

8. ROMANIAN CAPITAL MARKETS LAWS

Updated September 2015

The relevant **Romanian capital markets laws** and regulations are:

- ✓ Law no. 297 of 2004 regarding the Capital Market, as amended (“**Capital Market Law**”)
- ✓ Emergency Government Ordinance no. 25 of 2002 regarding the approval of the Statutes of the National Securities Commission as amended
- ✓ Regulation no. 15 of 2004 issued by the National Securities Commission (“**Securities Commission**”) regarding the Authorization and Functioning of Investment Management Firms, Collective Investment Undertaking and Depositories
- ✓ Regulation no. 13 of 2005 issued by the Securities Commission on the Authorization and Functioning of the Central Depository, the Clearing Houses and Central Counterparties as amended
- ✓ Regulation no. 01 of 2006 issued by the Securities Commission on Issuers and Operations with Securities as amended
- ✓ Regulation no. 02 of 2006 issued by the Securities Commission on Regulated Markets and Alternative Trading Systems
- ✓ Regulation no. 14 of 2006 issued by the Securities Commission modifying Regulation no. 2 of 2006 on Regulated Markets and Alternative Trading Systems
- ✓ Regulation no. 31 of 2006 issued by the Securities Commission amending the Securities Commission Regulations by Implementing Certain Provisions of European Directives as amended
- ✓ Regulation no. 32 of 2006 issued by the Securities Commission on Investment Services as amended

KEY INSTITUTIONS

ASF - Financial Supervisory Authority

The Financial Supervisory Authority (“**ASF**”) was established as an autonomous, specialized, with legal status, independent, self-financed administrative authority, exercising its duties by taking over and reorganizing all duties and powers of the National ASF(CNVM), the Insurance Supervisory Commission (CSA) and the Private Pension System Supervisory Commission (CSSPP).

In cases of breaches of the securities laws, the ASF has the power to apply fines, and to suspend trading of the stock of the companies affected by the respective breaches.

Derivatives are effectively traded on two regulated markets, one operated by the BSE and one by the Sibiu Monetary - Financial and Commodities Exchange (“**Sibex**”).

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Bucharest Stock Exchange (“BSE”)

BSE was created in 1995. This is the main stock exchange in Romania.

BSE is a joint-stock company under the supervision of the ASF, being able to adopt its own set of regulations.

Sibiu Monetary Financial and Commodities Exchange (“SIBEX”)

Sibex was authorized by the Securities Commission, ASF’s predecessor and was set up in 2006.

Sibex launched several derivative financial instruments.

The Central Depository

The Central Depository is a legal entity established as a joint-stock company, authorized and supervised by the ASF. The clearing-settlement operations are carried out through the Central Depository.

The members of the Central Depository’s Board must be individually validated by the ASF before exercising their mandates. The shareholders are not allowed to hold more than 5% each of the voting rights, except for the market operators which are entitled to 75% of the voting rights subject to the prior approval from the ASF.

The operations carried out by the Central Depository are supervised by the ASF.

Clearing Houses

The Clearing Houses are the entities responsible for ensuring the clearing and settlement of transactions with derivatives and act under the supervision of the ASF. The Clearing Houses are registered as joint-stock companies and require a prior authorization issued by the ASF.

The transactions carried out on SIBEX are settled through the Sibiu Clearing House, while the transactions carried out on BSE are settled through the Bucharest Clearing House.

Investors’ Compensation Fund

The Investors’ Compensation Fund (“**Fund**”) is established as a joint-stock company approved by the ASF. The intermediaries and the management companies whose object of activity is the management of individual investment portfolios are the shareholders of the Fund.

The intermediaries authorized to provide investment services and management companies, which manage individual investment portfolios, have to be members of the Fund. The Fund’s major role is to compensate the investors in case that the Fund members fail to reimburse the money or the financial instruments held on their behalf. The Fund compensates the investors within the limits established by the President of ASF on an annual basis.

KEY PLAYERS

Financial Investment Services Companies

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The intermediaries which provide investment services in Romania are the financial investment services companies authorized by the ASF, the credit institutions authorized by the National Bank of Romania, as well as the equivalent of such entities that have been authorized by the competent authorities of the relevant Member States of the European Union ("EU").

Financial Investment Services Companies (*S.S.I.F.*) are legal entities, established as joint-stock companies, authorized by the ASF to provide investment services. Such authorization provides what type of investments services the respective Financial Investment Services Company is entitled to perform.

The principal financial investment services are related to the sale and purchase of financial instruments on behalf of investors or on their own account, the management of investment portfolios within the limits of their mandates and the placement of financial instruments.

Other related services include the administration of financial instruments, the safe custody services, the granting of credits to investors, and providing investment advice concerning financial instruments.

The initial registered capital of a Financial Investment Services Company is to be determined according to the ASF regulations which provide certain thresholds for such capital depending on the type of investment services provided by the respective company. A Financial Investment Services Company has to comply with the authorization conditions, prudential and capital requirements as required by the ASF.

The Financial Investment Services Company has to notify any change in its organization and operation to the ASF.

The ASF has to be notified in case any person intends to acquire directly or indirectly the shares of a Financial Investment Services Company, thus becoming a significant shareholder, or intends to dispose, directly or indirectly of such position held in a Financial Investment Services Company.

Also, any significant shareholder which proposes to increase or decrease its holding, so that the proportion of the voting rights or of the share capital would reach, exceed, or fall below 20%, 33% or 50% has to notify the ASF first.

Agents of Financial Investment Services Company

Investment services are provided by agents of Financial Investment Services Companies registered with the ASF Register.

Foreign intermediaries

With regard to foreign intermediaries, their ability to operate in Romania depends on whether they are domiciled in a Member State of EU or in a non-member State. If the Financial Investment Services Company is authorized by the competent authority in a Member State, it may provide, on the Romanian territory, investment services either directly or via a branch. In case of Financial Investment Services Company domiciled in countries which are not members of EU, such companies can carry out financial investment services by setting up branches in Romania, which must be authorized by the ASF.

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Traders

Traders are legal entities which carry out transactions with derivatives such as futures and options contracts in their own name only. Such entities must be authorized by the ASF, and registered in the ASF Register. The clearing and settlement of the transactions concluded by the traders have to be carried out only through intermediaries.

Investment Consultants

The investment consulting services regarding financial instruments may be provided by Investment Consultants, natural or legal persons, which are registered with the ASF Register.

Rating Agencies

The ASF issues regulations regarding the selection criteria for Rating Agencies which evaluate and rank the listed companies and the financial instruments traded on the stock exchanges.

Management Companies

The management companies (S.A.I.) are legal entities registered as joint-stock companies, and authorized by the ASF.

The main object of activity of such companies is the management of undertakings for collective investment in securities. The initial registered capital of management companies has to be of at least the Lei equivalent of EUR 125,000.

Depository

The Depository is considered to be a credit institution authorized by the National Bank of Romania or a Romanian branch of a credit institution authorized in a Member State which is entrusted for safekeeping of all the assets of an undertaking for collective investment in transferable securities.

Undertakings for collective investment (Rom. - Organism de Plasament Colectiv)

The Undertakings for Collective Investment in securities are either open-ended investment funds set up under civil contracts, or closed-end investment funds. Each such undertaking:

- (i) performs collective investment services;
- (ii) at the holders' request must ensure the redemption of the units.

The Undertakings for Collective Investment are undertakings authorized by the ASF whose object of activity is the collection of financial resources in order to perform collective investments by investing cash resources in liquid financial instruments.

Open-Ended Investment Funds

This is a fund whose units are traded on the stock exchange. Such fund units have to be of a single type, fully paid at the time of their subscription and shall confer equal rights to their holders.

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Apart from these units, the fund cannot issue any other financial instruments. The value of the units will be published daily by the Management Company for each working day, based on the data certified by the Depository.

Close-end funds

This is a fund which is set up as a joint-stock company, and is managed by a Management Company. The fund units issued by the close-end funds have to be of a single type, fully paid at the time of their subscription and shall confer equal rights to their holders.

CAPITAL MARKET LISTING REQUIREMENTS

In order to be eligible for listing on a stock exchange, the Capital Market Law stipulates certain requirements regarding both the issuer company and its shares.

The listing on the stock exchange of certain shares requires the prior publication of a Prospectus approved by the ASF. The Prospectus must comply with the requirements of the ASF.

The company which applies for the listing must be registered for at least three years prior to the request for listing on the stock exchange. Further, the company must have an estimated net worth of at least EUR 1 million. If such a valuation is not available, the company must have a share capital plus the reserves (including the profit or loss of the last financial period) worth at least EUR 1 million.

The shares of the company applying for listing on the stock exchange must be negotiable and fully paid for. In addition, the company applying for listing must ensure a free float of 25% of its outstanding shares for the public, or a lower float if a large number of shares are distributed among investors.

MANDATORY CORPORATE DISCLOSURE

In order to ensure a fair and equal treatment to all investors as well as the transparency of the market, the ASF may request the publicly traded issuers to provide all necessary information regarding their activity on a regulated market.

The disclosure of the initial information is made through the Prospectus.

Furthermore, the listed company must inform the market about any material event that may influence the price of its shares within 48 hours from such occurrence. Moreover, the listed company is required to provide information enabling the shareholders to exercise their rights with respect to the general meetings and voting rights, the payment of dividends, the issuance of new shares, and the capital increases.

Any listed company has reporting obligations to the ASF and the stock exchange regarding the financial status at the end of the fiscal year including any significant information enabling the investors to evaluate the activity of the company, including profit and losses. The listed company:

- (i) must file quarter, half-year and annual reports, which must be also published within maximum 5 days from their approval;
- (ii) must also disclose the audited results at the end of the fiscal year.

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The listed company has to inform the public, as well as the ASF with regard to any inside information which directly concerns the said listed company. Any delay in such disclosure must be notified to the ASF, which may require the listed company to immediately disclose the information in order to ensure the transparency and the integrity of the market.

A listed company whose shares are admitted to trading on a stock exchange in Romania or on the stock exchange of a Member State must ensure that similar information is made available to each of these exchanges.

When, as a result of a sale or a purchase of shares issued by a listed company, the voting right percentage of an investor exceeds or falls below 5%, 10%, 20%, 33%, 50%, 75% or 90% of the voting rights, that investor has to notify such positions to the issuer, the ASF, as well as to the stock exchange within maximum three business days.

SPECIAL PROVISIONS REGARDING LISTED COMPANIES

The cumulative voting method is a procedure used in the election of the Board of Directors of a listed company if the number of Board Members is at least 5, or is requested by a significant shareholder. The significant shareholder is a shareholder who owns at least 10% of the issued capital of the company.

The extraordinary general meeting of shareholders of a listed company has the prerogative to decide upon any share capital increase. The share capital increase, in cash or in kind, must be approved at an extraordinary general meeting attended by at least 3/4 of the total number of the shareholders, by a vote of at least 75% of the voting rights.

Any sale, purchase, exchange, or guarantees involving fixed assets, which have a value exceeding 20% of the total of the fixed assets less receivables, or joint ventures with a duration of more than one year which involve fixed assets, which have a value exceeding 20% of the total of the fixed assets may be concluded by the company's Administrators or Directors only with the prior approval of the extraordinary general meeting of the shareholders.

By way of derogation from the provisions of Companies Law no. 31/1990, the identification of the shareholders entitled to receive dividends will be determined by the listed company within 10 business days after the general meeting of shareholders which approved the distribution of dividends. The respective general meeting must also set the payment date which should not exceed 6 months as of the date of the meeting which approved the distribution of dividends.

PUBLIC OFFERINGS

Public offerings are regulated by the Capital Market Law as well as by rules provided by the ASF. All types of public offerings require prior authorization given by the ASF. Therefore, any advertising of such offerings before obtaining the above-mentioned authorization is prohibited.

Here are the main requirements concerning the *Public Sale Offers, and the Public Purchase Offers*:

- (i) The Public Sale Offer must be made through an intermediary authorized to provide investment services with prior publication of a prospectus approved by the ASF. The Public Purchase Offer is the offer to buy securities addressed to all holders by mass media or other means and it must also be made through an intermediary authorized to provide investment services.

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- (ii) The application for authorization must be accompanied by a Prospectus in case of a Public Sale Offer, or by a Purchase Offer in the case of a Public Purchase Offer. The above documents must provide information regarding the listed company, and the conditions of the offer.
- (iii) The Prospectus shall contain all information enabling investors to correctly assess the assets, liabilities, financial position, profit and loss as well as the provided guarantees. The Prospectus and the Purchase Offer must comply with the requirements of the ASF.
- (iv) The Prospectus, or the Purchase Offer and for a Purchase Offer is valid for the time period mentioned in the Prospectus.
- (v) Failure to obtain the approval of the Prospectus or of the Purchase Offer, or to comply with the conditions set forth in the approval decision renders the public offer void.
- (vi) The Prospectus for a Sale Public Offer is valid 12 months as of the date of publication, while the Purchase Offer is available only for the approved period. However if the offering announcement is not made within 10 business days as of the ASF approval, the Purchase Offer is cancelled.
- (vii) Once the announcement is published, the Offer becomes mandatory and it has to be made available to the public in the form and content approved by the ASF. The Sale or Purchase Offer is valid throughout the period set out in the announcement, but it may not exceed the time limit set out by the ASF.
- (viii) Any significant new event or the modification of the original information in the prospectus or offer document that occur during the validity term of the offering and affecting the investment decision has to be included in a supplement.

Voluntary Takeover Offer

The Voluntary Takeover Offer represents a purchase offer directed to all shareholders of a company by a person, who, together with his/her affiliates intends to acquire more than 33% of a listed company.

In respect thereof, the offeror has to send the ASF a preliminary announcement. After obtaining the approval from the ASF, the offeror must make the offer public by sending it to the subject of the takeover and publish it in one central and one local daily newspaper.

Within five days as of receiving the preliminary announcement of the Voluntary Takeover, the Board of Directors of the listed company must inform the ASF, and the stock exchange regarding their position. The Board of Directors of the listed company may also convene an extraordinary general meeting of the shareholders in order to inform them of the management position regarding the takeover offer.

After the receipt of the preliminary announcement, during the term of the offer, the Board of the listed company shall inform both the ASF and the stock exchange of all the transactions carried out by its members, and the executive management regarding the securities subject to the Voluntary Takeover Offer.

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Moreover, during the term of the offer, it is prohibited to enter into transactions, or take any measures which could affect the assets of the company, except for the current management activities.

Operations considered to affect the company's assets may include share capital increases, issuance of securities which grant subscription rights, transfer of assets representing at least one third of the net assets according to the yearly financial balance sheet, and measures which may affect the status of the classes of shares of the listed company.

The minimum price for the takeover offering is supposed to be at least the highest price among the following:

- (i) the highest price paid within 12 month prior to the voluntary takeover offer by the same offeror for shares of the same issuer;
- (ii) the weighted average market price for the said shares computed for the last 12 month prior to the offer, or
- (iii) at least the net asset value per share following the latest financial balance sheet.

The offeror cannot launch another offer for the shares of the listed company within one year from the closing of the takeover offering.

Mandatory Takeover Offer

The Capital Market Law also provides that the shareholder holding alone or together with other affiliates more than 33% of the voting rights of a company listed on the stock exchange must launch a Mandatory Takeover Offer. The Mandatory Takeover Offer must be made as soon as possible, without exceeding a 2-month term from reaching the 33% threshold.

Until the Mandatory Public Offer is made, all voting rights exceeding 33% are suspended, and the offeror cannot acquire any additional shares of the same company.

The minimum price offered has to be at least equal to the highest price paid by the offeror for the same shares within the 12 months prior to the launching of such offer.

In case such price calculation method cannot be applied, the minimum price for the Takeover Offer is supposed to be at least the highest price among the following:

- (i) the weighted average trading price in the last 12 months prior to the offer;
- (ii) the value of the company's net assets according to the last financial balance sheet;
- (iii) the value of the shares, following an expert report prepared by an independent auditor.

The public offer is no longer mandatory if the percent exceeding 33% of the voting rights is acquired as a result of an excepted transaction, such as a privatization process, share acquisition from the Ministry of Public Finance or from other entities, share transfer between the parent company and its subsidiaries, or between the subsidiaries of the same parent company, or a Voluntary Takeover Offer directed to all shareholders for all the shares of the listed company.

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Counteroffer

Any counteroffer may be launched within 10 business days as of the publication of the announcement of the initial offer and it has to refer to the same amount of shares and target the same share capital. The price of the counter offer must be at least 5% higher than the price of the initial offer.

The ASF determines the criteria for selecting the winning bid. A tender is conducted by the ASF in order to select the winning offer. The price is increased with at least 5% over the highest price offered in a previous round until no other price increase offer is submitted.

If the majority shareholder holds more than 95% of the share capital or has acquired more than 90% of the shares targeted by the public purchase offer, it is entitled to ask the minority shareholders to sell their shares at a fair price.

On the other hand, a minority shareholder has the right to request the majority shareholder which has over 95% of the shares to buy its remaining shares at a fair price.

The fair price is considered to be the price offered in the voluntary or mandatory takeover offering, only if the offeror has exercised its right within 3 months from the closing of the said offer. Otherwise, the price shall be established by an independent expert in accordance with international valuation standards.

GREENHOUSE GAS EMISSION CERTIFICATES

At the beginning of 2010, the ASF published the Approval Notice no. 10 of February 22, 2010 whereby it provided that the "greenhouse gas emission certificates" qualify as securities. Consequently, the trading of such certificates was regulated by the capital markets legislation. However, the said Approval Notice no. 10 of 2010 was suspended by the Bucharest Court of Appeals shortly after the issuance thereof, pursuant to a motion to suspend filed by one of the securities brokerage companies. Further on, the Bucharest Court of Appeals cancelled the said Approval Notice no. 10 of 2010, pursuant to an action for annulment filed by the same securities brokerage company.

The National ASF challenged this decision of the Bucharest Court of Appeals, by filing a recourse with the High Court of Cassation and Justice, on the docket of which the recourse case is currently pending.

Consequently, currently the greenhouse gas emission certificates are not considered as being securities. Therefore, they are traded as commodities, VAT being applicable to the transactions.

The greenhouse gas emission certificate is the title which confers the right to issue a ton of carbon dioxide equivalent during a defined period, according to the Government Decision no. 780 of 2006 regarding the Approval of the Trading Scheme of the Certificates for GHG Emission Allowances.

The transactions with greenhouse gas emission certificates, which are carried out by entities which are not operators of the installations, have to be performed through authorized brokers.

In order to trade such greenhouse gas emission certificates, all the parties involved in the transaction have to be registered with the Romanian Register of Greenhouse Gas Emission Certificates.

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