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Legal Bulletin



Capital Markets

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Clarifying the legal status of the shares traded on the RASDAQ Market or the unlisted securities market

In Romania, the RASDAQ market/the unlisted securities market was born for “historical” reasons, during the mass privatization programs where the participating companies had the legal obligation to be listed on a stock exchange market, so that most of them got listed on the RASDAQ market.

After Romania joined the European Union (EU), the alignment of national capital markets to EU standards became a necessity. The Romanian Parliament adopted Law No. 151/2014 on the clarification of the legal status of the shares traded on the RASDAQ Market or the unlisted securities market (“Law No. 151/2014”) because the relevant EU rules (i.e., Directive 2004/39/EC on markets in financial instruments - MiFiD) provide for only two types of trading systems, i.e. regulated markets and multilateral trading facilities (MTF), while the RASDAQ market / the unlisted securities market fall under none of these two trading systems regulated by MiFiD¹.

Law No. 151/2014 provides that the RASDAQ market / the unlisted securities market are to be closed *de jure* within 12 months as of the effective date of such law, i.e. on October 27, 2015. Against this background, the companies listed on the RASDAQ market / unlisted securities market will have to opt for listing on a regulated market or, as the case may be, on a MTF² or for becoming private companies (i.e., whose shares are not admitted to trading).

1 Law No. 151/2014 on the clarification of the legal status of the shares traded on the RASDAQ Market or the unlisted securities market, published in the Romanian Official Journal No. 744 of October 24, 2014, Part I.

2 Romania has two regulated markets (i) the Bucharest Stock Exchange, with Bursa de Valori București S.A. (BSE) as operator and (ii) the Sibiu Monetary Financial and Commodity Exchange, with Bursa Monetară-Financiară și de Mărfuri S.A. (BMFM) as operator, and two MTFs, i.e. (i) CAN-ATS, with BSE as operator, and (ii) “Start Sibex”, with BMFM as operator.

The decision on the fate of RASDAQ companies (i.e., whether they are to be listed on a regulated market / MTF or, on the contrary, they are to be delisted) will be taken by the extraordinary general meetings (EGMS) of such companies, under a special procedure expressly regulated by Law No. 151/2004.

Such procedure essentially involves the following steps:

- The competent management body (i.e., the Board of Directors or, as the case may be, the Managing Board) prepares a special report containing information on the legal framework applicable to the trading of shares on a regulated market/MTF and a description of the regulated markets and MTFs;
- The EGMS is convened by the competent corporate body, having on the agenda the taking of a decision on the fate of the company listed on the RASDAQ market (i.e., listing on the regulated market / MTF or, as the case may be, de-listing). The EGMS must be convened so that the EGMS would take place within no more than 120 days as of the effective date of Law No. 151/2014, i.e. on February 22, 2015 at the latest;
- The competent management body makes various diligences in view of implementing the EGMS decision;
- If the EGMS decides to list the company on the regulated market / MTF, the company will draft a prospectus for the admission to trading, which must be sent to the Financial Supervision Authority (FSA) within no more than 90 days as of the date when the EGMS listing decision has been adopted. FSA will charge no fee for the approval of the prospectus;
- If the EGMS decides to de-list the company, the shareholders of the companies listed on the RASDAQ market which did not vote in favor of the de-listing are entitled to divest from the company. The right to divest can be exercised within 90 days as of the date when the EGMS decision is published.

The shareholders shall also be entitled to divest from the company in the following cases:

- The EGMS cannot be validly held or, as the case may be, cannot validly take decisions, because the legal attendance or, as the case may be, the legal majority requirements have not been met, in which case the right to divest can be exercised within 90 days as of the EGMS date;
- The EGMS does not take place for any other reason within 120 days as of the effective date of Law No. 151/2014 - in which case the right to divest can be exercised within 90 days as of the expiry of the 120-day period; or
- FSA rejects the company's application for listing on the regulated market/ MTF - in which case the right to divest can be exercised within 90 days as of the publication of the relevant FSA decision.

It is worth noting that, according to Law No. 151/2014, the shareholders of companies whose shares are traded on the unlisted share market do not have the aforementioned right to divest.

In divestment cases, the repurchase price must be determined by an independent expert and will be calculated as the average value of the prices resulting from the application of at least two assessment methods provided by the laws in force.

The Regulation for the implementation of Law No. 151/2014, to be adopted by FSA within 30 days as of the effective date of Law No. 151/2004, is expected to provide for details/special requirements on the setting of the repurchase price (such as how the independent expert is to be appointed, the time when the price is to be established, the period when such price is to be paid, etc.).

According to Law No. 151/2014, failure of the competent management body to convene the EGMS by the legal deadline (in order to take a decision on the fate of the company listed on RASDAQ / unlisted securities market) or, as the case may be, failure to send to FSA the prospectus for the admission to trading (if the EGMS decided to list the company on a regulated market / MTF) is a misdemeanor. The penalty is a fine up to RON 100,000.

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Țuca Zbârcea & Asociații offers legal advice on a variety of capital market related issues. The firm's team specialising in **Capital Markets** comprises lawyers with extensive expertise in advising on and understanding the particularities of the capital market legal framework, as well as corporate law, intellectual property law, competition, litigation, tax, advertising, mergers and acquisitions, product liability. In addition, our lawyers are well versed in assisting in relation to insolvency and restructuring, labour and debt recovery proceedings affecting capital market players. Țuca Zbârcea & Asociații's scope of practice include legal advice on the regulatory compliance, interpretation and implementation of the relevant legal framework for listed companies, financial intermediaries/services providers, asset management companies, investment companies/funds, central depository, stock exchanges; assistance in acquisitions of share stakes in listed companies; assistance in relation to minorities' special rights and related capital markets disputes; drafting of local regulations applicable to various types of capital markets transactions.



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