

Decree of the Minister of Finance of April 1, 2009, establishing the conditions for the creation, organization, and operation of the customer guarantee fund for the securities and financial products market.

The Minister of Finance,

Having regard to Law No. 94-117 of November 14, 1994, on the reorganization of the financial market, and in particular Articles 62 and 68 thereof, as amended and supplemented by subsequent texts, and in particular Law No. 2005-96 of October 18, 2005, on strengthening the security of financial relations.

Decrees:

Article 1:

Stockbrokers shall, at an extraordinary general meeting of the Tunis Stock Exchange, within a period not exceeding 30 days from the date of publication of this decree, the "customer guarantee fund for the securities and financial products market" provided for in Article 62 of Law No. 94-117 of November 14, 1994, referred to above.

The management of the said fund shall be entrusted to the Tunis Stock Exchange in accordance with the provisions of this decree.

Article 2:

"The securities and financial products market customer guarantee fund" shall intervene to protect customers against non-commercial risks.

Non-commercial risks within the meaning of this decree are considered to be the failure of a stock exchange intermediary to honor its commitments concerning:

- the return of funds deposited or transferred to it on behalf of its clients for any reason whatsoever,
- the payment of sums of money following a securities transaction that was the subject of an order transmitted in accordance with the regulations in force,
- the payment of sums of money following a transaction subject to registration on the Tunis Stock Exchange that have been paid or transferred to it by its co-contractor,
- the delivery of securities following trading,
- the delivery of securities following a transaction subject to registration on the Tunis Stock Exchange that have been delivered to it by its co-contractor,
- the return of securities issued by public offering and recorded in its clients' accounts.

The fund shall act on the advice of the Financial Market Council in accordance with the provisions set out in Article 5 of this decree.

Article 3:

The Tunis Stock Exchange shall record the resources and uses of the "securities and financial products market customer guarantee fund" in separate accounts and shall invest at least 80% of the sums belonging to the fund in securities issued by the State.

Article 4:

The resources of the "guarantee fund for customers of the securities and financial products market" shall come from:

- 5% of the amount of commissions collected by the Tunis Stock Exchange on stock market transactions,
- an annual contribution of 1,000 dinars paid by each stock exchange intermediary before the end of January each year. For 2009, this contribution shall be paid within one month of the date of creation of the fund,
- investment income from the fund's resources.

Contributions paid into the fund are non-refundable.

Article 5:

The "Securities and Financial Products Market Customer Guarantee Fund" shall intervene following a notice from the Financial Market Council stating that a stockbroker has failed to honor its commitments as defined in Article 2 of this decree.

This notice is published in the official bulletin of the Financial Market Council and in the official bulletin of the Tunis Stock Exchange.

This notice shall include an invitation to the brokerage firm's clients to submit their claims for compensation to the Tunis Stock Exchange.

Article 6:

Clients of the stockbroker who has failed to meet its obligations as defined in Article 2 of this decree and who request the intervention of the "Securities and Financial Products Market Customer Guarantee Fund" must submit to the Tunis Stock Exchange a request for intervention accompanied by all supporting documents enabling them to assert their rights, within a period not exceeding three months from the date of publication of the notice referred to in Article 5 of this decree.

Article 7:

The Tunis Stock Exchange shall decide on the action to be taken in response to requests from clients of the defaulting broker within a maximum period of one month from the expiry of the period referred to in Article 6 of this decree.

The Tunis Stock Exchange shall submit to the Financial Market Council a detailed report including a statement of the claims it has received and the compensation it has decided to grant to claimants from the resources of the "securities and financial products market customer guarantee fund" and within the limits set out in Article 8 of this decree, for claims that meet the conditions for intervention by the fund.

The report of the Tunis Stock Exchange shall be submitted for opinion to the Financial Market Council, which shall order the payment of compensation where appropriate.

Article 8:

The guarantee of the "Securities and Financial Products Market Customer Guarantee Fund" may not exceed an amount equivalent to two-thirds of its available resources. The amount to be paid shall be distributed among the customers whom the Tunis Stock Exchange has decided to compensate in proportion to each customer's rights in the pool of claims eligible for compensation, up to a limit of 30,000 dinars for each client, regardless of the number of accounts they hold, without the total amount paid exceeding 90% of the amount concerned by the compensation for each client.

Article 9:

The following are not eligible for the "securities and financial products market customer guarantee fund":

- stockbrokers for their own rights,
- the directors of the defaulting stockbroker and shareholders holding at least 10% of its capital,
- subsidiaries of the defaulting stockbroker,
- the spouses, ascendants, and descendants of:
 - the managers of the defaulting stockbroker,
 - shareholders holding at least 10% of its capital.

Article 10:

The Tunis Stock Exchange is subrogated on behalf of the "customer guarantee fund for the securities and financial products market" up to the amount of compensation paid, in the rights and shares of the person compensated against the defaulting broker and, where applicable, against its insurer.

The Tunis Stock Exchange is also entitled, on behalf of the said fund, to claim interest calculated at the legal rate in force for commercial transactions, as well as recovery costs.

The Tunis Stock Exchange shall inform the Financial Market Council of the results of the subrogation, whatever they may be.

Article 11:

The Tunis Stock Exchange shall submit a quarterly report to the Financial Market Council on the financial situation of the "Securities and Financial Products Market Customer Guarantee Fund," including its resources and uses.

Article 12:

The Financial Market Council and the Tunis Stock Exchange shall be responsible, each in its own capacity, for the implementation of this decree, which shall be published in the Official Journal of the Republic of Tunisia.

Tunis, April 1, 2009.

The Minister of Finance
Mohamed Rachid Kechiche

Having regard to
The Prime Minister
Mohamed Ghannouchi