

# Romanian Capital Markets

Last update: April, 2010

[by Deloitte/Reff&Associates](#)

## General legal framework applicable to the Romanian capital market

Capital market regulations have encountered an important evolution after 1994 when the first law on securities and stock exchange markets was adopted. Major amendments have been brought to the capital market legislation especially in 2002 and the subsequent period, especially in view of initiating the process of implementing the European Union legislation. Law 297/2004 (the "Capital Market Law"), currently in force, enacted in June 2004 and subsequently amended, sets out the main legal framework applicable to capital market operations. Moreover, the regulatory framework has been completed by the secondary legislation enacted by the Romanian Securities Commission, in view of transposing and implementing the main EU provisions.

## The regulators

1. *The Securities Commission ("CNVM")* - According to the provisions of the Capital Market Law and the provisions of Emergency Ordinance no. 25/2002, subsequently amended, the National Securities Commission is the regulatory and supervisory authority of regulated markets, commodities and derivative markets as well as institutions and operations specific to these markets. CNVM has the authority to issue norms with general applicability or individual decisions, as well as to take the appropriate measures for their implementation. In addition, CNVM is the sole authority competent to issue official rulings of interpretation of its own norms or decisions.
2. *Market and system operators* - Regulated Markets are managed by market operators, established as joint stock companies authorized and supervised by CNVM. Authorized intermediaries and market operators may act as system operators with respect to alternative trading systems. Market and system operators are competent to draft and submit for approval of the Securities Commission the rules and regulations governing the respective regulated market/alternative trading system. Currently there is no alternative trading systems authorized by CNVM.
3. *The central depository* - As per the provisions of the Capital Market Law and of CNVM Regulation no. 13/2005 as subsequently amended, the central depository is organized as a joint stock company, authorized and supervised by CNVM. The Central Depository acts as depository of securities and carries out any other operations pertaining thereto. In addition, the central depository issues regulations pertaining to, among others, criteria for admission and maintaining securities in the central depository's system and organization and functioning of the clearing and settlement system. Such regulations issued by the central depository must be also approved in advance by CNVM.

## The markets

Currently in Romania there are two market operators, certified to operate two regulated markets, respectively the Bucharest Stock Exchange and the Monetary and Commodities Exchange Market based in Sibiu ("BMFMS").

## Market participants

Listed companies - In order to be listed on a Regulated Market an entity has to be set up as a joint stock company. Several conditions are provided by the Capital Market Law for the admission to trading of shares issued by joint stock companies (e.g., anticipated capitalization or the minimum level of the company's equity, period of existence prior to admission to trading and so on). Additional conditions are also imposed by the regulated market.

Investment funds and investment companies - Investment funds are established as civil partnerships without legal personality while investment companies are organized as joint stock companies. Both types of entities are organized and operate in accordance with the authorization issued by CNVM. Investment funds and companies may be organized as opened end funds/companies, addressed to public or closed end funds/companies, attracting their resources from determined investors.

The main characteristics of such entities, as provided by the capital market legislation are:

- The management is performed by asset management companies, authorized by CNVM; investment companies may also be self managed;
- the net assets calculation is performed by a bank acting as depository;
- the issuance and redemption of the units is made taking into account its net asset value less the issuance/redemption commission;
- must comply with certain prudential requirements concerning their investment policy;
- the issuance of units is made based on a prospectus authorized by CNVM.

Special purpose vehicles (SPV) - According to Law no. 31/2006 on the securitization of receivables, a special purpose vehicle may be organized either under the form of a securitization fund (established as a civil partnership without legal personality) or a securitization company (established as a joint stock company). SPVs may be used to securitize receivables, whether originated by loan contracts, leasing contracts, asset backed securities, and in general any receivables which may be freely transferable.

Municipalities - According to Law no. 273/2006 regarding the local public finances, as amended, a municipality may raise funds by issue of bonds reimbursable from the municipality's own income. Several municipalities have already issued municipal bonds which have been listed on the Bucharest Stock Exchange.

## Other entities

- *Credit institutions*. Credit institutions may be authorized by the Securities Commission to perform financial investment services or to act as depository for investment funds and investment companies.
- *Financial investment services companies ("SSIF")*. SSIFs are established as joint stock companies and function based on the authorization issued by CNVM. The main activity performed by SSIFs consists of financial investment services. In addition, they may finance investors for the purpose of transactions with financial instruments, provide securities underwriting and may act as agents in mortgage bonds issues and securitisation deals.
- *Asset management companies*. Asset management companies are established as joint stock companies and function based on the authorization issued by CNVM. Besides providing management for collective undertakings for investment in transferable securities, they can manage individual investment portfolios and provide investment consultancy services.

- *SPV administrators*. According to Law no. 31/2006 concerning the securitization of receivables, SPV administrators are organized as joint stock companies and subject to CNVM authorization. SPV administrators manage the incorporation process of SPVs, represent the SPV in the acquisition of receivables portfolios and assist with the structuring of the asset pools and the asset-backed securities issues.

## Financial instruments

### General definition of financial instruments

As per the Romanian Capital Market Law no. 297/2004 as amended, financial instruments, comprise:

- transferable securities;
- units in collective investment undertakings;
- monetary market instruments, including government securities with maturity less than one year and deposit certificates;
- futures contracts, including equivalent cash-settled instruments;
- options to acquire or dispose of any instruments falling under the scope of the above mentioned paragraphs, including equivalent cash-settled instruments; this category includes options on currency and on interest rates;
- forward interest-rate agreements;
- interest-rate, currency and equity swaps;
- derivatives on commodities;
- any other instrument admitted to trading on a regulated market in a State in the European Union or, for which a request for admission to trading on such a market has been made;

### Financial instruments traded on Romanian regulated markets

**Shares** - Shares issued by joint stock companies are currently traded on the Bucharest Stock Exchange. Shares are traded on the Bucharest Stock Exchange on three tiers, differentiated by the specific conditions which the listed companies must comply with (minimum own funds, disclosure of information to investors, profits track record, corporate governance standards).

**Preference rights** - Preference rights are negotiable and tradable securities, incorporating the owner's right to subscribe with priority in a share capital increase, in correlation with the number of shares owned in the company at the date of subscription, in a determined period of time, at a price different from the price at which the shares shall be offered for subscription to the public.

**Allocation rights** – The allocation rights are negotiable and tradable securities, issued for a short period, that certify the right of its holder to receive a share at the moment of the registration with the central depository of the increase of the share capital.

**Units issued by investment funds/companies** - Investment fund/companies units are issued/redeemed by the fund/company at a price determined in accordance with the its net assets, less the subscription/redemption fee, at the date the subscription/redemption request was submitted by the investor.

**Debt instruments** - Currently in Romania, the regulatory framework allows for issuance of the following debt instruments:

- Corporate bonds, issued by joint stock companies;
- Mortgage bonds. Such financial instruments can be issued only by banks or mortgage banks and for a specific purpose, namely for refinancing the issuer's activity of granting mortgage loans. Mortgage bonds are issued on the basis of a cover pool of mortgage loans structured in accordance with the minimum eligibility criteria provided under the Mortgage Bond Law, over which the investors acquire a first rank guarantee and a legal preference right against any other creditor of the issuer.

- Asset backed bonds, issued by an SPV in effect of a securitisation transaction
- Municipal bonds, issued in accordance with Law no. 273/2006 regarding the local public finances.

### **Other types of financial instruments**

**Asset backed units** - SPVs organized as securitisation funds may issue asset backed units, which are participative securities representing an undivided ownership interest in a securitised pool of assets.

**Asset backed securities** – Securities of participative or obligatory type, issued in dematerialized form in a securitisation operation;

### **Market operations**

The legal regime of the operations with securities is provided by the Capital Market Law and Regulation no. 1/2006 issued by CNVM, regarding the issuers and the operations with securities, as amended.

Any transaction consisting of sale/purchase/subscription of securities fulfilling the criteria imposed by the law has to be performed through a public offer approved by CNVM, accompanied by an announcement.

The offer prospectus has to be drafted at least in Romanian language and has to contain at least the information provided as per the EC Regulation no. 809/2004, implementing EU Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

The prospectus will be approved by CNVM within 10 working from the registration of the request. Any request for supplementary information or for the modification of the information originally provided in the prospectus, by CNVM, or by the offeror, shall interrupt this term, which shall start again from the date when the said information or modification are provided.

After the approval of the prospectus by CNVM, the offeror makes it public by publishing an announcement offer which should contain the minimum information, as provided in CNVM'S regulations.

The public offer has to be intermediated by a financial investment services company and has to be performed within the time period established in the prospectus (not be less than 15 working days in case of a purchase public offer or 5 working days in case of a sale public offer and not more than 50 working days in case of a purchase public offer or 12 months in case of a sale public offer).

### **Public purchase offer**

The public purchase offer represents the offer initiated by a person to purchase securities, addressed to all of the securities' holders, made by means of public information, provided it is equally received by all securities' holders. The public purchase offer has to be performed through an authorized intermediary and for a minimum price established according to the conditions set forth by CNVM'S regulations.

### **Voluntary takeover offer**

According to the Capital Market Law, a person which intends to acquire shares representing more than 33% of the share capital of a traded company must perform a voluntary takeover offer.

In case the performance of a voluntary takeover offer is envisaged, the following requirements have to be observed:

- the operation requires the drafting of an offering circular and an offer announcement having the minimum content established according to CNVM regulations, both documents being submitted for approval to CNVM;
- after the approval of the preliminary announcement, this document has to be transmitted to the traded company and to the regulated market on which the shares issued by that company are traded;
- all the shareholders of the traded company are entitled to deposit their shares and the offeror shall be obliged to purchase them;
- certain restrictions are imposed to the board of directors of the traded company during the performance of the voluntary takeover offer.

The price at which the voluntary takeover offer shall be performed shall be at least equal to the highest of:

- the highest price of the shares paid by the offeror and its affiliates in the last 12 months prior to the application for authorization to CNVM;
- the weighted trading price of the shares in the regulated market in the last 12 months prior to the application;
- the price resulted from dividing the company's equity to the number of shares issued.

Any person is allowed to launch a counter offer for the same securities, provided that the counter offer refers to the same quantity of securities or the same participation level and the offered price is with at least 5% higher than the one initially offered.

### **Mandatory takeover offer**

In case where a person acquires directly or indirectly more than 33% of the voting rights of a company whose shares are traded on a regulated market, the respective person must undertake a takeover offer to be addressed to all shareholders of the respective company and for their entire holdings therein, no later than 2 months after the 33% threshold is reached. Until the mandatory takeover offer is performed, the voting rights of such shareholder are suspended and it is forbidden to acquire shares of the same issuer by other means.

As an exception to the mandatory takeover rule, the obligation referred to above in respect of the mandatory takeover offer to be performed in case the threshold of 33% of the traded company's share capital is exceeded, does not apply when the acquisition up to this threshold was performed (i) through a voluntary takeover offer addressed to all the shareholders of the traded company, (ii) during the privatization process, (iii) by the ministry of public finance or other authorized entities within the foreclosure proceedings, (iv) following the transfers between the mother company and its affiliates or between the affiliates of the same mother company.

The price at which the mandatory takeover offer shall be performed shall be at least equal to at least the highest price paid by the offeror or the persons acting in concert with it, within the last 12 months before the mandatory takeover offer. In case this is not applicable the price shall be the highest of:

- the weighted average shares' trade price for the 12 months prior to the mandatory takeover offer;
- the price resulted by dividing company's net assets' value (as per the latest financial statements) to the number of publicly traded shares and
- shares' value as valued by an expert in accordance with international valuation standards.