

### **Notification of the Position of Significant Shareholder in an Investment Company**

This article presents the relevant legal requirements concerning the notification of the intent to acquire the position of significant shareholder in an Investment Company, as well as some considerations based on our recent practice with the Securities Commission.

Art. 7 (1) (6) of Government Emergency Ordinance no.99/2006 on Credit Institutions and Capital Adequacy defines the Investment Company as a legal person whose regular business is the provision of investment services to third parties and/or the performance of investment banking activities.

According to Art. 18 of the Capital Market Law no. 297 of 2004, any person or company which intends to acquire directly or indirectly the shares of an investment company registered in Romania, whereby it could become a significant shareholder, i.e. it will hold at least 10% of the capital, must notify the National Securities Commission (the “Securities Commission”) in advance, mentioning the size of the intended holding.

Within 90 days as of the notification date, the Securities Commission will issue a decision regarding the approval or interdiction to acquire such a position. In case of approval, the decision of the Commission shall set out the deadline by which the wannabe shareholder can acquire the position of significant shareholder of the investment company.

Art. 7 of the Regulation no. 32 of 2006 regarding the Financial Investment Services (“Regulation no. 32”) issued by the Securities Commission, provides the documents which have to be filed together with the notification, as mentioned below:

1. A Certificate of Good Standing regarding the registration date, administrators or directors, object of activity of the future significant shareholder (hereinafter referred to as the “Company”), issued by the Court/Trade Registry where the Company was registered, dated no earlier than 60 days before the filing of the notification.

As in some countries, the Court/Trade Registry where the Company is registered does not issue certificates of good standing, the Securities Commission accepts also historical excerpts issued by such authority, or notarized excerpts.

2. A Presentation of the Group to which the Company belongs.

Regulation no. 32 does not provide specific requirements regarding the Group Presentation, being sufficient to submit a copy of the Presentation of the Group, as probably prepared for marketing and commercial purposes, together with a chart representing all the companies belonging to the Group and the links between them.

Such document has to be signed by a representative of the Company and stamped with the Company’s stamp/seal, but it does not need to be notarized.

3. The shareholding structure down to the ultimate parent company. The list must include the names of the shareholders which directly or indirectly hold control over the Company.

The Shareholder Structure should be issued in the form of a chart by the authority where the structure of the Company's shareholders has been registered.

However, if the Company is not yet registered with an authority similar to the Securities Commission, i.e. the stock market regulatory authority, the Shareholder Structure should be appended to a Declaration printed on the letterhead of the issuer, signed and stamped/sealed by the representatives of the Company confirming the accuracy of such data.

4. For the Companies registered with an authority similar to the Securities Commission, a certificate of good standing issued by such authorities regarding the Company is also to be filed with the Securities Commission.

The certificate of good standing may be in a form of a letter issued by the relevant authority mentioning that the Company was properly registered and functions in accordance with the provisions of the local laws.

5. Copies of the Company's financial statements for the last two fiscal years, which were registered with the relevant Tax Authority.

The Securities Commission will approve the Notification only if:

- (i) the Company has been operating for at least 3 years;
- (ii) the Company has not incurred losses in the last two financial years. If such losses were incurred, a financial statement for the group to which the Company belongs should be issued attesting that at a group level no losses were incurred.

6. A Questionnaire, which must be issued by the legal representative of the Company. The draft of the Questionnaire is the standard form provided by the Annex no. 1 E of Regulation no. 32.

The Questionnaire is an informative document issued by each company which is a direct or indirect shareholder in a Romanian investment company. The aim of the Questionnaire is to provide the Securities Commission with the relevant information attesting that the company issuing the Questionnaire carries out its activity in good faith and in a fair manner.

7. A Statement signed by the legal representatives of the Company, regarding the compliance with the provisions of Art. 6 (f) (3) of Regulation no. 32.

Also, the standard Statement has to include all the individual holdings and the holdings in relation to persons with close links in any company, which account for at least 10% of the share capital, or of the voting rights of the respective company.

If the Company is listed on the stock market, the representatives of the Company may issue a Declaration *in lieu* of the above-mentioned Statement.

**Note:**

*The Notification and the supporting documents mentioned above have to be submitted not only by the Company, but also by the shareholders owning at least 10% of the capital of the Company, down to the level of natural persons.*

*In a recent case though where the Company was listed on a foreign stock market, the Securities Commission accepted the submission of a Declaration signed by the representatives of the Company specifying that none of the shareholders owns more than 10% of the capital, instead of requesting the filing of Notifications by all the shareholders of the Company,*

Further to the approval by the Securities Commission of the intention of the Company to become a significant shareholder, the Romanian Investment Company has to file with the Securities Commission an application in order to obtain the authorization regarding the change of the shareholders structure within 60 days as of the date of the approval issued in respect thereof.

Corina Papuzu  
Attorney-at-law

Buzescu Ca