

Financial Services Industry News

Recent securities law updates

Overview

The recent securities law updates include: the status of shares traded on the RASDAQ market, the amendments to the Capital Markets Law no. 297/2004, FSA decision on shares offerings in other member states and exemptions applicable to issuers from non-EU member states having shares traded on a regulated market in Romania.

I. Regulation of the status of the RASDAQ market

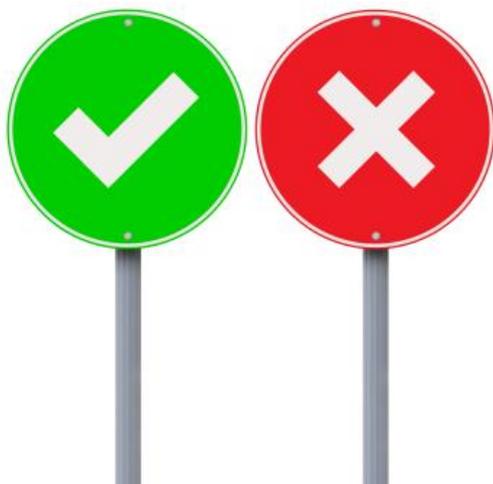
a. Legislation

In Official Gazette no. 774/24.10.2014, Law no. 151/2014 on the legal status of shares traded on the RASDAQ market or the market for unlisted securities was published.

This law is supplemented by the publication in Official Gazette no. 870/28.11.2014 of FSA Regulation no. 17/2014 regarding the legal status of shares traded on the RASDAQ market or the market for unlisted securities.

b. Relevant provisions

- The boards of directors of the companies listed on the RASDAQ market will ensure the summoning of the general meetings of shareholders within 120 days of the entering into force of Law no. 151/2014;
- The general meetings of shareholder may decide to list the companies on a regulated market or alternative trading system;
- In order to be admitted to trading, the companies will submit to the FSA the trading prospectus drafted according to the legal provisions and a request for admission to trading to the market operator;
- The decision of the market operator will then be transmitted to the FSA;
- If the general meetings of shareholders do not decide to list the companies or the FSA rejects their listing, the shareholders may exercise their right of withdrawal within 90 days of the publication of the general meeting of shareholders resolution or of the rejection decision;
- The RASDAQ market and the market for unlisted securities will cease to function by effect of law 12 months after the entry into force of Law no. 151/2014;
- The companies whose shareholders exercise their right of withdrawal will repay the price of the shares set by an authorised independent expert, within 30 days of the expiration of the term for the finalisation of the expert's report or the submission of the withdrawal request;
- Exceeding the term for summoning the general meeting of shareholders or submission of the transaction prospectus are administrative offences which carry a fine between RON 5,000 and 100,000;
- Until the cessation of activity of the RASDAQ market and the market for unlisted securities the transaction and settlement regime in force at the time of publication of FSA Regulation no. 17/2014 will be maintained, as well as certain reporting obligations under NSC Regulation no. 1/2006.



II. Alignment of the Bucharest Stock Exchange to the status of an emerging market

a. Legislation

In Official Gazette no. 964/30.12.2014, Emergency Government Ordinance no. 90/2014 for the modification and amendment of Law no. 297/2004 was published (“**EGO 90/2014**”).

b. Relevant provisions

Corporate aspects at the level of issuers

- The payment term for dividends, in case this is not provide in the general meeting of shareholders resolution, is shortened to 30 days after its publication, while payment shall be made through the central depository and the participants to the settlement and registry system;
- The majority required to decide the increase of the share capital through contributions in cash or in kind is reduced from 75% to 2/3 of the voting rights;
- Representation of shareholders through special power of attorney shall entail specific voting instructions and can be issued for a single general meeting. A general power of attorney may only be issued to an intermediary or attorney for a period which will not exceed 3 years. Persons in situations of conflict of interest cannot be representatives of shareholders;
- Voting by correspondence is regulated in more detail.

Other aspects

- Inclusion in the definition of securities of government bonds, regardless of their maturity;
- Provision of a definition for management of individual portfolios as the discretionary and individualised management of portfolios in the framework of a power of attorney granted by the client;
- Regulation of the initial capital requirements for FISCs by relating firstly to the provisions of EU Regulation no. 575/2013 and the provision of a general minimum of EUR 730,000, which is decreased to EUR 125,000 for FISCs which do not carry out transactions on their own account, but hold the instruments of their clients or EUR 50,000 if they also do not hold the instruments of their clients;
- The maximum ownership threshold in the share capital of a market operator is increased from 5% to 20%, with the obligation to obtain FSA approval for such a stake;
- Publication of a public offer prospectus or document may also be carried out through on-line newspapers, according to the applicable EU regulations;
- Publication of a public offer prospectus or document may be carried out alternatively through the website of the bidder or the intermediary;
- Information for publicity should conform with the specific legal provisions only if the publication of a prospectus for the offer to which it refers is mandatory;
- Communications which announce the publication of a prospectus must also indicate the date and time at which the investors can procure the prospectus in question;
- It is explicitly stated that incitement to acceptance of a public offer by presenting the FSA approval decision as an advantage constitutes fraud through abusive or deceitful publicity;
- The documentation for admission to trading is submitted to the market operator simultaneously with the request for approval of the prospectus by the FSA;

III. Shares offerings in other member states and exemptions applicable to issuers from non-EU member states

The FSA issued Notice no. 266/17.12.2014, amending the previous NSC Notice no. 30/10.08.2011 regarding share offerings in other member states and exemptions applicable to issuers from non-EU member states.

This amendment clarifies which provisions of Law no. 297/2004 and NSC Regulation 1/2006 are applicable in the aforementioned situations, by correlating the provisions of NSC Notice no. 30/10.08.2011 with the other recent legislative changes.



Should you have any questions please do not hesitate to contact us:

Andrei Burz Pinzaru

Attorney at law
+40 21 207 52 05

Oana Petrescu

Partner-in-Charge, Consulting
+40 21 207 52 88

Radu Straut

Attorney at law
+40 21 207 54 05

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