

Client Brief

CAPITAL MARKETS | ROMANIA

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PROPOSED AMENDMENTS TO THE ROMANIAN CAPITAL MARKET LAW

On 6 October 2014, the Ministry of Public Finance launched for public debate a draft law amending and supplementing Law no. 297/2004 on capital market (the "**Draft Capital Market Law**").

This enactment is aimed at reforming the Romanian capital market by aligning the current legislation to the existing European standards so that Romania be ranked, by Morgan Stanley Capital International, as an emerging capital market (leaving behind its current status as "frontier market"), increasing thus external visibility and attracting new investors.

Furthermore, the Draft Capital Market Law is intended to eliminate the obstacles in the development of the capital market and to consolidate it as a viable alternative to the banking sector's financing activity, the latter being quite reluctant lately to finance investment projects.

This largely awaited initiative was estimated to pass rapidly as an emergency government ordinance. However, the Ministry of Public Finance decided at the last moment to launch it as a draft law, the enactment of which clearly requires a longer process since its adoption will pass by the Romanian Parliament.

The proposed amendments are mainly aimed at:

- adjusting the ownership thresholds with respect to financial investment companies ("**SIFs**") and market operators;
- eliminating from SIF's and market operators' constitutive acts of restrictive provisions related to quorum and adoption of decisions by the general meetings of shareholders;
- facilitating the access to the capital market;
- observing the fundamental rights of investors, such as voting rights or rights to dividends;
- improving corporate governance and transparency requirements for issuers of securities;
- simplifying the public offerings procedures and listing of stocks and bonds.

❖ Ownership thresholds with respect to SIFs and market operators

✓ Elimination of ownership thresholds for SIFs

One of the most important changes brought by the Draft Capital Market Law refers to the elimination of the 5% threshold in a SIF's shareholding. This threshold was largely debated for quite some time. The purpose for such elimination resides mainly in increasing the standards of SIFs' corporate governance to the benefit of all shareholders as it is expected that SIFs' majority stakes would be taken over by sophisticated investors. Aside from the anticipated increase in the number of institutional investors, this measure is also expected to motivate people to invest, directly or indirectly, in listed securities.

A potential take-over followed by delisting of certain SIFs is deemed to be a major risk of eliminating the ownership threshold, with an adverse impact on the minority shareholders and on the number of listed companies and market liquidity.

It is further provided that, in case a SIF's constitutive act provides for limitations as to the ownership of its share capital, an extraordinary general meeting of shareholders shall be convened within maximum 3 months as of the date the law enters into force, in order to decide whether such provisions should be maintained, eliminated or amended.

Furthermore, the Draft Capital Market Law includes provisions as to the quorum and adoption of decisions by the SIF's general meeting of shareholders which should be complied with in 60 days as of the date the law enters into force (*i.e.* the presence of shareholders holding at least ¼ of the total number of voting rights – for the first calling and the presence of shareholders representing at least 1/5 of the total number of voting rights – for subsequent callings; decisions are adopted with the majority of the votes held by present or represented shareholders). In case the SIFs fail to do so, their constitutive acts shall be deemed amended by law in line with such quorum and voting requirements. After complying with the above mentioned provisions, SIFs may stipulate in their constitutive acts more restrictive quorum and voting requirements.

✓ Increasing ownership thresholds for market operators

The threshold for holding, directly or indirectly, shares in a market operator is proposed to be increased from 5% to 20% of the total voting rights. This measure is meant to attract strategic investors in the shareholdings of market operators.

Moreover, any acquisition of shares in a market operator which results in the holding of a stake equal to or higher than 5%, 10%, 15% or maximum 20% of its total voting rights shall be notified to the respective market operator and is subject to the prior approval by the Financial Supervisory Authority ("FSA").

A notification obligation towards the market operator and FSA is provided in case of sale of shares belonging to the market operator which results in the decrease under any of the thresholds mentioned above.

The provisions regarding the quorum and adoption of decisions by the general meeting of shareholders set forth in the Draft the Draft Capital Market Law with respect to SIFs apply also to market operators.

❖ Rights of investors in listed companies – right to dividends/voting rights

The Draft Capital Market Law provides for certain amendments and clarifications as regards the rights of shareholders in listed companies, amongst which we mention the following:

- ✓ the delay in which dividends are to be paid to the shareholders (should the general meeting of shareholders not decide about a precise dividends payment date) is decreased to maximum 30 days (as opposed to maximum 60 days) as of the publication date of the decision of the general meeting of shareholders with the Official Gazette; at the expiry of such 30 days period, the company shall be deemed to be rightfully in delay;
- ✓ the decisions of the extraordinary general meeting of shareholders regarding the removal of shareholders' preferential right to subscribe new shares in case of a share capital increase by way of subscription in cash or in kind are to be adopted in a more relaxed manner, such decisions requiring the presence of at least $\frac{3}{4}$ of the subscribed share capital and the vote of shareholders holding at least 75% of the present or represented voting rights (as opposed to the presence of at least $\frac{3}{4}$ of the number of holders of share capital and the vote of shareholders holding at least 75% of the voting rights);
- ✓ the representation of shareholders to the general meeting of shareholders may take place by way of special or general power of attorney; a general power of attorney is valid for a period of maximum three years and may only be given by the shareholder, in its capacity as client, to a trader or a lawyer;
- ✓ the procedure for voting by correspondence is to be simplified and guarantees the shareholder's right to vote personally or by proxy if it decides that being present or represented at the general meeting of shareholders serves better its interests rather than voting by correspondence.

❖ Simplifying public offering procedures

The Draft Capital Market Law provides for a set of amendments which are meant to fully align the national legislation with the provisions of the Prospectus Directive (Directive 2003/71/EC) and the related Commission Regulation (EC) No. 809/2004.

Amongst such amendments, we mention:

- ✓ the elimination of the obligation that a public offering for the sale of securities be accompanied by a notice stating how the prospectus has been made available and where it can be obtained by the public, and
- ✓ the introduction of an exception from the rule that the prospectus shall also include a summary, namely in case the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of the RON equivalent of at least EUR 100,000. However, this exception is not applicable if the prospectus is passported in another Member State, the legislation of which requires the existence of a summary. Furthermore, if the admission to trading takes place on a Romanian regulated market, the summary shall be drafted in Romanian language.

If you are interested in receiving further information on this topic, please do not hesitate to contact us.

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