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Client Brief

CAPITAL MARKETS | ROMANIA

OCTOBER 2014

THE RASDAQ MARKET DISMANTLING

On 30 September 2014, the Romanian Chamber of Deputies adopted a law intended to clarify the legal status of shares traded on the Rasdaq market and the unlisted securities market (the "**Rasdaq Law**").

The status of the Rasdaq market has raised numerous controversies in the past, mainly because the National Securities Commission (currently the Financial Supervisory Authority, "**FSA**") treated the Rasdaq market as a 'regulated market', although, the Rasdaq does not meet the requirements of a regulated market according to the European regulations.

Therefore, the purpose of this enactment is to ensure the compliance of the national legislation with the provisions of the Directive 2004/39/CE of the European Parliament and of the Council on markets in financial instruments (MiFID), following the warnings of the European Commission that it would start an infringement procedure against Romania for failure to clarify the status of the Rasdaq market.

The Rasdaq Law is expected to have a major impact on the companies listed on the Rasdaq market and on the Romanian capital markets, in general.

Meanwhile, it may be an opportunity for captive companies that do not feel comfortable on the capital market to delist, based on a resolution of a general meeting of shareholders.

In what concerns the entry into force of the Rasdaq Law, there is a certain unpredictability, since further steps in this respect, e.g. promulgation by the Romanian president, publication in the Official Gazette must be followed.

The most significant provisions of the Rasdaq Law are reflected below, as follows:

❖ **Call of the general meeting of shareholders**

The boards of directors/directorates of companies the shares of which are traded on the Rasdaq market or the unlisted securities market must call the general meeting of shareholders and perform all necessary actions, so that the meetings are held within 120 days after the entry into force of the Rasdaq Law to resolve on whether such companies should: (i) be admitted on a regulated market (provided they meet the required criteria), (ii) be admitted on an alternative trading system (provided they meet the required criteria) or (iii) withdraw from trading and thus be delisted from the Rasdaq market.

❖ Right of shareholders to withdraw from the company

Where the resolution passed by the general meeting of shareholders is not to perform the necessary actions in order to be admitted on a regulated market or on an alternative trading system, the shareholders of the respective company are entitled to withdraw from the company, under the conditions set forth in Article 134 of the Companies Law no. 31/1990, as further amended (the "**Companies Law**"). The right to withdraw must be exercised within 90 days as of the date the publicity requirements with respect to the resolution of the general meeting of shareholders have been fulfilled.

There is no specific provision in the Rasdaq Law with respect to the price to be paid to the shareholders exercising their right to withdraw from the company. Even if the initial draft of the law was setting forth that the price per share to be paid in case of shareholders' withdrawal from the company should have been approved by the general meeting of shareholders and determined in accordance with the international valuation standards by an independent valuator registered with the National Securities Commission (currently the FSA), such provision was not captured in the adopted form of the Rasdaq Law. Therefore, since the provisions of the Rasdaq Law make reference to the shareholders' withdrawal, as regulated by the Companies Law, one may argue that the price per share will be determined by an independent expert, as an average value resulting from the application of at least two valuation methods recognized by the law in force at the valuation date (as provided by Article 134, paragraph 4, of the Companies Law). This is certainly an aspect to be clarified by the FSA, within the norms for the application of the Rasdaq Law which should be adopted in 30 days as of the entry into force of the Rasdaq Law.

❖ Submission of the prospectus for admission to trading

Where the resolution of the general meeting of shareholders is to initiate the proceedings for admission to trading on a regulated market, a prospectus must be submitted to the FSA within 90 days as of the passing of such resolution. The FSA will issue a decision either approving or rejecting the application for the admission to trading on the regulated market. In case of rejection, the shareholders of the respective company have the right to withdraw from the company within 90 days as of the date of publication of the FSA's decision.

❖ Sanctions

Failure by the board of directors/directorate of a company currently listed on Rasdaq to observe (i) the 120-day term for the calling of the general meeting of shareholders or (ii) the 90-day term for the submission of the prospectus for admission to trading with the FSA is deemed a contravention subject to a fine ranging from RON 5,000 (i.e. approximately EUR 1,130) to RON 100,000 (i.e. approximately EUR 22,600).

❖ Termination of the activity on the Rasdaq market and the unlisted securities market

All activity on the Rasdaq market and the unlisted securities market terminates *de jure* within 12 months as of the entry into force of the Rasdaq Law.

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

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