

AMENDMENTS TO THE ROMANIAN CAPITAL MARKET LAW

On 30 December 2014, Government Emergency Ordinance no. 90/2014 ("**GEO no.90/2014**") amending Law no. 297/2004 on capital markets ("**Romanian Capital Market Law**") was published with the Official Gazette. The provisions of GEO no. 90/2014 have entered into force on 9 January 2015.

Having been previously announced by the Ministry of Public Finance as a law, this enactment was finally passed "in emergency" by the Romanian Government as it was considered vital to eliminate the existing legislative barriers and continue the process of aligning the Romanian Capital Market Law to the European standards, in particular to those set out under MiFID¹ and the Prospectus Directive², in order for Romania to gain the status of an emerging capital market.

The main amendments brought by GEO no. 90/2014 relate to:

- the minimum capital requirements applicable to investment firms (*in Romanian SSIFs*) depending on the investment services they are authorised to provide;
- increasing the ownership thresholds with respect to market operators;
- 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.

¹ EU Directive 2004/39/EC on markets in financial instruments

² EU Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

❖ **Minimum share capital requirements applicable to investment firms (in Romanian SSIFs) depending on the investment services they are authorised to provide**

The following categories are listed by GEO no. 90/2014:

- (A) *SSIFs* which (i) do not perform trading activities in relation to financial instruments on their own account and (ii) do not undertake to subscribe financial instruments in accordance with a firm commitment, but which (iii) hold the clients' funds and/or the financial instruments and provide one or more of the following services: (x) taking over and transmitting orders received from investors in relation to one or several financial instruments, (y) performing orders in relation to one or several financial instruments, (z) managing individual investment portfolios in financial instruments,

must have a **minimum initial share capital of EUR 125,000 in RON equivalent**.

GEO no. 90/2014 provides that *SSIFs*, which perform investors' orders in relation to one or several financial instruments, may however, under certain conditions, temporarily hold such instruments on their own account. It is further clarified that, should a *SSIF* hold positions in financial instruments which are not part of its trading portfolio, for the purposes of investing its own funds, this shall not be regarded as a trading activity as detailed under this point A.

- (B) *SSIFs* which are not authorised (i) to trade on their own account, or (ii) to subscribe financial instruments in accordance with a firm commitment and which (iii) do not hold the clients' funds and/or financial instruments

must have a **minimum initial share capital of EUR 50,000 in RON equivalent**.

- (C) *SSIFs* which are only authorised to grant investment consultancy and/or to take over and transmit orders received from investors, as well as *SSIFs* authorised to manage individual portfolios, and which are not holding the clients' funds or financial instruments, thus not being in a debtor's position vis-a-vis such clients

must have (a) a **minimum initial share capital of EUR 50,000 in RON equivalent** and (b) a professional liability insurance.

- (D) *SSIFs*, other than those mentioned at points A-C above, shall have a **minimum initial share capital of EUR 730,000 in RON equivalent**.

❖ **Increasing ownership thresholds for market operators**

The threshold for holding, directly or together with other persons acting in concert, shares in a market operator (such as the Bucharest Stock Exchange) has increased from 5% to 20% of the total voting rights. This measure is meant to attract strategic investors in the shareholdings of market operators.

Any acquisition of shares in a market operator which results in holding a stake equal to 20% of its total voting rights must be notified to the respective market operator and is subject to prior approval by the Financial Supervisory Authority ("FSA").

Any transfer of shares belonging to the market operator which results in a decrease under the 20% ownership threshold shall be notified to the market operator and the FSA.

❖ Transparency and Rights of Investors in Listed Companies

GEO no. 90/2014 provides for a set of amendments and clarifications as regards the rights of shareholders in listed companies, amongst which:

- ✓ the delay in which dividends are to be paid to the shareholders (should the general meeting of shareholders not set a dividends payment date) was decreased to 30 days (as opposed to 60 days) as of the publication date of the resolution of the general meeting of shareholders with the Official Gazette;
- ✓ the resolutions 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 are to be adopted in a more relaxed manner, such resolutions requiring the presence of at least $\frac{3}{4}$ of the subscribed share capital and the vote of shareholders holding at least $\frac{2}{3}$ of the 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);
- ✓ shareholders may be represented to the general meeting of shareholders based on a special or general power of attorney, it being specified that substitution of the attorney is not allowed; a special power of attorney may be given to any person, for representation in a single general meeting of shareholders and should include specific voting instructions from the shareholder; a general power of attorney may be given for a period of maximum 3 years and may only be granted by the shareholder, in its capacity as client, to an intermediary³ or a lawyer;
- ✓ the procedure for voting by correspondence is 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.

³ According to the Romanian Capital Market Law, intermediaries are investment firms authorised by the FSA, credit institutions authorised by the National Bank of Romania, as well as entities similar to the above authorised by a Member or a Non-Member State to perform investment services and activities similar to those set forth under the Romanian Capital Market Law.

❖ Simplifying public offering procedures

GEO no. 90/2014 introduces a set of provisions, which are meant to align the national legislation with the Prospectus Directive and the related Commission Regulation (EC) No. 809/2004.

Amongst such amendments, we mention:

- ✓ It is no longer mandatory 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; thus, a public offering for the sale of securities becomes binding when the prospectus is published, whereas a public offering for acquisition of securities becomes binding when both the offering document and the related notice are published in accordance with FSA's regulations; the prospectus or the offering document, respectively, may only be made available to the public after its approval by the FSA and in the form and the contents approved by the FSA.
- ✓ the advertisements related to public offerings of securities or admission of securities to trading on a regulated market are no longer subject to approval by the FSA, however the FSA is authorised to check the conformity of the advertising activities with the legal provisions in force.
- ✓ an exception from the rule that the prospectus shall also include a summary is introduced, namely in case the prospectus relates to the admission to trading on a regulated market of non-equity securities having a nominal value of at least the RON equivalent of 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.

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