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## The Float Guide

# How to float a company on the Bucharest Stock Exchange

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## INTRODUCTION

**T**his guide gives an overview of what is involved in listing a company on the Bucharest Stock Exchange (*Bursa de Valori Bucuresti SA*). It is a practical manual covering all aspects of a float from prerequisites through to life after the float.

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## EXECUTIVE SUMMARY

### Why float?

Floating a company allows:

- the company itself to raise new capital with relative ease; and
- existing shareholders to sell and trade their holdings in the market.

### Does my company qualify?

Only companies having the legal form of a joint-stock company (in Romanian “**societate pe actiuni**” or “**S.A.**”) may be floated. Both one-tier system and two-tier system of management of the joint stock listed company are allowed.

Before a company can be floated on the Bucharest Stock Exchange (the “**BSE**”) it must fulfil the Romanian law requirements relating to the value and free float of shares as well as the foreseeable capitalization, the period of existence and financial statements of the company. It must also ensure that its structure and constitution are consistent with the listing rules of the BSE. Further it must check its readiness on the basis of several general economic criteria as to the company’s development, its management structure and corporate communication.

### What will it cost?

A company is charged with two fees prior to the listing, i.e. the processing fee (approx. EUR 265) and the listing fee (variable between approx. EUR 800 to EUR 4665), and one annual maintenance fee (variable between approx. EUR 800 to 4665), payable starting after the first year of listing.

The admission, upgrade and maintenance fees are calculated based on the monthly weighted average value (a measure that approximates the issuer’s market capitalization, determined according to the methodology detailed in BSE’s Rulebook) and the shareholders’ equity. Fees are presented on the BSE website in RON and are VAT exclusive.

To this BSE fees, the other costs related to the listing, charged by third parties, such as Central Depository, the Romanian Financial Supervisory Authority (the “**FSA**”), intermediary, advisors or auditors should be taken into consideration.

The Central Depository fees related to the admission and maintenance applicable to issuers are depending on the number of the holders of the financial instruments issued. The fees could vary between approx. EUR 200 to EUR 32,000.

Considering the above, the usually costs of floating the company could vary between approx. EUR 1,800 to EUR 41,330, including the listing and the maintenance fees charged by BSE and the Central Depository.

### How long will it take?

An average float usually takes about 3 to 12 months

### Who is on the float team?

In order to become a listed company, you will have to engage and collaborate with different types of external entities, such as intermediaries, auditors, financial and legal advisors that will

provide you all the necessary support and expertise in order for your offering to be successful and for your listing goals to be met.

### **What goes in the prospectus?**

The company will need to draw up and publish a prospectus before it can be floated. A prospectus must contain all the information that is needed in order to enable investors to make an informed assessment of the financial situation of the company, in particular on its assets and liabilities, profit and losses, prospects of the company and rights attaching to the securities to be offered.

In particular, the prospectus for issuance of shares must contain "minimum" information provided for in the Regulation (EC) No. 809/2004 (the "**Prospectus Regulation**").

### **What is due diligence?**

Due diligence includes a thorough analysis of the company from the legal, financial and organisational point of view. As a result the company gets information about its own strengths and weaknesses and is able to evaluate the plausibility of its planning documentation. There are different types of due diligence (commercial, financial, legal etc.).

Due to the complexity of issues involved in the due diligence examination, it is usually conducted by external consultants specialising in IPOs such as auditors, lawyers and investment banks as well as other specialists, if necessary. Each consultant is assigned responsibility for a certain area in the due diligence. The company as well as the investment bank retains their own set of advisers to ensure independent and objective results to be reflected in the prospectus.

### **Pricing of the float?**

There are a number of possible methods of issue of the shares offered under the float. The company may make either a fixed price offer or, in large floats, an open price offer of its shares.

### **How will the float be marketed?**

The process of marketing the float begins with marketing to institutions. Once the prospectus is approved and published, brokers will commence marketing to their private clients and marketing to retail investors generally begins.

### **What else is involved - Regulatory Requirements?**

The company will need to liaise with the BSE and the FSA during the float process to make sure that it fulfils their requirements. Usually, issuers also liaise with the Central Depository prior to listing.

The requisite applications should be identified early on so that any potential delays are avoided. The prospectus must be approved by the FSA which reviews and comments the prospectus with regard to its completeness, coherence and comprehensibility and the BSE and the Central Depository need to be ready to accommodate the new shares into their systems.

### **Will existing shareholders be able to sell?**

Depending of the structure of the offering, existing shareholders will be able to sell both at the time of the IPO and thereafter.

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## **1. PREREQUISITES TO FLOATING**

**Before a company can be floated on the BSE it must satisfy the Romanian law requirements relating to the value and free float of shares as well as the foreseeable capitalization, the period of existence and financial statements of the company. It must also ensure that its structure and constitution are consistent with the listing rules of the BSE.**

**Generally, a company seeking listing must prepare and issue a prospectus relating to the shares in the company being offered.**

**The timing of the float is also important to its success.**

## **1.1. Legal requirements**

### **1.1.1. Joint-Stock Company**

In order to be listed on a stock exchange the company must be organized as a joint- stock company (in Romanian "S.A").

In case the company is not a stock company it must be reorganized prior to be floated. Shareholders' meeting approving the reorganisation into a stock company must also define the name of the company, appoint members of the managing and supervisory board and adopt the new articles of incorporation of the company.

### **1.1.2. Resolution on floating**

The company shareholders decide to list shares on BSE. Shareholders adopt the decision regarding admission of company's shares to trading, followed by the public offer. This decision has to be made during the General Shareholders Meeting and, should the admission be preceded by a public offering, has to include the main features of the issue.

### **1.1.3. International accounting standards**

To be listed on the official market of the BSE a company must have audited (consolidated) financial statements for the three preceding full business years (drawn up in accordance with International Accounting Standards (IFRS/IAS) Requirements for admission to listing on the BSE (stock exchange requirements)

### **1.1.4. Criteria for admission to listing on a regulated market**

In Romania, the admission to listing on the Regulated Market is governed mainly by Law no. 24/2017 on issuers of financial instruments and market operations and by Law no. 297/2004 on capital markets, but also by the FSA regulations issued for the application of these laws.

In order to be admitted to trading on the Regulated Market, all financial instruments have to be freely transferable and negotiable and fully paid. Shares must belong to the same class, to be issued in dematerialized form and to be highlighted through account registration.

<b>Regulated Markets</b>	
Foreseeable capitalization	At least the RON equivalent of <b>EUR 1,000,000</b> or, to the extent that the value of the capitalization may not be foreseen, the capital and reserves, including the profit or loss of the last financial year, of at least the RON equivalent of EUR 1,000,000, calculated according to the reference rate communicated by the National Bank of Romania on the date of the request for admission to trading
Free float	At least 25% of the subscribed capital represented by this class of shares
Period of existence of the company	At least 3 years
Financial statements	For three preceding full business years
Prospectus	Yes

**“Transferable securities”**: For the purpose of market efficiency financial instruments to be admitted to listing must be freely transferable. Transferable securities are considered freely negotiable if they can be traded between the parties of a transaction and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible. Transferable securities that are subject to a restriction on transfer shall not be considered as freely negotiable unless that restriction is not likely to disturb the market.

Criteria for admission to trading on AeRO (Alternative Trading System of the BSE) - In addition to the possibility of admission to listing on the BSE’s Regulated Main Market, shares may also be admitted to trading on the AeRO market.

The AeRO Market was designed from the need of providing a financing alternative for entrepreneurs, and is the equity segment of the alternative trading system managed by the BSE.

The alternative trading system is not a regulated market in the sense of the European Directives as well as European and the Romanian capital market law, but it is regulated by BSE’s rules and obligations. The alternative system was established by BSE in order to provide a market with less reporting obligations from issuers, but at the same time with sufficient transparency for investors to motivate them to trade.

The AeRO market is dedicated to financing the companies that do not meet the size or history criteria for being listed on the regulated market.

Requirements for admission to trading on AeRO:

AeRO market has more relaxed admission criteria, all in order to match the needs of SMEs, which do not yet fulfill the size or the length-of-operation criteria necessary for listing on the Main Market.

In order for a company to be listed on AeRO, it has to have:

- an anticipated market value/equity of at least EUR 250,000 and
- a 10% free-float or at least 30 shareholders.

In cases of both Main Market and AeRO, a company has to transform to a joint-stock company (ro: S.A.) prior to the listing.

Mainly, the steps to become a listed company on AeRO are the following:

- The company owners' decision regarding the listing on AeRO;
- Transformation into joint-stock company (if needed);
- Shareholders' meeting or Board of directors (according to company's statute) resolution regarding the intention of listing on AeRO;
- Selection of an Authorized Advisor;
- Conducting an offer for newly issued shares – advisable;
- Preparation of documentation (the company's presentation, financial information);
- Registration of shares with the Central Depository;
- Registration of shares with the FSA;

In order to be listed on AeRO a company should prepare a Presentation Document. The company's Presentation Document, referred to as Memorandum, shall be drafted by the Authorized Advisor together with the company applying for listing on AeRO. The Memorandum shall contain information regarding the company's identification details, history, a description of the business, a presentation of the latest financial results available and of the business development plan.

## **1.2. Prospectus**

For public offering or admission of financial instruments to trading on BSE's Main Market the company must prepare and publish a prospectus. Prior to being published, the prospectus has to be approved by the FSA. The main purpose of a prospectus is to demonstrate the company's readiness for listing and inform potential investors about the company.

There are several exemptions from the obligation to draw up and publish a prospectus, for example, in the following situations:

- i. an offer addressed solely to qualified investors;
- ii. an offer addressed to fewer than 150 investors, individuals or legal persons, other than qualified investors;
- iii. an offer within the underwriting made by each investor in the offer are at least equal to the RON equivalent of EUR 100,000, for each separate offer;
- iv. an offer of securities with a unit denomination of at least the RON equivalent of EUR 100,000
- v. in case of shares issued to replace other shares, of the same class, already issued on the same regulated market, if this new share issue does not involve an increase of the share capital;
- vi. in case of shares representing, within a period of 12 months, less than 10% of the total number of shares already issued on the same regulated market;

- vii. securities offered in relation to a public offer for purchase/takeover by exchange, provided that a document having the minimum content provided in the Prospectus Regulation, depending on the type of issuer and securities offered in exchange, is made available;
- viii. in case of securities offered, allotted or to be allotted on the occasion of a merger or division, provided that a document having the minimum contents provided in the FSA regulations is available;
- ix. in case of dividends paid to the existing shareholders as shares of the same class as those giving them the right to such dividends, provided that a document having the minimum contents provided in the FSA regulations is available;
- x. in case of securities offered, allotted or to be allotted to the former members of the management or employees or to the current ones by their employer or by the parent company or a subsidiary, provided that the main offices or the registered headquarters of the company is in the European Union and provided that a document having the minimum contents provided in FSA Regulations is available.

The exemptions from the obligation to draw up and publish a prospectus, it is not limited to the above list, there also other specific situations when a prospectus is not required.

### **1.3. Costs of floating**

Fees charged by the BSE include the fee for processing of the listing application and admission to trading (both paid at once) and the fee for maintenance to trading (paid on an annual basis).

The usual costs of floating the company could vary between approx. EUR 1,800 to EUR 41,330, including the listing and the maintenance fees charged by BSE and the Central Depository.

There may be other costs related to the listing, charged by third parties, such as the FSA, intermediary, advisors or auditors.

### **1.4. Timing**

The process of preparing a company to the listing and the actual admission to trading may take between 3 to 12 months. The length of the process depends mainly on how prepared a company was prior to the admission to trading process. The size of the company, public offering structure and its value are also relevant.

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## 2. FLOAT TEAM

In order to become a listed company, the company will have to collaborate with different types of external entities that will provide all the necessary support and expertise in order for the offering to be successful

The float team may include intermediaries, auditors, lawyers, financial advisers and authorized advisers.

1. **Intermediary** (in case of the Main Market) – intermediaries are brokerage houses and major banks that are authorized by the FSA to conduct companies' offerings. An intermediary has a crucial role in any offering as since they maintain regular contact with the investors who are active on the market and therefore, they have an ability to assess the parameters necessary for a successful offering. Intermediaries assist the company in its valuation process, prepare or manage the preparation of the prospectus as well as manage the process of the subscription to the shares.

2. **Auditor** – the role of an auditor is a significant one as the company's financial statements and potential results forecasts are part of the prospectus that is of the key interest to investors. It is therefore important that the auditor is respected, with experience in adjusting the financial statements to the needs of the prospectus.

3. **Lawyers** – usually:

- advise on legal issues generally in relation to the prospectus, conduct the legal examination of the prospectus;
- advise on legal issues in connection with the reorganization of the company;
- conduct the legal due diligence on the company; and
- generally prepare most of the "additional information" section of the prospectus, as well as section "material contracts";
- register the capital increase with the Companies Register;

The lawyers will also generally be involved in drafting and negotiating the underwriting agreement with the underwriter and drafting the other documents required for the float, including the new constitution for the company, any employee share ownership plan and any service contracts required with key employees.

4. **Financial advisor** – the role of a financial adviser can be carried out by the brokerage house in case the latter has a dedicated department responsible for carrying out market analysis. The role of the financial advisor is to prepare the vital part of the prospectus that outlines the plans as well as development perspectives of the potential issuer.

5. **Authorized Advisor** (in case of AeRO) – Authorized Advisors (AAs) have an indispensable role in listing of a company on AeRO market. AAs are companies experienced in the field of company financing and are nominated by the BSE. The role of an Authorized Advisor is to carry out analysis of the company's listing opportunity and the company itself, offer advice on drafting

the documentation required for the listing on AeRO, prepare, together with the company, the presentation document for listing, support the company in finding investors and after the listing, provide assistance to the company for complying with the regulatory reporting obligations.

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## 3. GETTING THE COMPANY READY

**In addition to complying with the float prerequisites, the company will need to review its structure and corporate governance procedures as well as take other preparatory steps before floating.**

### 3.1. Structure (Joint-Stock company)

In case the company is not a joint stock company (S.A.) it must be reorganized. Shareholders' meeting approving the reorganisation into a stock corporation must also define the name of the company, appoint members of the management and supervisory board and adopt articles of incorporation of the company. The share capital must amount to at least EUR 25,000--. The articles must at least contain the provisions regarding:

- The name and registered office;
- The object of the business, including the main object of the company activity;
- The amount of the subscribed and paid share capital;
- Whether bearer shares or name shares are issued, the number and the nominal value of shares;
- If there are several classes of shares, the number, nominal value and the rights of each class of shares;
- The nature and the value of the assets provided as a contribution in kind, the number of shares granted for them and , if applicable, the name of the person who brought the contribution;
- The powers of the board members and, where applicable, directors, members of the directorate, providing the information if they are going to exert their attributions together or separately;
- The clauses regarding the management, functioning and control over society by the statutory bodies, the number of board members or method of determining this number;The duration of the company;
  - The distribution of profits and losses;
  - The secondary offices - branches, agencies or other such units without legal personality;
  - The total amount, or at least estimates of all expenses for incorporation;
  - The procedure of dissolution and liquidation of the company.

### 3.2. Selection of an intermediary/investment bank

The company selects the intermediary (brokerage company or a bank), authorized by the FSA. The company enters into an agreement with the intermediary stating that the intermediary will handle procedures related to the offering and, if case, admission of the issuer to BSE.

### **3.3. Kick-Off-Meeting**

On the Kick-Off-Meeting the company and all involved consultants meet for the first time in order to arrange tasks and responsibilities and to agree on the detailed time-plan.

### **3.4. Issuance concept and strategy**

The issuance concept and strategy are the key criteria of any public offering. The issuance concept involves the following steps:

- Project planning and timing;
- Issuance volume / origin of the stocks (capital increase, ownership by existing shareholders (so called Reallocation) or a combination of these two measures)
- Admission to a market segment;
- Placement and allocation strategies;

### **3.5. Categories of shares**

The shares subject to admission to trading on BSE should comply the following criteria:

- a) to be registered with FSA;
- b) to be freely transferable, fully paid, issued in dematerialized form and registered into account;
- c) to be shares of the same class.

### **3.6. First contact with BSE and the FSA**

After preparing a general concept for the initial public offering, the next step is to make an appointment for a personal meeting with BSE. The company presents its plans and the stock exchange presents the opportunities it offers for the company achieving a successful IPO.

It is also advisable to contact the FSA at an early stage and discuss the envisaged time plan for the prospectus approval, i.e. the date of the envisaged first filing of the draft prospectus, the subsequent update filings and the envisaged date of approval (this to allow the FSA to allocate internal resources to support the successful IPO).

### **3.7. Due Diligence**

Due Diligence, if at all conducted, is made together with the intermediary and represents an examination of the company from the legal, financial and organisational point of view. For details see Section 5 Prospectus.

The listing prospectus is drafted jointly by the advisers of the company and external consultants, if any, in conjunction with the intermediary/underwriters and their advisors. The content of the prospectus is described in Section 4.

### **3.8. Employee share ownership plan - Stock Options-Programs**

In Romania stock options-programs are permitted by law, having a preferential tax regime, but they are not frequently used by public companies.

Generally, such options are granted to executive and employees, different levels of criteria being established by the company in the stock-option public announcement. Design of

appropriate offer terms is critical to meet legal requirements, corporate governance and investor expectations.

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## 4. THE PROSPECTUS

**For public offering or admission of financial instruments to trading on BSE the company must prepare and publish a prospectus. Prior to being published the prospectus has to be approved by the FSA.**

**The prospectus must contain all the information that is needed in order to enable investors to make an informed assessment of the financial situation of the issuer, in particular on its assets and liabilities, profit and losses, prospects of the company and rights attaching to the securities to be offered.**

### 4.1. Prospectus requirements

#### 4.1.1. Prospectus content

The prospectus must contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market.

A prospectus has to contain information stipulated by Prospectus Regulation and described in a certain Annex to the Prospectus Regulation depending on the type of the issuer and securities involved.

In particular, the prospectus for issuance of shares must contain the following minimum information:

- Summary of the prospectus
- Risk factors associated with the shares to be offered/ admitted to trading
- Risk factors associated with the issuer
- Information on persons who are responsible for the prospectus as well as on auditors of the financial statements
- General information on the issuer and the capital of the issuer
- Information on the business of the issuer
- Information on the assets, financial and earnings situation of the issuer
- Information on the administration, management and supervision of the company
- Information on recent business developments and the business prospects of the issuer
- Information on the shares and their admission to a specific market
- Other information

*Minimum information:* Even if the prospectus contains all the information items required in the Prospectus Regulation and the relevant Annex it might sometimes be insufficient for an investor to make an informed assessment of the financial situation of the issuer. Therefore the information items required in the Prospectus Regulation represent only minimum information to be included in the prospectus. FSA may request that the information provided by the issuer be amended for each of the information items, on a case-by-case basis.

#### 4.1.2. **Summary**

The summary of the prospectus includes essential information on the securities to aid investors when considering investing in such securities. The summary should contain a warning addressed to potential investors, regarding the fact that:

- a) the summary should be read as an introduction to the prospectus;
- b) any decision to invest in the securities should be based on the information comprised in the prospectus, considered by the investor in its entirety;
- c) before the start of court judicial proceeding, having as object the information contained in a prospectus, the applicant will have to bear the costs of translating the prospectus in Romanian language;
- d) the civil liability pertain to those persons who have prepared and drafted the summary, including its translation, as well as to those persons notifying the public cross-border offers, but only if the summary is misleading, inaccurate or contrary with other parts of the prospectus .

#### 4.1.3. **Language**

The prospectus for public offers in Romania or admission to trading on BSE must be prepared and published in Romanian language. If an issuer, for which Romania is the home Member State, intends to make a public sale offering/requests to be admitted to trading on a regulated market only in Romania, the prospectus shall be prepared at least in the Romanian language, unless FSA gives its consent to the preparation of the prospectus in a wide circulation language in the international financial field.

#### 4.1.4. **Profit forecasts and estimates**

If an issuer chooses to include a profit forecast or a profit estimate the prospectus must contain the following information:

- A statement setting out the principal assumptions upon which the issuer has based its forecast or estimate.
- A report prepared by independent accountants or auditors stating that in their opinion the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.
- The profit forecast or estimate must be prepared on a basis comparable with the historical financial information (financial statements).
- If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.

#### 4.1.5. **Approval**

FSA shall decide on the approval of the prospectus within 10 working days from registration of the application. The deadline can be extended to 20 working days if the securities are issued by an issuer requesting the first admission to trading on a regulated market or who has not publicly offered securities. Where FSA does not issue any decision on the prospectus within the deadlines, it is not considered as a silent approval of the application. Any request for additional information or amendments of the original prospectus, initiated by FSA or the offeror, interrupts

these deadlines which will be calculated again from the date of providing such information or changes.

#### 4.1.6. **Publication**

Once approved, the prospectus shall be made available to the public at the latest at the initiation date of the offer to the public.

#### 4.1.7. **Supplements**

Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities, must be mentioned in a supplement to the prospectus, if it occurs in the period between the approval of the prospectus and the final closing of the public offer or the beginning of the trading on a regulated market.

The supplement must be immediately published and approved by the FSA within 7 business days from submission with the authority with at least the same arrangements as were applied when the original prospectus was published and lodged.

### **4.2. Liability for the Content of the Prospectus**

The following persons are responsible for failing to comply with the legal provisions regarding the truthfulness, accuracy and exactness of the information in the prospectus:

- a) the issuer;
- b) the members of the issuer's Board;
- c) the offeror, if it differs from the issuer;
- d) the members of the offeror's Board;
- e) the founders, in case of public underwriting;
- f) the financial auditor who has certified the financial statements whose information has been inserted in the prospectus;
- g) the intermediaries involved in the offer;
- h) any other entity, including the intermediaries of the offer, which has accepted in the prospectus the responsibility as regards to any information, survey or assessment inserted or mentioned in the prospectus. In this case, that person is responsible only of the reality, correctness and accuracy of the information, survey or evaluation expressly indicated by this person and only to the extent that the information, survey or assessment was included in the prospectus in the form and context expressly approved by the responsible person.

The following persons are responsible, irrespective of the fault, and are jointly held liable:

- a) the issuer, if any of the member of the issuer's Board is responsible;
- b) the offeror, if any of the member of the offeror's Board is responsible;

The right to receive compensation for damages shall be exercised within maximum 6 months from the date when the shortcomings of the prospectus have been acknowledged, but no later than 1 year from the date when the public offer has been closed.

Misrepresentation in the prospectus may be interpreted as fraud (criminal offence).

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## 5. DUE DILIGENCE

**Due diligence includes a thorough analysis of the company from the legal, financial and organisational point of view. As a result the company gets information about its own strengths and weaknesses and is able to evaluate the plausibility of its planning documentation. The results of the due diligence influence the content of the prospectus as well as the representations and warranties section of the underwriting agreement (if any).**

### 5.1. General

Due to the complexity of issues involved in the due diligence examination, it is usually conducted by external consultants specialising in IPOs such as auditors, lawyers and investment banks as well as other specialists, if necessary. Each consultant is assigned responsibility for a certain area in the due diligence.

For the purpose of examination of documents relevant for due diligence a special data room is usually made available for the due diligence team. The prospectus is prepared simultaneously with the due diligence investigations and is amended to reflect the findings of the reports and further investigations.

On the end of the due diligence consultants confirm accuracy and completeness of the documents examined by them and provide the company / investment bank with confirmations, such as “legal opinion” (issued by lawyers) and “comfort letter” (issued by auditors).

### 5.2. Why is due diligence necessary?

One of the reasons for due diligence is to ensure that the prospectus contains all the information that is needed in order to enable investors to make an informed assessment of the financial situation of the company, in particular on its assets and liabilities, profit and losses, prospects of the company and rights attaching to the securities to be offered. An investor is entitled to claim damages if the investor’s decision to subscribe for offered securities were based on incorrect, incomplete or misleading information of the prospectus. There is also criminal liability for incorrect information included in the prospectus as described in Section.

The persons responsible for conducting the due diligence and preparation of a prospectus such as the company, the investment bank, lawyers, auditors etc., are liable for the accuracy and completeness of the published information in the areas examined by them, such liability covering the absence of incorrect, incomplete and misleading information in the relevant documentation.

### 5.3. Types of due diligence

Types of due diligence:

- Commercial due diligence
- Financial due diligence
- Legal due diligence
- Human resources due diligence
- Environmental due diligence
- Technical due diligence

The commercial due diligence includes an analysis and assessment of individual fields of business, market position, development strategies and organization, management, planning and reporting system of the company.

The financial due diligence examines the present financial and profit situation of the company and analyses risk management and planning of the company. Its aim is to show risks that could influence the future financial and profit situation of the company.

The legal due diligence includes an examination of the company's major contracts, liabilities, patents and other legal facts. The aim of the legal due diligence is generally to find out whether the company complies with relevant legal requirements and its material contractual obligations. It is necessary to show risks resulting from any missing licences (e.g. under the trade, copyright or patent law), contractual relations or any breach of legal provisions.

The tax due diligence examines possible tax risks and provides an indication for tax optimisation of the transaction structure and implementation.

The human resources due diligence includes analysis of possible risks or hidden burdens resulting from special obligations towards the employees and the management of the company as well as identification of the key personnel.

The environmental due diligence includes analysis of possible environmental risks and any potential future burdens resulting from that risks.

#### **5.4. Scope of the due diligence**

The due diligence should always cover all aspects which are to be described in the prospectus and which are, or could be, important or crucial for the company. Practically, the involved parties agree on certain thresholds relevant for the company and its business to focus and limit the due diligence efforts.

#### **5.5. Performing the due diligence**

The due diligence is usually performed by examination of relevant documents made available by the company in a physical or electronic special data room. In addition, the float team can interview the management, key personnel or consultants of the company and conduct site visits.

As the prospectus is prepared simultaneously with the due diligence, it has to be continuously amended to reflect the findings of the reports and further investigations. The due diligence ends on the day of approval of the prospectus with a so-called "bring down call" with the top management of the company in which the management confirms that the prospectus contains all relevant information that is needed in order to enable investors to make an informed assessment of the financial situation of the company.

Valuation is one of the most important steps in the company's journey to the stock market. Before listing shares, your company will receive a market valuation carried out by a professional intermediary - investment bank or a broker, using tools which are widely acknowledged, like assets and multiples. Also, a comparison with similar companies in Romania and in the region should be provided.

The evaluation report will contain a descriptive part, a commercial and an operational analysis – one legal and one financial. For applications based on income approach, the report will also contain a description of the strategy linked to the future business development and assumptions in explaining and justifying parameters considered in the financial model of evaluation based on income.

Based on this valuation, intermediary together with the company's shareholders will decide on a price at which the company will be sold to the investors (in case of shares. In case of listing of shares, the price should ideally be set-up as the best price, not too low (so the company is not undervalued) but also not too high (so that the company is not overvalued).

After the listing, the valuation of a company will be done by investors, based on the demand and supply of the company shares. Investors decide to buy or sell stock based on the information they receive from the company as well as the information they read in the media, the current economic environment etc.

## **5.6. Marketing the float**

Law no. 24/2017 provides for restrictions on advertising. Every type of advertising that refers to a public offering of shares or admission to trading on a regulated market must comply with the following principles (applicable if the company is subject to the obligation to publish a prospectus):

Any advertising indicates that a prospectus has been or will be published and indicates the date and place when and where investors will procure the prospectus.

Dissemination of advertising, prior to the decision approving the prospectus is prohibited advertisements must be clearly recognizable as such. The information contained in an advertisement must not be inaccurate or misleading. This information must also be consistent with the information contained in the prospectus,

all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, including in an electronic form, even if not for advertising purposes, must be consistent with that content of the prospectus,

Any advertising that incites to the acceptance of the public offer, presenting the offer as having operating advantages or other qualities arising from the FSA approval decision of the prospectus constitutes misleading advertising and is punished according to the law.

When no prospectus is required, the material information, provided by the company to qualified investors or special categories of investors, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.

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## **6. DEALING WITH THE REGULATORS**

**The company will need to liaise with the BSE and FSA during the float process to make sure that it satisfies their requirements. The requisite applications should be identified early on so that any potential delays are avoided.**

### **6.1. During the process**

The company will need to liaise regularly with the BSE during the float process to make sure that it is aware of the progress of the float and to ensure that the BSE is able to comply with the timing requirements of the company.

### **6.2. Application for admission to a regulated market on the BSE**

In case of a case of a successful IPO the intermediary submits to BSE the following documents:

- Application for admission to trading;
- Prospectus accompanied by FSA's approval thereof;
- The decision of the statutory body of the company regarding the admission to trading;
- Articles of incorporation;
- A copy of the Securities Registration Certificate issued by FSA;
- Contract for admission and maintenance to trading;
- Statement of the issuer, providing names of persons designated to remain in contact with BSE (at least two persons).

BSE's Board of Directors approves the company's admission to trading

### **6.3. Application for admission to the AeRO.**

After the shares' registration with the FSA and the Central Depository the company submits to BSE the following documents:

- Application for admission to trading;
- Prospectus / Memorandum (depending on the type of offering);
- The proof regarding the closing of the contract with the Central Depository;
- A copy of the Securities Registration Certificate issued by FSA;
- A copy of the Certificate of Registration with the Trade Registry Office;
- The annual and quarterly financial reports, at least for the last financial year (if any);
- The decision of the statutory body of the company regarding the listing;
- A contract signed with an Authorized Advisor.

BSE CEO approves the company's admission to trading.

#### **6.4. Prospectus approval by the FSA**

If Romania is the home Member State of the issuer a prospectus must be approved by the FSA. FSA may delegate the approval of a prospectus, in such a situation, to the competent authority of another Member State provided that first informs **European Securities and Markets Authority** and obtains the approval of the foreign competent authority.

When approving prospectus applications for securities that are to be admitted to trading on BSE, the FSA has the right to obtain a statement of the BSE prior to the approval, unless such a statement has already been attached to the approval application (it is usual practice for issuers to obtain a statement of the BSE prior to submission of the prospectus to the FSA for approval).

The FSA approves a prospectus submitted for approval if it is complete, coherent and comprehensible and complies with other conditions under the applicable legal rules. The FSA neither examines the accuracy of the information included in the prospectus nor does it assess the financial situation of the issuer.

FSA shall decide on the approval of the prospectus within 10 working days from registration of the application. The deadline can be extended to 20 working days if the securities are issued by an issuer requesting the first admission to trading on a regulated market or who has not publicly offered securities.

Where FSA does not issue any decision on the prospectus within the deadlines, it is not considered as a silent approval of the application. Any request for additional information or amendments of the original prospectus, initiated by FSA or the offeror, interrupts these deadlines which will be calculated again from the date of providing such information or changes.

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## **7. OFFER PERIOD**

**The offer period in Romania is generally 2 to 4 weeks. The duration of a public offer shall not exceed 12 months. It starts once the prospectus is approved and made available to the public. The company is not allowed to offer or sell the shares to the public before the prospectus is approved and made available to the public.**

### **7.1. No public offer without an approved prospectus**

Once the prospectus is finalised, it should be submitted to the FSA for approval. Once approved, the prospectus shall be made available to the public at the latest at the initiation date of the offer to the public Offer Period.

The offer period for IPOs in Romania shall not exceed 12 months. During the offer period, the investment bank/underwriter and the company market the float to institutional and retail investors and monitor the level of interest in the float.

### **7.2. Supplements, Right to Withdraw**

Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities, must be mentioned in a supplement to the prospectus, if it occurs in the period between the approval of the prospectus and the final closing of the public offer or the beginning of the trading on a regulated market.

The supplement must be immediately published and approved by the FSA within 7 business days from submission with the authority with at least the same arrangements as were applied when the original prospectus was published and lodged.

Investors who have expressed their willingness to subscribe for securities prior to the publication of an amendment to the prospectus shall have the right to withdraw their underwritings within 3 working days from the date of publication of the respective amendment.

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## **8. BEEING PUBLIC**

**After the float, the company will have to publish legal information and voluntary information for transparency and Investor Relations.**

Each listed company should actively communicate with the market and pay attention to the investor's and analyst's opinions on an ongoing basis. The minimum standards of a listed company's communication policy are the reporting and transparency regulated by the FSA and the BSE.

### **8.1. Post-listing requirements and recommendations**

Initial promises fulfilment

A public company needs to build investors' trust from the very beginning. Investors want to know that the funds were spent in line with the company's prospectus. Therefore it is of key importance to show that the funds raised during the public offering were put to use. It is also of great value to emphasise positive results of the investments made (in case of newly-issued shares).

### **8.2. Mandatory reporting obligations**

Transparency is a key issue for any public company. Investors need to be updated and informed constantly on all important events in the company's life. In order to meet this requirement, a company should inform the market via so-called current reports whenever a significant event occurs. Companies should also submit financial reports on a quarterly basis (it is recommended to provide them in both Romanian and English).

### **8.3. Investor Relations**

It is important to have an Investor Relations function, as a single point of contact with the listed company, which should be able to provide knowledgeable information on request. Investor Relations duties can be also carried out by the CEO/CFO. Investors and analysts value the participation in regular meetings and the ability to be in a constant touch with the company. The company's webpage should also serve the latter goal.

### **8.4. Corporate Governance framework**

The BSE has enacted its own Corporate Governance Code.

The BSE Code of Corporate Governance is a set of principles and recommendations for companies whose shares are admitted to trading on the regulated market. The Code aims at building an internationally attractive capital market in Romania, based on best practices, transparency and trust. It encourages companies to build a strong relationship with their shareholders and other stakeholders, communicate effectively and transparently and show openness towards all potential investors.

At the center of this Code are access to information for investors and protection of shareholders' rights. Therefore, each listed company should aim at fulfilling all provisions of the Code. The role of good governance is to facilitate good, effective, entrepreneurial management that can deliver the long-term success for the company.

Companies shall include a corporate governance statement in their annual report, as a specific section of the annual report which shall contain a self-assessment on how the "provisions to comply with" are observed and include the measures taken in order to comply with provisions that are not fully met.

All situations where a company does not observe the “provisions to comply with” must be reported to the market via the form of a current report, in accordance with the BSE Rulebook.

The BSE maintains a mechanism based on the “comply or explain” principle which gives the market clear, accurate and actual information about listed companies’ compliance with corporate governance rules.

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## **9. CONCLUSION**

**This guide has provided an overview of the issues that arise on any float. The process of floating a company is time-consuming and can be expensive. It is critical to make sure that the members of the float team have the expertise to deal with all standard issues that arise on any float quickly and efficiently. This will allow the company to focus on the specific key issues that invariably arise on a float. Properly addressing these issues will be critical to the success of the float.**

## NOTES

## FLOAT TIMETABLE

No. Date	Action Item	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		WEEKS																			
1	Internal check of company's readiness to float																				
2	Shareholders' resolution to float																				
3	Appoint IPO team																				
4	Reorganization into a stock corporation																				
5	Selection of intermediary/underwriting bank, if any																				
6	Selection of a Lead Manager, signing of an engagement letter																				
7	Selection of co-managers, other advisors																				
	Kick-Off-Meeting																				
8	Issuance concept and budget																				
9	First contacts with the stock exchange companies in question																				
10	Due diligence																				
11	Preparation of equity story																				
12	Selection of a market place																				
13	Draft prospectus and other documents																				
14	Setting of price range																				
15	Signing of underwriting agreement																				
16	Approval of prospectus by FMA/ due diligence sign-off																				
17	Bookbuilding, subscription period, investor roadshow																				
18	Pricing																				
19	Allocation and subscription of capital increase																				
20	Registration of capital increase with Trade Register																				
21	Admission of shares to trading (Bucharest Stock Exchange)																				



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**DISCLAIMER & IMPORTANT NOTE**

This guide is general and should not be relied on as advice on any particular float. Anyone involved in a float should seek specific advice. This guide reflects the law as at September 25, 2017.