

LEGISLATIVE MEASURES REGARDING THE ROMANIAN CAPITAL MARKET IN SUPPORT OF THE TRANSITION FROM FRONTIER MARKET TO EMERGING MARKET

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Abstract:

This paper addresses the relevant legal instruments aimed to eliminate the major obstacles that prevent the normal development of the Romanian capital market amid the economic and financial reforms carried out in order to maintain the economic stability in the context of the current global financial crisis. So, we try to present in a systematic and coherent manner the difficulties affecting the capital market, also insisting on the recent legislative adjustments aimed at increasing its the performance. Our approach is based on the analysis of the specific literature, legal sources - national and European, as well as on a series of acts issued by the public authorities at the highest level (the Government, specialized ministries etc.).

Key words: legal instruments, stock exchange, capital market barriers, legislative solutions

JED Classification: M41

1. Introduction

Currently, at the global level it is manifested the necessity for the capital markets, in general, and the stock exchanges, in particular, to strengthen substantially their role as viable alternatives to bank lending.

The role in question is justified by the fact that in the economically developed countries this type of market represents one of the main sources of financing for companies - by capital increases, issuance of shares, bonds and other instruments. The conference "The Development of the International Capital Market in Romania", held in February 2014 and organized by the Bucharest Stock Exchange under the auspices of the Romanian National Bank in partnership with the the Financial Supervisory Authority (ASF) (EM-PL, 2014), was meant to draw the attention that the Romanian capital market is one as modest as possible.

Moreover, during the recent years, its characteristics and parameters present it as one of the lowest in Europe in terms of capitalization of listed companies and total traded value (Diaconasu *et al.*, 2012). On the other hand, it is characterized by a very low level of liquidity compared to other markets in the region, such as Hungary, the Czech Republic and Poland.

Therefore, a necessary measure is to improve the legislation, in order to attract, as a result, significant capital flows in the national economy.

2. DIFFICULTIES AFFECTING THE NATIONAL CAPITAL MARKET

Although currently the capital market legislation in Romania (Law no. 297, 2004) is harmonized with the European legislation, the practice and the standards in this sector indicate significant differences in the implementation of the legal provisions in question in comparison with other jurisdictions, due to the specificity of this market.

The actual impediments in the way of diversifying the funding sources through this market causes the general inefficiency of the system, intended, in principle, to

financing companies and to efficiently allocate the available resources. It has been frequently argued that we have one of the smallest such markets in Europe in terms of capitalization of the listed companies and total traded value.

The causes were reported to consist in the various obstacles that appear on this plan (EM-PL, 2014; SN-GEO, 2014). Among them, we mention the complicated process of opening a trading account in Romania by foreign investors or the difficult exercise of some of their fundamental rights. Also, there must not be neglected the existence of certain thresholds of ownership of shares issued by the market operators, generating the impossibility to make strategic decisions, creating bottlenecks in the functioning of these entities and negatively affecting the local capital market.

Then, the thresholds of ownership of the shares issued by financial investment companies also create bottlenecks in the functioning of the entities and thus have a negative impact on the liquidities of the capital market, especially as those companies contribute to a complex corporate governance with no real opportunity to reform. We know or we can guess the consequences: the decrease of the confidence of the investors in the Romanian capital market, the low attractiveness for the investors to participate in public offerings as well as for the companies to attract financing by listing on the stock exchange, the decrease of the opportunities to access new investments etc.

All these facts prevent the creation of jobs and also deprive the state budget of collecting tax revenue, at the same time slowing down the economic development and GDP growth.

3. RECENT LEGISLATIVE ADJUSTMENTS AIMING TO INCREASE THE PERFORMANCE OF THE ROMANIAN CAPITAL MARKET

Given the difficulties to which we referred above and the extent of their consequences, there has been taken a first step consisting in the preparation of a bill amending and supplementing Law no. 297/2004 on the capital market (EM-PL, 2014). Subsequently, several reasons determined making the decision to amend the primary normative act on the capital market by avoiding the parliamentary procedures which take longer periods of time (Mărcineanu, 2008; Bostan, 2014, 2014b).

Therefore, the Romanian Government, justifying the adoption of an Emergency Ordinance in this situation (SN-GEO, 2014), besides considering the fact that the delay in taking the appropriate measures meant losing ground in the competition with the neighboring capital markets, cited the need to comply with the terms and conditions assumed by the Government in the international commitments on the implementation of the structural reforms to enhance the competitiveness of the Romanian economy. The text, as such, is intended to transpose certain provisions of several directives adopted by the European Parliament and Council of the European Union (EP, 2003, 2004, 2007, 2013).

They concern the regulations referring to financial instruments markets, the prospectus to be published in case of public offerings of stocks and shares or the admission of the stocks and shares for trade, the exercise of certain rights of the shareholders of the listed companies, the access to the activity of the credit institutions and the prudential supervision of the credit institutions and the investment firms.

In fact, the amendments made to the primary regulation (Law no. 297/2004 on the capital market) aim:

- (a) to facilitate the access to the Romanian capital market and to respect the rights of the investors - the right to vote or to receive dividends;
- (b) the corporate governance of the issuers and their transparency, including the reporting of the information relevant to the market participants;
- (c) to simplify the system of public offerings and listings of shares and bonds;

- (d) to modify the threshold of ownership of shares issued by market operators;
- (e) the removal from the articles of incorporation of market operators of some restrictive provisions relating to the conditions of quorum and the adoption of decision by the general meeting of the shareholders.

It should be noted that the amendments also aim to increase the base of institutional investors in Romania and to motivate the population to invest directly or indirectly in the listed financial instruments. By mentioning here only some elements of the normative act that amends the primary regulation on the capital market (GEO no. 90, 2014), from 9 January 2015, it becomes important the fact that “the initial registered capital of a financial investment services company (SSIF) is to be determined according to the EU regulations, which may be composed of one or more of the elements referred to in subparagraph a)- e) of paragraph 1 of Article 26 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012” (Article 7, paragraph 1).

Then “the SSIF has an initial capital level equal to the RON equivalent of EUR 50 000 if it is not authorized to trade on its own account or to subscribe to the issuance of financial instruments based on a firm commitment and does not have the funds or financial instruments of the clients” (Article 7, paragraph 1). With respect to shareholders, “no shareholder of a market operator cannot hold, directly or together with the persons acting in concert, more than 20% of the total voting rights” (Article 129, paragraph 1), and “each acquisition of shares of the market operator, resulting in a holding of 20% of the total voting rights shall be notified to the market operator within the period prescribed by the regulations issued by the Financial Supervisory Authority and is subject to ASF’s prior approval” (Article 129, paragraph 2). On the other hand, “any sale of shares of the market operator which results in the holding of less than 20% of the voting rights shall be notified to the market operator and the ASF, within the term established by the regulations issued by the ASF” (Article 129 paragraph 3).

We note that all the legislative amendments made by the Ordinance in question (GEO no. 90, 2014) are likely to eventually lead to the inclusion of Romania in the group of countries with emerging capital markets, detaching from the group with frontier capital markets. This implies going through a formal procedure led by the American company Morgan Stanley Capital International (EM-PL, 2014; NF-GEO, 2014).

This company is an acknowledged supplier of market analyzes and stock exchange indices used as benchmarks in underlining the investment decisions by the international investors. This particular procedure makes it possible to reclassify the Romanian capital market based solely on annual cycles, each cycle ending in April-May. The status of emerging market involves priory passing through a stage of monitoring and the inclusion in the monitoring list is also based on annual cycles.

Specifically, Romania may be included in this monitoring list in mid-2015 and only in the event that for a prior period of sufficient length meets a set of quantitative and qualitative criteria. These criteria refer to the companies listed to the Bucharest Stock Exchange, to the access on the market and to the market infrastructure standards. The quantitative criteria represent the minimum necessary level of the total capitalization of companies (the total market value of the company), the free-float level and value (free shares available for trading) and the liquidity or the trading value of a sufficient number of listed companies (at least 3).

Obtaining the Emerging Market status brings as benefits a greater visibility worldwide for Romania and a direct way to attract new investors. Also, the transition from Frontier Market to Emerging Market would strengthen the competitive position of the Romanian capital market up against other markets in Europe and would allow both the increase of the value of the financial instruments traded in Romania as well as the

increase of the volume of transactions on the local market, with direct impact upon the collection to the state budget.

4. CONCLUSIONS

The latest amendments to the legislation governing the national capital market were adopted starting from the deficiencies occurring in this sector up to the present date, following a series of steps designed to create a stable and predictable legal framework for all the participants in the capital market.

As shown in this paper, the new legislative provisions provide the easier access of foreign investors in the Romanian capital market and the respect for their fundamental rights in the context of simplifying the system of the public offerings and shares and bonds listings.

In essence, what is sought is for the national capital market to become a functional and competitive capital market up against the capital markets of the other Member States of the European Union. What remains is for the The Financial Supervisory Authority (ASF) to undertake issuing regulations in order to establish the secondary legislative framework necessary to the implementation of the new provisions and to clarify some concrete situations encountered in the practice of licensing, regulation, supervision and control.

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