASE Public Shareholding Company as a trading market in securities in accordance with the provisions of amended \textit{Securities Law} and the instructions issued in this regard.\textsuperscript{1172}

The full privatisation of the ASE would require the sale of all or part of the Jordanian government’s shares in the ASE Public Shareholding Company to the public and/or specific strategic partner/partners. Going public offers a direct access to investors and funding which is necessary to carry out the ASE's future plans such as the investments in new technology. This may be accomplished by a variety of methods. The most direct is Public Offer. This is the offer by the issuer to sell its new issues of securities, including the initial issues of shares and bonds, to more than 30 persons.\textsuperscript{1173} The Public Offer for the sale of securities includes the Public Issuance and Public Subscription.\textsuperscript{1174} In the Public Issuance the subscription takes place through banks.\textsuperscript{1175}

The alternative method is by Public Subscription, this is the offer by the issuer to sell its securities to more than 30 persons through making the securities available for trading on the market.\textsuperscript{1176} The government can sell all or part of its shares to the public through the ASE in accordance with the \textit{Trading Directives}.\textsuperscript{1177}

Both the Public Issuance and Public Subscription are subject to all the Public Offer rules in the \textit{Securities Law 2002} and \textit{Instructions of Issuance and Registration of Securities 2005}, such as a prospectus should be prepared by the issuer and submitted by banks and purchasing brokers to the subscribers and buyers before accepting the applications for subscription and the purchase orders respectively.\textsuperscript{1178}

A nother alternative is a non-public offer for sale of securities, this is the offer by the issuer to sell its securities to 30 persons or less.\textsuperscript{1179} The government can sell and transfer the ownership of all or part of its shares to specific strategic partner/partners

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\textsuperscript{1170} \textit{ASE Privatisation Process report}, above n 1109, 42.
\textsuperscript{1171} \textit{Companies Law 1997} art 8.D.
\textsuperscript{1172} \textit{Securities Law 2002} art 67.A.
\textsuperscript{1173} \textit{Instructions of Issuance and Registration of Securities 2005} art 4.A.1.
\textsuperscript{1174} Ibid art 6.
\textsuperscript{1175} Ibid art 7.A. For example, in November 2007 the government sold 71\% of its shares in the Royal Jordanian Airlines Public Shareholding Company to the public through a subscription happened in a bank which assured the subscription process and the competence of the official documents, see ASE, Announcement No 221, 12 December 2007.
\textsuperscript{1176} \textit{Instructions of Issuance and Registration of Securities 2005} arts 6, 7.B.
\textsuperscript{1177} Ibid. For example, in October 2002 the government sold 10.5\% of its shares in Jordan Telecom Public Shareholding Company to the public through making the securities available for trading on the ASE, see Jordan Telecom Company Annual Report (2002) <http://web.jordantelecom.jo/JordanTelecom/portals/0/reports/annual2002/annual_18_a.htm> (24 September 2011)
\textsuperscript{1178} \textit{Instructions of Issuance and Registration of Securities 2005} arts 5, 7.A.2, B.1.
\textsuperscript{1179} Ibid art 4.A.2.
\end{flushright}
through the SDC.\textsuperscript{1180} Provided that all the information related to the issuance process published twice at least in two local daily newspapers by the issuer.\textsuperscript{1181}

Whether the government wants to sell, all or part, its shares in the ASE to the public and/or specific strategic partner/partners, there are three key issues should be considered.

Firstly, allocation of shares between the public, financial institutions, brokerage firms and the ASE’s employees. Although, the London Stock Exchange (LSE) Report claims that the public are not active in exercising their voting rights and do not understand governance issues in comparison with the financial institutions so the largest portion of shares should be given to the financial institutions.\textsuperscript{1182} There should be a balance between the public shareholding and the financial institutions shareholding through giving the public, in particular the ASE’s members and employees, a reasonable portion to avoid conflicts between shareholders and stakeholders, and guarantee sufficient liquidity.\textsuperscript{1183}

Secondly, seeking for the strategic partner/partners who have advanced technology to manage the ASE with modern methods to make the ASE internationally competitive and attract domestic and foreign investments.\textsuperscript{1184}

Thirdly, the national interest. The potential problem of the exchange becoming controlled by a foreign/local shareholder may not be considered in the national interest since the ASE plays a critical role in the Jordanian economy. Although, the \textit{Privatisation Law} authorises the Council of Ministers to grant the government in privatised companies ‘golden shares’ with special voting rights to veto, upon the Council approval, the decisions issued, by general assembly and/or the board of directors, against the higher national interest.\textsuperscript{1185} Among all the Jordanian privatised companies the Council has not used this power. The ‘Golden Share’ may not be acceptable for the investors and does not attract investments or meet the international best practice. In order to avoid this problem and encourage diverse ownership of the exchange, some exchanges restrict the shareholding maximum limit (between 5-20\%), and require the regulator approval to exceed the limit.\textsuperscript{1186} For example, in Australia

\textsuperscript{1180} JSC Board of Commissioners, Decision No 414/2006, 11 July 2006; \textit{Securities Law 2002} art 69. A states that “A Financial Broker or Dealer shall not trade in securities of a Public Issuer except on a stock exchange, unless such a security is exempt from this condition by the Board”.
\textsuperscript{1181} \textit{Instructions of Issuance and Registration of Securities 2005} art 5.D. For example, in January 2000 the government sold a part of its shares 40\% in Jordan Telecom Public Shareholding Company to a specific strategic partner (Joint Investment Telecommunications Company – Owned by France Telecom and Arab Bank Ltd) through a non-public offer, see Jordan Telecom Company Annual Report (2002), above n 77.
\textsuperscript{1182} \textit{ASE Privatisation Process report}, above n 1109, 17.
\textsuperscript{1183} Ibid.
\textsuperscript{1184} \textit{Privatisation Law 2000} art 3.5.
\textsuperscript{1185} Ibid art 14.
\textsuperscript{1186} \textit{ASE Privatisation Process report}, above n 1109, 18. In addition to placing restrictions on the permitted size of shareholdings with or without discretion to approve higher levels, which is the most used way, there are two ways of approaching non-mutual ownership: placing specific eligibility requirements on substantial or controlling shareholders such as in Mexico and India where foreign investors are prohibited from acquiring shares in exchanges and imposing regulatory notification and/or disclosure requirements when shareholdings exceed certain thresholds, it is to be noted that in
the shareholding maximum limit of the ASX was 5%. It was later increased to 15% to allow strategic alliances.\textsuperscript{1187}

Timing will be important to facilitate the sale of the ASE's shares. The government should choose the suitable economic circumstances to start the selling process. In this regard the government may sell its shares in tranches to achieve good prices in the light that the evaluation of the ASE properties and its potential performance after privatisation.

Privatisation of the ASE and its conversion to a publicly listed company is not an issue solely concerned with the ASE. The ongoing financial viability of the ASE is generally considered crucial for the Jordanian Capital Market. It is especially important since the ASE is Jordan's sole capital market utility. Thus, the success of the privatisation of the ASE, as a project, will depend on the honest commitment from the government and JSC to privatise the ASE in accordance with the international best practices.

In order to allow the ASE to carry out its programs and face the cost of being an independent listed company, the ASE needs full financial autonomy in relation to its revenue sources, listing charges,\textsuperscript{1188} trading commissions,\textsuperscript{1189} membership fees and subscription fees.\textsuperscript{1190} The ASE's income over the last 13 years covered the ASE's expenses (JD 33 million/approximately US $46.6) and achieved large financial surpluses of JD 90 million (approximately US $127).\textsuperscript{1191} It is therefore clear that the ASE is viable as an independent entity.

Although, monopoly stifles innovation and increases costs to the investors,\textsuperscript{1192} maintaining the ASE's monopoly in the market as Jordan's sole capital market utility after the privatisation to protect the viability of the ASE is required at least for a period of time. During the last decade the JSC has refused to grant any licence as a

\textsuperscript{1187} Otchere et al, above n 182, 514. The statutory 5% limitation on shareholdings imposed by the Corporation Amendment (ASX) Act applies to both Australian and foreign persons and associates including bodies corporate as well as individuals, see Donnan, above n 37, 24, 31.

\textsuperscript{1188} The ASE collects from the listed issuers on the ASE the annual listing charges: 1- (0.0004) four per 10 000 of the nominal value of the listed securities, provided that the maximum amount collected does not exceed JD 3000 (approximately US$ 4237). 2- (0.0001) one per ten 10 000 of the nominal value of the listed companies bonds, provided that the maximum amount collected does not exceed JD 1000 (approximately US$ 1412). 3- JD 250 (approximately US$ 353) per issue of treasury bonds. 4- JD 250 (approximately US$ 353) per issue of treasury bills, see the ASE's \textit{Proceeds Internal By-Law 2004} art 3.A, B, C, D.

\textsuperscript{1189} The ASE collects commissions from each trader in securities (0.0005) five per 10 000 of the market value of traded securities, and (0.0001) one per 10 000 of the market value of traded bonds. In this connection the brokerage firms collect the trading commissions directly from their clients who trade in securities, then they send these commissions to the ASE, see the ASE's \textit{Proceeds Internal By-Law 2004} art 5.

\textsuperscript{1190} The ASE collects from its members JD 200 000 (approximately US$ 282 485) once only as a membership fee, and JD 500 (approximately US$ 706) as an annual subscription fee, see ASE's \textit{Proceeds Internal By-Law 2004} art 6.


trading market in securities in accordance with the Securities Law 2002 to retain the ASE monopoly. The JSC’s attitude is not unusual for government-owned exchanges which most often operate as monopoly, with final objectives fixed by the government itself. The Jordanian government may learn from the Australian experience. Although, there are many financial markets that have been licensed to operate in the Australian Capital Market, they do not compete with ASX. ASX has an effective monopoly over many services in the market in particular the clearing and settlement facilities is in a superior position and this seems to accord with government preferences.

Some of the reforms recommended can be achieved without privatisation. However, most of these recommendations are not achievable without the mutual collaboration with the regulatory bodies in the market particularly the JSC. Improving the Jordanian Capital Market requires political commitment to continue the reforms started in 1997. This time the cornerstone of these reforms should be restructuring the ASE from a non-official public institution to a listed public shareholding company managed on commercial basis. But these reforms cannot be done in isolation from the review of the operations of the JSC. A newly privatised ASE would have financial and administrative autonomy something that is currently compromised by the JSC’s supervision over the ASE. The financial and administrative autonomy of the ASE will permit the ASE to be operated and managed on a commercial basis. As a private sector organisation, the ASE will have the opportunity to develop new products and services, attract more listings and accordingly compete with other securities markets in the area.

1193 Poitras, above 14, 165.
1194 Heathcote, above n 1192, 4-5.
### Appendices

Appendix 6.1: Shortcomings and Drawbacks in the JSC Regulatory Functions:

<table>
<thead>
<tr>
<th>Old legislation issued pursuant to the repealed Securities Law 1997 no. (23) and still applied.</th>
<th>Legislation drafts time period until approval by the JSC.</th>
<th>Legislation amended in short periods - from 31 December 2002 the effective date of Securities Law 2002 no. (76) to date.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASE’s Legislation</strong></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>2. Internal By-Law of the ASE 2004. This By-Law was amended four times (once in 2007, once in 2008 and twice in 2009).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Directives for Trading in Securities on ASE 2004. These directives were amended twice (Once in 2009 and once in 2013).</td>
</tr>
<tr>
<td><strong>JSC’s Legislation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Instructions of Issuance and</td>
<td>5. Instructions of Issuing Companies</td>
</tr>
</tbody>
</table>

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1196 Information about the SDC’s legislation is not available.
1197 These instructions were issued pursuant to Amman Financial Market Law (No 1)1990 (Jordan) 17 February 1990, Official Gazette, No 3678, 17 February 1990, 292 (Translated from Arabic) which was repealed by the repealed Securities Law 1997.
1198 The draft Mutual Fund Instructions has been studied and examined by the JSC since February 2006 to date.
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Code of Corporate Governance for Listed Shareholding Companies on the Amman Stock Exchange 2008. (Almost two and a half years from the establishment of the committee in February 2006 to prepare the code).1199*</td>
<td></td>
</tr>
<tr>
<td>8. Draft Instructions for Segregation of the Broker's Funds from those of his Clients (More than eleven years from the issuance of the Securities Law 2002 no. (76)).</td>
<td></td>
</tr>
</tbody>
</table>

* These statutes issued for the first time.
** These statutes replaced old statutes issued pursuant to the repealed Securities Law 1997 no. (23).

1199 For more information see 6.4.4.
Appendix 7.1: Listed Companies' Reasons for Non Compliance with Voluntary Rules in the *Code of Corporate Governance for Listed Shareholding Companies on the ASE 2008*:

<table>
<thead>
<tr>
<th>Voluntary Rule</th>
<th>Non Compliance</th>
<th>Reasons for Non-Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board of Directors</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 2.1 The members of the board of directors shall not be less than five and not more than thirteen as determined by the company's memorandum of association. | 5              | - Some companies comply with art 132.A of the *Companies Law 1997 no. (22)* "The members of the board of directors shall not be less than three and not more than thirteen as determined by the company's Memorandum of Association".  
- Some companies intend to comply in the future.                                    |
| 2.1 The members of the board of directors shall be elected by the company's general assembly in accordance with the cumulative voting principle by means of a secret ballot. | 51             | - Some companies comply with art 132.A of the *Companies Law* "The members of the board of directors shall be elected by the company's General Assembly by means of a secret ballot"  
- It is a right for the shareholders according to art 178 of the *Companies Law* "Every shareholder in the Public Shareholding Company ... shall have the right to participate in discussing issues presented thereto and to vote on the decisions adopted by the assembly regarding these issues, each according to the number of shares he represents in person and by proxy".  
- Some companies have not elected new boards of directors.  
- Some companies intend to comply in the future.  
- Some companies are considering amending Memorandums of Association to comply. |
| 2.1 At least one third of the board of directors shall be independent members.  | 17             | - Some companies intend to comply in the future when they elect a new board of directors.  
- Some companies have some independent members.  
- The majority of members in the board of directors are corporate bodies/ public corporate bodies, according to art 135 and art 136 of the *Companies Law* they should be entitled to be represented on their boards of directors by a number of |
| 2.3 The corporate body which is a member in the board of directors shall name a natural person to represent it for the entire board's duration. | 16 | - Some boards of directors do not include corporate bodies.  
- It is a right for the company according to art 135.B and art 136 of the \textit{Companies Law} "The corporate body may also replace its representative with another natural person during the board's duration". |
| --- | --- | --- |
| 2.5 Splitting the role of the Chairman of the board from any executive position in the company. | 28 | - Some companies comply with art 152.C of the \textit{Companies Law} "The chairman of the public shareholding company's board of directors or any member thereof may be appointed as the company's general manager or as his assistant or deputy by a decision issued by a two-thirds majority vote of the board members, in any such cases, provided that the concerned party shall not take part in the voting".  
- Some companies are considering this issue.  
- Cost reduction.  
- The chairman's experience in the company's activities and to enhance its flexibility in making the decisions and running the business.  
- In order to improve the control system efficiency over executive management's decisions and performance, the bank has adopted different control measures:  
  1. Established many Board Committees.  
  2. Appointed an independent director in the board as a deputy chairman.  
  3. Established the deputy general manager position. |
| 2.6 The member of the board of directors should be qualified and enjoys adequate knowledge and experience in administrative affairs. He should also be aware of relevant legislation and the board of directors' rights and duties. | 2 | - In one company all the shareholders in the company (8 shareholders) are members in the board of directors (8 members). |
| 2.11 The board of directors may seek the opinion of any external consultant at the company’s expense, provided that the | 8 | - No need.  
- Sufficient board experience |
majority of board members approve this and there is no conflict of interests.

<table>
<thead>
<tr>
<th>The Board of Directors' duties and responsibilities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 The board of directors shall set an internal by-law to be reviewed annually, which defines in detail the duties, powers, and responsibilities of the board of directors, including:</td>
<td>40</td>
</tr>
<tr>
<td>- Some companies comply with art 151 of the Companies Law &quot;The financial, accounting, and administrative issues of a Public Shareholding Company shall be organized in accordance with special by-laws prepared by its board of directors. Same shall specify in detail the duties, responsibilities and powers of the company's board of directors regarding such issues&quot;.</td>
<td></td>
</tr>
<tr>
<td>- Some companies intend to prepare this internal by-law in the future.</td>
<td></td>
</tr>
<tr>
<td>- Some companies have internal by-laws and review them periodically not annually, and some do not review them at all since they have not commenced operations.</td>
<td></td>
</tr>
<tr>
<td>- Some companies comply with the board of directors' duties, responsibilities and powers in the Companies Law and Securities Law.</td>
<td></td>
</tr>
<tr>
<td>- The board of directors' duties, responsibilities and powers are determined in the company's Memorandum of Association.</td>
<td></td>
</tr>
<tr>
<td>- Some companies have recently transformed to Public Shareholding Companies from Limited Liability Companies and were not required to set up this internal by-law.</td>
<td></td>
</tr>
<tr>
<td>- The size of some companies' activities does not require preparing this internal by-law.</td>
<td></td>
</tr>
<tr>
<td>2.1.1 Setting strategies, policies, plans and procedures that achieve the company's interest and objectives, maximize its shareholders' rights and serve the local community.</td>
<td>14</td>
</tr>
<tr>
<td>- Some companies intend to prepare all this in the future.</td>
<td></td>
</tr>
<tr>
<td>- Some companies are developing and improving their internal policies to achieve full compliance.</td>
<td></td>
</tr>
<tr>
<td>- The board of directors/ the chairman of the board of directors clarify all that in their decisions and recommendations.</td>
<td></td>
</tr>
<tr>
<td>2.1.4 Setting a risk management policy for the risks that the company may face.</td>
<td>29</td>
</tr>
<tr>
<td>- The executive management and board of directors apply a risk management policy but this policy is not written as an internal by – law.</td>
<td></td>
</tr>
<tr>
<td>- The company's activities do not include high risks.</td>
<td></td>
</tr>
<tr>
<td>- Some companies intend to prepare the policy in the future.</td>
<td></td>
</tr>
<tr>
<td>- The board of directors studies case by case and finds solutions for each one.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>2.1.6</td>
<td>The date of the financial statements disclosure shall be announced previously, three business days at least before the announcement date.</td>
</tr>
<tr>
<td>2.1.7</td>
<td>Setting the company's disclosure and transparency policy and follow up its implementation in accordance with the regulatory bodies' requirements and legislation in force.</td>
</tr>
<tr>
<td>2.1.8</td>
<td>Setting procedures to forbid insiders in the company from using confidential inside information to achieve material or moral gains.</td>
</tr>
<tr>
<td>2.1.12</td>
<td>Establishing a special unit for internal audit and control, in order to ensure the compliance with the legislation in force, the regulatory bodies' requirements, and internal regulations, policies, plans and procedures set by the board of directors.</td>
</tr>
<tr>
<td>2.1.13</td>
<td>Reviewing and evaluating the performance of the company’s executive management, and the extent of implementation of the strategies, policies, plans and procedures in force.</td>
</tr>
<tr>
<td>2.1.14</td>
<td>Setting a</td>
</tr>
</tbody>
</table>

- Some companies intend to comply in the future.
- Companies comply with the legislation and the Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004 and disclose within the periods.
- The company has been established recently and has not commenced operations.
- Some companies have to wait till the financial statements are submitted by the external auditor or approved by the CBJ.
- Some companies intend to prepare this policy in the future.
- Companies comply with the legislation and regulatory bodies' requirements regarding the disclosure issues.
- Some companies intend to prepare these procedures in the future.
- The insiders of the board of directors and executive management comply with the legislation which prevents using confidential inside information.
- The board of directors' decisions regulate this issue.
- The company intend to establish a committee for this purpose in the future.
- Some companies depend on the external auditor/external services company/ executive management to perform this duty.
- The company depends on the supervisory roles of the regulatory bodies to perform this duty.
- The size of some companies' operations does not require establishing this unit.
- The general manager fulfils this duty.
- It is a voluntary rule.
- Some companies do that through reviewing the company's annual achievements and financial results.
mechanism to receive the shareholders' complaints and suggestions, including their suggestions related to listing certain matters in the general assembly agenda, in a manner that would ensure studying them and taking a proper action within a certain period of time.

| 2.1.15 Adopting criteria for granting incentives, remunerations, and privileges to the board members and executive management. | 27 | - Some companies implement art 162 of the Companies Law.
- The board of directors determines these incentives, remunerations, and privileges according to the company's annual achievements and results.
- Some companies intend establish the Nominations and Remunerations Committee to set these criteria.
- The company has been established recently and has not commenced operations.
- The company has not granted remunerations to the board members in the last few years.
- Some companies have criteria for the executive managements, and intend to set one for the board of directors in the future. |
| 2.1.16 Setting a policy to organize the relations with stakeholders. | 17 | - Some companies intend to comply in the future.
- Companies comply with the legislation and regulatory bodies' requirements.
- The board of directors studies case by case and regulates it in a contract.
- There are no stakeholders transactions. |
| 2.1.17 Setting written | 66 | - Most of the companies could not prepare |
procedures for implementing the good corporate governance rules in the company, reviewing them and evaluating the extent of the implementation.

these procedures since the corporate governance code has issued recently, and they intend to comply with this rule in the future.
- Some companies comply with the corporate governance rules in the legislation.

### Committees Established by the Board of Directors

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2.1</td>
<td>The board of directors shall establish the permanent Nominations and Remunerations Committee.</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>- Some companies depend on the board of directors/audit committee/ board's temporary committees/general manager to perform the committee duties.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Some companies intend to establish this committee in the future.</td>
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</tr>
<tr>
<td></td>
<td>- There are only three members in the board of directors.</td>
<td></td>
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<tr>
<td></td>
<td>- The small number of the employees and the size of some companies' activities do not require establishing this committee.</td>
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<tr>
<td></td>
<td>- The company has not commenced operations.</td>
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</tr>
<tr>
<td>2.2.2</td>
<td>The audit committee and Nominations and Remunerations Committee shall be composed of not less than three non-executive members of the board of directors, at least two of whom must be independent members and one of the two independent members must preside over the committee.</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>- Most of the companies do not have nominations and remunerations Committee.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- The size of some companies' operations does not require establishing this committee.</td>
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</tr>
<tr>
<td></td>
<td>- Some companies only have one independent member in the audit committee.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Some companies intend to comply in the future.</td>
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</tr>
<tr>
<td>2.2.3</td>
<td>Both committees, upon the approval of the board of directors, shall set written procedures that regulate their activities and define their duties.</td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>- Most of the companies have not established a Nominations and Remunerations Committee.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Some companies intend to set these procedures in the future.</td>
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<tr>
<td></td>
<td>- No need for these procedures since the board members have adequate knowledge and experience in administrative affairs.</td>
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<tr>
<td>2.2.5</td>
<td>Both committees shall submit their decisions and recommendations to the board of directors, and a report regarding their activities to the company's general assembly in its</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>- The board of directors submits to the general assembly in the ordinary meeting its report which includes the committees' decisions and recommendations.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Some companies intend to comply in the future.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- All the shareholders are members in the board of directors.</td>
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</tbody>
</table>
| Ordinary meeting. | - Some companies are considering their internal procedures.  
- It is a voluntary rule. |
| 2.2.1.B The Nominations and Remunerations Committee performs the following tasks:  
1- Ensuring the independence of the independent members continuously.  
2- Setting a policy for granting remunerations, privileges, incentives and salaries in the company and reviewing it annually.  
3- Defining the company's needs of qualifications at the high executive management and employees levels, and the criteria for choosing them.  
4- Setting the company's human resources and training policy, monitoring its implementation and reviewing it annually. | 96 | - Most of the companies have not established a Nominations and Remunerations Committee.  
- Some companies intend to comply in the future.  
- The board of directors/ general manager in cooperation with the board practice these powers.  
- The human resources department in the company is responsible to follow everything regarding task four.  
- The company offers training for employees when it deems appropriate. |
| 2.2.6 The Nominations and Remunerations Committee enjoys the following powers:  
1- ….  
2- ….  
3- …. | 90 | - Most of the companies have not established a Nominations and Remunerations Committee.  
- The general manager practices these powers in cooperation with the board of directors. |
| Board of Directors meetings | - It is a voluntary rule.  
- Some companies intend to comply in the future. |
| 2.3.4 The number of meetings of the board of directors shall be disclosed in company's annual report. | 26 |
| General Assembly Meetings | - All companies comply with art 144.A of the Companies Law  "The board of directors of a public shareholding company shall direct an invitation to each shareholder to attend the general assembly meeting to be sent via ordinary mail at least 14 days prior to the date set for the meeting. The invitations may be delivered to the shareholder by hand against a signature of | 100 |
should be made for the meeting including the choice of place and time.

- The shareholders' e-mails are not available to the company.
- Some of the shareholders do not have e-mails.
- The invitations delivered by hand since it is a family company and the number of shareholders is small.

<table>
<thead>
<tr>
<th>3.4 New topics, which were not listed on the general assembly agenda sent previously to the shareholders, should not be listed at the meeting.</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
</tr>
</tbody>
</table>

- It is a right for the shareholders according to art 171.A.9 of the Companies Law "The powers of the general assembly of a public shareholding company during its ordinary meeting shall include powers necessary for considering, discussing and taking the appropriate decisions on all company-related issues, particularly the following: … 9- Any other matter which the general assembly proposes to include in the agenda, and are within the work scope of the general assembly in its ordinary meetings, provided that such a proposal is approved by shareholders representing not less than 10% of the shares represented in the meeting".

<table>
<thead>
<tr>
<th>3.5 The shareholder who wishes to nominate himself for the membership of the board of directors shall send his C.V prior to the end of the company's fiscal year preceding the year in which the general assembly meeting would be held to elect the board.</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
</tr>
</tbody>
</table>

- Some companies intend to comply in the future.
- Some companies have not elected new boards of directors.
- The majority of members in the board are representatives for corporate bodies/public corporate bodies, according to art 135 and art 136 of the Companies Law they shall be entitled to be represented on their boards of directors by a number of members in proportion to their subscription proportion in the company's capital.
- Usually shareholders nominate themselves for the membership of the board in the general assembly meeting without informing the company previously or sending the C.V.
- The shareholder sends his C.V after electing him.

<table>
<thead>
<tr>
<th>3.5 The board of directors shall attach the shareholder's C.V to the invitation which was sent to the shareholders to attend the general assembly meeting.</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
</tr>
</tbody>
</table>

- Some companies intend to comply in the future.
- The majority of members in the board of directors are representatives for corporate bodies/public corporate bodies, according to art 135 and art 136 of the Companies Law they shall be entitled to be represented on their boards of directors by a number of
members in proportion to their subscription proportion in the company's capital.
- Usually shareholders nominate themselves for the membership of the board in the general assembly meeting without informing the company previously or sending the C.V.

3.6 The place and date set for the meeting of the general assembly shall be announced at least twice in three local daily newspapers, and on the company's website.

<table>
<thead>
<tr>
<th>Shareholders' Rights</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1.6 Receiving annual dividends within thirty days from the date of the meeting of the general assembly whereby it decides to distribute them.</td>
<td>48</td>
</tr>
<tr>
<td>- Some companies pay the dividends within 45 days from the date of the general assembly's meeting according to art 191.C of the <em>Companies Law</em>.</td>
<td></td>
</tr>
<tr>
<td>- Some companies have not distributed dividends.</td>
<td></td>
</tr>
<tr>
<td>4.1.7 Priority to subscribe in any new shares issuances to be made by the company before offering them to other investors.</td>
<td>13</td>
</tr>
<tr>
<td>- Art 92.B.7 of the <em>Companies Law</em> states that &quot;The shareholding company's Articles of Association and Memorandum of Association should include whether the shareholders and the holders of convertible bonds hold pre-emptive right to subscribe for any new issuances to be made by the company&quot;.</td>
<td></td>
</tr>
<tr>
<td>- Some companies' Memorandums of Association allow offering the new shares issuances to other investors.</td>
<td></td>
</tr>
<tr>
<td>4.1.8 Resorting to alternative methods to dispute resolutions including arbitration and mediation, as a result for the violation of the legislation in force or the company's Memorandum of Association or any default or negligence in the management of the company, or disclosing the</td>
<td>33</td>
</tr>
<tr>
<td>- The company has not received any request for this purpose.</td>
<td></td>
</tr>
<tr>
<td>- Companies comply with art 160 of the <em>Companies Law</em> &quot;The Controller, the company and any shareholder therein shall have the right to file a case with the court&quot;.</td>
<td></td>
</tr>
</tbody>
</table>
company's secrets.

| 4.1.11 | Shareholders holding 20% of the company shares may request an extraordinary general assembly meeting to dismiss the board of directors or any board member. | 45 |
| 4.1.12 | Shareholders holding 10% of the company shares may request the audit of the company's activities and records. | 49 |
| 4.2.13 | The general assembly enjoys wide powers, particularly the power to take decisions which affect directly the future of the company, including selling all the company's assets or a significant part of these assets that might affect the realization of the company's objectives. | 6 |

**Disclosure and Transparency**

| 5.1 | The company shall establish written work procedures in accordance with the disclosure policy adopted by the board of directors to regulate disclosure of information and follow up on the implementation of the policy in accordance with the requirements of the | 26 |

- Some companies intend to set these procedures in the future.
- Companies comply with the disclosure requirements in legislation and the *Instructions of Issuing Companies Disclosure, Accounting and Auditing Standards 2004*.
regulatory bodies and the legislation in force.

<table>
<thead>
<tr>
<th>5.4 The company shall use its website on the Internet to enhance disclosure and transparency, and to provide information.</th>
<th>81</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Some companies intend to comply in the future.</td>
<td></td>
</tr>
<tr>
<td>- Some companies do not have websites.</td>
<td></td>
</tr>
<tr>
<td>- Some companies’ websites are not developed for disclosure.</td>
<td></td>
</tr>
<tr>
<td>- All the shareholders are members in the board of directors.</td>
<td></td>
</tr>
<tr>
<td>- Some companies disclose via the JSC’s and ASE’s websites.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.5 The company shall disclose its policy and programs regarding the local community and the environment.</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Some companies do not have any program regarding the local community and the environment.</td>
<td></td>
</tr>
<tr>
<td>- The company has not commenced operations.</td>
<td></td>
</tr>
<tr>
<td>- Some companies intend to comply in the future.</td>
<td></td>
</tr>
</tbody>
</table>

### Audit Committee

<table>
<thead>
<tr>
<th>5.1.1 All members of the Audit Committee must have knowledge and experience in finance and accounting affairs, and at least one of them must have worked previously in accounting or finance fields, or that person must have an academic or professional certificate in accounting or finance or related fields.</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>- There is no Audit Committee in the company since there are only three members in the board.</td>
<td></td>
</tr>
<tr>
<td>- All the shareholders are members in the board, and board members who enjoy knowledge and experience in finance and accounting affairs occupant executive positions in the company.</td>
<td></td>
</tr>
<tr>
<td>- All the committee members enjoy knowledge and experience in finance and accounting affairs but they have not worked previously in accounting field, and they do not have academic or professional certificates in accounting or finance or related fields.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5.1.3 The company shall offer for the Committee all necessary facilities to perform its duties, including seeking experts assistance whenever needed.</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>- There is no Audit Committee in the company since there are only three members in the board.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>5.1.4 The Audit Committee shall meet the company’s external auditor once a year at least, without the presence of the executive management or any representative of it.</th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>- There is no Audit Committee in the company since there are only three members in the board.</td>
<td></td>
</tr>
<tr>
<td>- Some companies intend to comply in the future.</td>
<td></td>
</tr>
<tr>
<td>- No need for this meeting.</td>
<td></td>
</tr>
<tr>
<td>- The board of directors meets the company's external auditor directly.</td>
<td></td>
</tr>
</tbody>
</table>
### The Audit Committee's duties

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.4</td>
<td>4</td>
<td>Following the company's compliance with the requirements of regulatory bodies.</td>
</tr>
</tbody>
</table>
| | | - There is no Audit Committee in the company since there are only three members in the board.  
- The board of directors practices these powers directly. |
| 5.2.12 | 6 | Reviewing the related parties transactions and recommending to the board of directors prior to their ratification by the company. |
| | | - There is no Audit Committee in the company since there are only three members in the board.  
- Some companies intend to comply in the future.  
- The board of directors practices these powers directly.  
- The Audit Committee reviews the related parties transactions after their ratification by the company. |

### The External Auditor

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.4.2</td>
<td>10</td>
<td>The external auditor shall exercise his duties for one renewable year, provided that the responsible partner at the external auditor may not audit the company's accounts for more than four consecutive years, and re-selection him to audit the company's accounts may take place after two years at least.</td>
</tr>
</tbody>
</table>
| | | - Companies comply with art 192.A of the Companies Law "The general assembly of a public shareholding company shall elect one or more licensed auditors from amongst licensed auditors for one renewable year".  
- It is a voluntary rule.  
- Companies have to wait four years to apply this rule. |
| 5.4.3.B | 4 | The external auditor shall not perform any additional services to the company such as administrative and technical consultations. |
| | | - Companies comply with art 197 of the Companies Law "The auditor is not entitled to work permanently in any technical, administrative or consultancy work therein".  
- The company avoids the conflicts of interest and discloses the additional services in the annual report.  
- Some companies only mentioned the type of the additional services.  
- The external auditor provides tax consultations to the company upon the Audit Committee approval according to the CBJ instructions. |
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