

THE ROMANIAN FINANCIAL MARKET: THE OPENING OF AN OPPORTUNITY?

The simplification of the procedures on the admission or trading of securities on the Romanian securities exchange market by EU member states and other member states of the Common European Economic Space.

For the first time in 11 years, Romania fully opens its financial markets to foreign direct investors and to big international players, thus putting an end to a long isolationist period. Based on a report¹ by the Romanian National Commission of Prognosis (RNCP) on the evolution of the Romanian securities exchange in 2005, the forecast for 2006 is encouraging: the value of shares and stock indexes is steadily increasing, and the RNCP estimates that the capitalisation of GDP of the transactions will exceed 25%, at a transaction value of almost 3.5 million Euro. The BET (Bucharest Exchange Trading) indexes approximate an increase of over 25% as compared to 2005. However, RNCP considers that a boost in securities listings on the market, along with the implementation of new financial instruments of trading might outstrip their forecast.

In Romania, financial markets are regulated and supervised by the Romanian National Securities Commission, stock exchange markets, and other market forces - private companies. In view of Romania's imminent accession to the European Union, projected for the 1st of January 2007, the Romanian National Securities Commission is implementing new regulations to facilitate the access of foreign actors to local financial markets. The Romanian National Securities Commission has adopted Regulation 1/2006 regarding the issuers and the operations with securities in order to harmonise the Romanian legislation on financial markets to that of the EU. Accordingly, a set of EU Directives have been implemented in Romania, such as: Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, and Directive 2004/39/EC on markets in financial instruments.

THE DEROGATION PROCEDURE

Among the dispositions of the Regulation, there are a series of provisions that implement a derogation procedure for both the regulations that apply to EU issuers of securities as to those that apply to non-EU issuers of securities. First, these provisions establish the conditions under which EU issuers of securities are admitted to trade on the Romanian Stock Exchange market. Second, the provisions stipulate that EU issuers are not required anymore to obtain an

¹ *Projection of the Main Macroeconomic Indicators in the Period 2006-2010*, National Commission for Prognosis, Romania, 3rd of May 2006



authorisation from the Romanian National Securities Commission in order to access the market, therefore avoiding a futile double-authorisation procedure. From now on, the only authorisation required is the one issued by the competent body of their country of origin.

CONDITIONS FOR ENTERING THE MARKET

Chapter V of the Regulation standardizes cross-border public offers and the cooperation among competent bodies, and it establishes a series of necessary conditions to be fulfilled by a successful public offer of trading on the Romanian market. The following conditions shall be cumulatively fulfilled:

- **A prospectus² authorised by the competent body from the country of origin.**

Stipulated by Article 49, Paragraph 1 of the Regulation, this is a *sine qua non* condition. Moreover, RNCP shall be notified regarding the prospectus, as well as of any modifications brought to the prospectus.

The Regulation has no rules as to the language in which the prospectus is written, unless it refers to the Initial Public Offering (IPO) / listing of financial instruments on a regulated market (other than capital titles with a nominal value of at least 50.000 Euro). In the case of capital titles, the prospectus shall be redacted in an international language, or a language approved by both the competent bodies of the host country and of the country of origin in agreement with the preferences of the issuer, the bidder or any other person that requests admission to trading operations.

Furthermore, according to Title VII of the Regulation, securities issued by an EU member state or by a non-EU country can be listed on the regularised market before Romania's accession to the EU only after the approval by RNCP of a prospectus drafted in line with the current legislation. Nevertheless, and as an exception, the prospectus authorised in the country of origin and any other related amendments are accepted for the Initial Public Offering (IPO)/ listing of financial instruments on a regulated market if a reciprocity agreement exists between RNCP and the competent body of the country of origin.

- **The Initial Public Offering (IPO) / listing on a Romanian regulated market shall refer exclusively to financial instruments.**

According to the Romanian law, financial instruments are: shares issued by private companies gone public, titles of participation in collective placement bodies, state bonds with a maturity of less than 12 months and deposit certificates. As well, the legislation refers to other instruments commonly sold by underwriters or traders.

²A prospectus is a legal document that institutions and businesses use to describe what they have to offer for participants and buyers. A prospectus is commonly used to detail mutual funds, stocks, and other investments. The documents provide a detailed explanation about a business, providing a history of the company, lists of officers who operate such a business, any litigation that is taking place, financial data, and a list of operations. These documents, when used by businesses, are usually given out to potential investors as part of the Initial Public Offering (IPO).

- **Required attribute of *Issuer of shares from an EU member state.***

The Derogatory Procedure established by the Regulation, through the dispositions of Article 2, Paragraph 1, Points 28-29 from Law 297/2004 on financial markets, with further modifications and completions, refers to issuers from EU member states and to other member states of the Common European Economic Space.

The issuers from an EU member states and from other member states of the Common European Economic Space are defined as: issuers of shares with a nominal value smaller than 1000 Euro registered in an EU member state; and issuers registered in a non-EU member state that report to competent bodies from an EU member state.

This definition also applies to shares issued in currencies other than the Euro; nonetheless, the nominal value of the share, at the date it was issued, shall be approximately of 1000 Euro. The issuer might choose a single EU member state as country of origin; the choice is valid for up to 3 years unless the shares issued are not traded anymore in any of the regulated markets by the EU.

- **RNCP Notification.**

As I mentioned above, in order to be able to use a prospectus as part of the IPO, the prospectus has first to be authorised in the country of origin along with any further amendments, and second, RNCP shall be notified about the existence of such a prospectus. Besides this formal notification, no other procedure or approvals are needed.

Therefore, the issuer, the underwriter or any other person in charge of drafting the prospectus shall request to the competent body of the country of origin an authorisation to be able to use the prospectus. After obtaining the authorisation, the person in charge shall notify RNCP within 3 business days.

- **Currency in financial instruments listed/to be listed on a Romanian regulated market.**

According to Article 97, Paragraph 1 from the Regulation, the financial instruments (shares) that are listed or will be listed on the Romanian securities exchange market can be issued in RON or any convertible currency, while respecting the provisions of the Regulation and other legal provisions.

Financial instruments (shares) issued in other currencies than RON can be listed and traded in Romania only if the markets (Rasdaq, BVB – Bucharest Stock Exchange) accept such a currency in their listings.

Shares shall be issued in a currency unanimously approved by the General Assembly of Shareholders/Statutory Body. The Regulation underlines the fact the all shares issued at a given time, must be issued in the same currency.

REGISTRATION PROCEDURE FOR EU ISSUERS

Given the fact that all shares listed and traded on the Romanian securities exchange market must be registered with RNCP, an EU issuer shall undergo the same procedure. For example, according to Article 100, Paragraph 3 from the Regulation any financial instrument that is listed/traded on a regulated market from outside of Romania and will be listed/traded in the Romanian market shall be registered with RNCP and fulfill the legal requirements of the local legislation.

Taking into consideration that the IPOs procedures and the listing on the Romanian financial markets for issuers from EU member states and from other member states of the Common European Economic Space raise many theoretical and practical issues vis-à-vis the Romanian legislation, please feel free to contact us for more information at: office@sova-avocati.ro.

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