CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: CAPITAL MARKETS 2020

CEE
Legal Matters

www.ceelegalmatters.com

FOREWORD:

By Pawel J. Szaja, Partner, Shearman & Sterling

Although the number of IPOs and bond offerings in Central and Eastern Europe over the past few years remained significantly lower than in Western Europe, the capital markets in CEE have been playing an increasingly important role in providing capital to local businesses and an exit strategy for selling shareholders. The IPOs of Nova Ljubjanska Banka in Slovenia, Avast in the Czech Republic, and the Port of Tallinn in Estonia, as well as bond offerings in Lithuania, Ukraine, Turkey, Poland, and Romania (to name just a few) constituted some of the biggest offerings in Europe targeted at local, regional, and international investors, and are testament to the significant potential of this region. The need for accessible and efficient capital markets is also universally recognised by local and EU regulators, investors, and market participants.

This guide sets out an overview of key requirements applicable to IPOs and bond offerings across the region and has been prepared in cooperation with experienced professionals recognised as key capital markets practitioners in each jurisdiction. Our intention is to provide a user-friendly summary of the main listing requirements and IPO/bond process, described in practical terms and presented in a consistent manner across all countries. In addition, the guide highlights ongoing reporting and compliance requirements as well as corporate governance rules applicable to public companies.

While we focus primarily on the countries of CEE, we have also included a UK chapter to serve as a point of reference and to summarize the IPO/bond offering process for those companies in the region wishing to list on the London Stock Exchange (as, indeed, a number have in recent years). In 2019, 30% of all European IPO proceeds were derived from the offerings on LSE, and despite Brexit and the ongoing coronavirus pandemic, the UK continues to be the most liquid market and the LSE the most active stock exchange in Europe.

Going public or issuing a public bond is never a straightforward decision or easy process for first-time issuers. Regardless of the chosen listing venue, full preparation, and an expected timeline, it is a long journey – but one which will hopefully pay off at the end. We hope that this guide will address some of the most important considerations, help issuers and offerors avoid the unexpected, and make the road less bumpy.

The Editors:

- David Stuckey
david.stuckey@ceelm.com
- Radu Cotarcea
radu.cotarcea@ceelm.com

Letters to the Editors:

If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:
press@ceelm.com

TABLE OF CONTENTS

CHAPTER CONTENTS

AUSTRIA

By Christoph Moser, Partner, and Angelika Fischer, Associate, Weber & Co.

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

On the DCM side, in the past 2 to 3 years, the biggest DCM transactions consisted of two multi-tranche bond issuances by OMV AG, an integrated oil, gas and polymer company, with EUR 1 bn multi-tranche corporate bonds issued in each of 2018 and 2019, as well as a EUR 1.75 billion multi-tranche corporate bond issued in April 2020. Further, several other issuers issued benchmark size or sub-benchmark size corporate bonds in 2019 and 2020, including, inter alia, CA Immobilien Anlagen Aktiengesellschaft, voestalpine AG, IMMOFINANZ AG.

On the ECM side, in 2020, Swiss-listed but Austrian-based ams AG competed a substantial capital increase in an amount of EUR 1.65 billion, which served for the purpose of partially financing the acquisition of German OSRAM. In view of the Covid-19 pandemic, 62% of shares were placed among investors, whereas 38% were subscribed by the joint bookrunners. The transaction was the first notable ECM issue in Vienna in 2020. In 2019, three initial public offerings (IPOs) took place in Vienna, with Marionomed Biotech AG opening the field for other issuers in February, followed by Frequentis AG and Addiko Bank AG in July 2019.

2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

The Official Market (Amtlicher Handel) of the Vienna Stock Exchange (Wiener Börse) is the only regulated market in Austria in accordance with the Markets in Financial Instruments Directive (Directive 2014/65/EU (MiFID II). The Stock Exchange Act 2018 (Börsegesetz 2018) constitutes the primary framework for the admission of securities to a regulated market in Austria as well as for ongoing obligations of issuers of listed equity and debt instruments.

2.2. Non-regulated market

The Vienna Stock Exchange also operates the Vienna MTF (formerly the Third Market (Dritter Markt)), which is not a regulated market within the meaning of MiFID II but a multilateral trading facility. Securities are usually admitted to trading on the Vienna MTF if securities need to be listed but the extensive governance and disclosure framework applicable to the Official Market should be avoided. The Vienna MTF is governed by the Rules for the Operation of the Vienna MTF of the VSE. Some of the provisions and requirements set forth in the Stock Exchange Act 2018 do not apply to financial instruments traded on the Vienna MTF. However, the key provisions of the Regulation (EU) 596/2014 (Market Abuse Regulation (MAR)) (dissemination of inside information, directors' dealing reports and maintaining insider lists) apply also for issuers having securities admitted to trading on the Vienna MTF.

3. Key Listing Requirements

3.1. ECM

Official Market:

Any admission to the Official Market requires the publication of an approved prospectus (see below).

For a listing on the Official Market (i.e. a regulated market pursuant to MiFID II) in the standard market segment the minimum period of existence is three years (exceptions apply) and a minimum nominal share capital of EUR 1 million is required. The free float needs to meet 25% of the total nominal


Christoph Moser


Angelika Fischerkowska

WEBER & CO.
RECHTSANWÄLTE

value (par value shares) or 25% of the number of shares (par value shares) or 10% held by at least 50 different shareholders. From an accounting perspective, IFRS or internationally-recognized accounting standards for groups or also national standards for single entities must apply.

If issuers target the so-called "prime market" segment of the Vienna Stock Exchange, some further requirements on top of those for the standard market segment apply: a specialist and further market makers need to be appointed, the capitalization of the free float needs to exceed certain thresholds (a minimum of EUR 20 million for free float > 25% or a minimum of EUR 40 million for free float < 25%), publications have to be made in German and English, and the level of compliance with post-issuance on-going requirements is higher.

Vienna MTF:

If no regulated market segment pursuant to MiFID II is required, issuers can also choose the so-called "direct market" or "direct market plus", both of which are part of the Vienna MTF segment. No prospectus is required for inclusion to trading on the Vienna MTF.

These sub-segments of the Vienna MTF are seen as basic exchange-regulated segments for SME and young companies as an entry segment to capital markets. There are no or only minimum periods of existence (direct market: no minimum period, direct market plus: one year). The minimum share capital for a joint stock corporation is the mandatory minimum for such legal form in Austria, amounting to EUR 70,000. For the direct market plus, the market capitalization has to be approximately EUR 10 million as a minimum and a sufficient share diversification of at least 20 shareholders is requested by the Vienna Stock Exchange.

3.2. DCM

Also in relation to DCM listings, it has to be distinguished between a listing on the Official Market and an inclusion to trading on the Vienna MTF.

The admission of bonds to listing must be applied for by the issuer for the admission segment regulated by law (Official Market) along with a stock exchange member of the Vienna Stock Exchange (i.e., a credit institution being a member of the stock exchange). The minimum issue size for the Official Market is EUR 250,000; there is no such requirement for the Vienna MTF. Bonds are included in trading in the Vienna MTF upon the request of a credit institution, an investment firm, a law firm or the issuer itself.

When an issuance program is admitted to the Vienna Stock Exchange, no separate admission procedures are required for each of the individual bonds. Trading in the bonds may start as quickly as two days after the Vienna Stock Exchange has received the bond terms of the bonds issued under the program.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

Unless a prospectus exemption applies, an issuer will be required to publish an approved prospectus when conducting a public offer of securities in Austria or filing a request for the admission to trading of securities on the regulated market in Austria, namely, on the Official Market.

The key laws applicable to securities offerings in Austria are the Capital Markets Act 2019 (Kapitalmarktgesetz 2019) and the Stock Exchange Act 2018 (Börsegesetz 2018). The Prospectus Regulation (EU) 2017/1129 is the primary source governing the offering of securities, including in particular the prospectus obligation (publication of an approved prospectus for public offers of securities) as well as exemptions from the prospectus obligation. The Capital Markets Act 2019, which replaced the former version of the Austrian Capital Markets Act after the Prospectus Regulation entered into force on 21 July 2019, supplements the Prospectus Regulation and sets out the rules for the public offering of investments in Austria, which requires in principle the publication of an investment prospectus.

The Prospectus Regulation, the Capital Markets Act 2019 and

the Stock Exchange Act 2018 are primarily administered and enforced by the Austrian Financial Market Authority (Finanzmarktaufsichtsbehörde - FMA). Any public offer of securities or investments pursuant to the Prospectus Regulation or the Capital Markets Act 2019 is subject to a prospectus publication, either approved by the FMA or passported into Austria. If a listing of securities is sought, the prospectus, along with other documents, has to be filed with the Vienna Stock Exchange which operates the only regulated market in Austria: the Official Market. In addition, any prospectus for an offer of securities in Austria has to be filed with Oesterreichische Kontrollbank AG (OeKB). If the FMA approves a prospectus, the FMA directly procures the filing with OeKB.

4.2. Local market practice

See above.

4.3. Language of the prospectus for local and international offerings

The most common language used for prospectuses is English; however, a prospectus drafted only in German can be used for debt offerings. For ECM market practice will only accept an English prospectus, along with a German language translation of the summary in case Austrian retail investors are also targeted.

5. Prospectus Approval Process

5.1. Competent Regulator

The competent regulator for prospectuses in Austria is the Austrian Financial Market Authority (Finanzmarktaufsichtsbehörde - FMA).

5.2. Timelime, number of draft submissions, review and approval process

To commence a public offer, a prospectus must be drawn up in accordance with the Prospectus Regulation (public offer of securities) or the Capital Markets Act 2019 (public offer of investments), and filed with the FMA for approval.

The FMA must notify the issuer, the offeror or the entity asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within ten banking days of the filing of the prospectus. This time limit is reduced to five working days for a prospectus drawn up by frequent issuers referred to in Article 9, Paragraph 11 of the Prospectus Regulation. An extended review period of 20 banking days applies if the issuer's securities have not yet been admitted to trading on a regulated market. Usually, the first version submitted to the FMA is not complete and still includes placeholders for missing parts and information. The FMA provides comments on the submitted prospectus at the end of the review period. In such case, the issuer adds further missing information, addresses the FMA's comments and re-submits an amended prospectus version to the FMA. After that, the FMA again reverts within the respective review period. The review period of ten or twenty banking days applies to each prospectus version submitted. Accordingly, it is common practice to have several review rounds for debt prospectuses and even more for prospectuses for equity offerings.

Once approved, the prospectus must be published as soon as practicable, at least prior to the commencement of the offering. The publication may, inter alia, be undertaken electronically on the website of the issuer. Subsequent to the approval, the prospectus must also be provided to the Oesterreichische Kontrollbank AG (OeKB) as the registration office. The issuer must notify the New Issue Calendar (Emissionskalender) maintained by the OeKB for statistical purposes prior to commencement of the offering.

In practice, issuers usually file a preliminary prospectus without the final price and the final volume of securities offered as this information can be provided only after completion of the book-building process. The book-building process starts with investors submitting bids for purchasing the securities at prices that must be within a pre-defined offer price range or maximum limit. At the same time, marketing activities are usually undertaken by the issuer and the underwriters (eg, press conferences, road shows or advertising). The offer price is usually determined after the book-building phase. Finally, the issuer is obliged to file and publish a supplement to the preliminary prospectus including the final offer price, the gross proceeds as well as the net proceeds of the issues.

Sales of securities in a public offering are usually settled through a clearing system. The settlement process, whereby securities are delivered, usually against payment, is subject to the rules and procedures of the respective clearing system. In most issues, individual certification of the security is excluded. Therefore, global certificates are deposited with a securities clearing bank (e.g. Oesterreichische Kontrollbank AG). In certain cases, temporary and permanent global notes are used.

6. Listing Process

6.1. Timeline, process with the stock exchange

An application to list securities to the Official Market or to include the securities in trading on the Vienna MTF has to be filed with the Vienna Stock Exchange. For a listing on the Official Market the application for admission to listing of securities or of an issue programme must be made in writing by the issuer and signed by an exchange member of the Vienna Stock Exchange. The issuer must state, among other things, the type and denomination of the securities as well as the total amount of the issue to be admitted by stating the nominal value or in the case of no-par value securities, the expected market value and the number of securities. In the case of an application for admission to listing of an issue programme, the total amount of the maximum issue volume stated in the prospectus shall refer to all potential non-dividend paying securities. The filing with the Vienna Stock Exchange must be accompanied by, inter alia, the approved prospectus, an excerpt from the companies' register relating to the issuer not older than four weeks and proof of any other legal requirements for the issue of securities (eg, corporate resolutions).

The issuer and the Vienna Stock Exchange usually agree on the date of the public listing. The Vienna Stock Exchange is obliged to reach a decision on applications for admission of securities within ten weeks after submission.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

7.1.1. ACGC

The Austrian Corporate Governance Code (ACGC) was published by the Austrian Working Group on Corporate Governance, a group of private organizations and individuals in 2002 and was amended most recently in January 2020. The ACGC primarily applies to Austrian stock market-listed companies that undertake to adhere to its principles. The ACGC is based on statutory provisions of Austrian corporate law, securities law and capital markets law ("Legal Requirements", "L Rules"), which must be complied with. In addition, the ACGC contains rules considered to be a part of common international practice, such as the principles set out in the OECD Principles of Corporate Governance and the recommendations of the European Commission. Rules an issuer should comply with are so-called "Comply or Explain" rules ("C Rules"); reasons and explanations for deviations from C Rules must be provided in order to ensure compliance with the ACGC. In addition, the ACGC provides for voluntary rules seen as recommendations only, deviations of which do not require explanations ("Recommendation", "R Rules").

7.1.2. Management Board

As to the composition of the management board (Vorstand), which handles the day-to-day management of an Austrian joint stock company, the ACGC foresees that the management board shall be made up of several persons, with one member acting as the chairperson of the management board. Internal rules of procedure of the management board shall define

the distribution of responsibilities and the mode of cooperation between management board members.

The management board shall provide the supervisory board periodically and in a timely manner with comprehensive information on all relevant issues of business developments including an assessment of the risk situation and the risk management in place at the company and at group companies in which it has major shareholdings. If an event of major significance occurs, the management board shall immediately inform the chairperson of the supervisory board; furthermore, the supervisory board shall be immediately informed of any circumstances that may have a material impact on the profitability or liquidity of the company (special report). Ensuring that the supervisory board is supplied with sufficient information is a joint task of the management board and the supervisory board. Members of the boards and the staff members involved are obliged to maintain strict confidentiality.

The management board shall agree on the strategic direction of the company with the supervisory board and shall periodically discuss the progress made on implementing the strategy.

7.1.3. Supervisory Board

The supervisory board (Aufsichtsrat) of an Austrian joint stock company is responsible for overseeing the management board and shall provide support to the management board in governing the enterprise and, in particular, shall assist in making decisions of fundamental significance. The supervisory board appoints the members of the management board and has the right to terminate their employment. The supervisory board shall set up expert committees from among its members depending on the specific circumstances of the enterprise and the number of supervisory board members. These committees

shall serve to improve the efficiency of the work of the supervisory board and shall deal with complex issues. However, the supervisory board may discuss the issues of the committees with the entire supervisory board at its discretion. An audit committee must be set up. At least one person with special knowledge meeting the company's requirements and practical experience in the area of finance and accounting and reporting must belong to the audit committee (financial expert). The chairperson of the audit committee or financial expert may not be a person who in the past three years has served as a member of the management board or has discharged managerial duties or has served as auditor of the company or has signed an auditor's opinion or who is not independent and free of prejudice for any other reason. The audit committee shall be responsible for monitoring the accounting process and or monitoring the efficacy of the internal control and risk management system, the independence and the activities of the auditor of the financial statements as well as for the approval of non-audit services.

7.3. Any other ESG considerations

Not applicable.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

Price stabilisation in connection with an offering of securities, for example, by means of overallotment or the exercise of greenshoe options, may contravene the restrictions on market manipulation set forth in the Market Abuse Regulation 2014/596/EU (MAR). Pursuant to Article 5 of the MAR, price stabilization is permitted provided that such stabilization measures are carried out in accordance with Commission Regulation (EU) 1052/2016 with regard to Regulatory Technical Standards (the RTS Regulation). To benefit from the exemption under the RTS Regulation, some key obligations have to be complied with.

Issuers, offerors or entities undertaking stabilization have to notify details of all stabilization transactions to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of such transaction. Within one week of the end of the stabilization period, issuers, offerors or entities undertaking stabilization have to adequately publicly disclose the following: whether stabilization was undertaken; the date at which stabilization started; the date at which stabilization last occurred; the price range within which stabilization was carried out, for each of the dates during which stabilization transactions were carried out; and the trading venues on which the stabilization transactions were carried out, where applicable.

When conducting stabilization measures and exercising an overallotment facility or green shoe option outside the permitted frame of the RTS Regulation, although the European Securities and Markets Authority has indicated that stabilization will not necessarily be regarded as abusive solely because it falls outside the MAR and the RTS Regulation, a risk remains that the Financial Market Authority will consider those measures as market manipulation. This may lead to criminal sanctions, or administrative fines of up to €5 million or up to three times the amount of the benefit gained, taking into account any losses avoided due to the infringement committed, provided that benefit can be expressed in figures.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

Stock lending transactions are considered to be transfers of ownership of the underlying securities. Therefore, any transfer of shares by means of stock lending transactions is subject to reporting requirements provided for in terms of major shareholding disclosure as well as potential takeover law implications of any share transfer.

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

See above.

9. Ongoing Reporting Obligations (Life as a Public Company)

Upon listing on the Official Market of the Vienna Stock Exchange, issuers become subject to ongoing reporting requirements set forth in the Stock Exchange Act 2018. Provisions on the reporting obligations are harmonised as a result of the implementation of Directive 2004/109/EC as amended by Directive 2013/50/EU (Transparency Directive), including major shareholding disclosure, ad hoc disclosure and mandatory publications of financial information.

Further, in case of admission of securities to trading on the Vienna multilateral trading facility (MTF), the issuer will become subject to key Market Abuse Regulation 2014/596/EU provisions (dissemination of inside information, directors' dealing reports, maintaining of insider lists, prohibition of

market manipulation and prohibition of insider dealing and of unlawful disclosure of inside information) if he has submitted an application for inclusion in trading of the financial instrument or has approved it.

9.1. Annual and interim financials

Issuers of debt and equity securities must disclose annual financial statements no later than four months after the close of the financial year and half-year reports no later than three months after the close of the reporting period, and shall ensure that this report is available to the public for at least 10 years. Moreover, issuers whose shares are listed in the Vienna Stock Exchange's prime market segment must publish their half-year report no later than two months after the close of the reporting period. Since February 2019, companies listed on the Vienna Stock Exchange's prime market segment may choose whether to publish quarterly reports for the first and third quarters and in what form.

Annual financial reports for financial years starting from 1 January 2020 are required to be published in the European Single Electronic Format. An overview about the planned process for the acceptance of the technical standards on the reporting format in which issuers should prepare their annual financial reports is currently provided by the draft Regulatory Technical Standards (RTS).

9.2. Ad hoc disclosures

Pursuant to Article 17 of the Market Abuse Regulation (Regulation 2014/596/EU), issuers of financial instruments shall inform the public as soon as possible of inside information that directly concerns that issuer. Inside Information according to Article 7 of the Market Abuse Regulation is any information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

The issuer must ensure that the inside information is made public in a manner that enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the officially appointed mechanism referred to in Article 21 of Directive 2013/50/EU. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly.

Inside information has to be disclosed ad hoc with the intention of an EU-wide distribution via certain channels, including Reuters, Bloomberg and Dow Jones Newswire. Any major changes with respect to inside information, which has already been disclosed, must be disseminated immediately after any such change takes place.

In certain cases, an issuer possessing inside information is entitled to postpone the ad-hoc disclosure to protect its justified interests. Issuers are permitted to delay disclosure of inside information to protect their legitimate interests, as long as the public is not misled and confidentiality can be maintained (Article 17 para 4 of the Market Abuse Regulation). In such case, the issuer is obliged to ensure confidentiality. The FMA has to be notified immediately after the disclosure of inside information via email. To preserve the stability of the financial system, an issuer that is a credit institution or a financial institution, may, on its own responsibility, delay the public disclosure of inside information, under certain circumstances.

The Authors:

■ Christoph Moser
Partner
c.moser@weber.co.at
+43 1 4272040

■ Angelika Fischer
Associate
a.fischer@weber.co.at
+43 1 4272044

BOSNIA & HERZEGOVINA

By Amina Djugum, Independent attorney at law in cooperation with Karanovic & Partners

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

The capital market in Bosnia and Herzegovina ("BH") is still in the development process and there is still more to do in order to have a reputable capital market. In BH, there are currently two stock exchanges, the Sarajevo Stock Exchange ("SASE") and the Banjaluka Stock Exchange ("BLSE"), both established in 2001. Prior to that, the BH did not have a market-based economy but its economy was governed by the socialist principles.

In 2019, the SASE recorded a total turnover in approx. amount of EUR 220 million. Through 4,562 transactions, a total of 19,580,404 securities were traded. Using the SASE infrastructure, eight public offers were successfully completed in the 2019, totalling approx. EUR 116 million.

In the same period, BLSE recorded a total turnover in the amount of approx. EUR 240 million. On the BLSE during 2019, the most traded shares on the ECM market were Telekom Srpske shares. On the BLSE, bonds and treasury bills in the primary and secondary markets accounted for 84% of the total turnover. The most traded securities are RS bonds which means that the longstanding trend of shifting investors' focus from shares to bonds continued.

2. Overview of the local Stock Exchange and listing segments (Regulated and Non-regulated markets)

The capital market in BH is primarily regulated by the FBH Securities Market Law and related by-laws ("FBH Law") applicable on the FBH territory and by the RS Securities Market Law and the related by-laws ("RS Law") applicable on the RS territory. The regulator in FBH is the FBH Securities Commission ("FBH Commission"), and in RS the regulator is the RS Securities Commission ("RS Commission").

2.1. Listing segments (markets)

The Stock Market in FBH is structured as:

1. A Regulated market:

- Official Stock Exchange Market ("FBH Market") which consist of:
  - Companies shares market,
  - Investment fund shares markets,
  - Bonds market, and
  - Market for other securities.

- Free Market ("FBH Free Market") which consists of:
  - Companies shares market, divided into the following sub-segments:
    - Free-market sub-segment 1 (ST1),
    - Free market sub-segment 2 (ST2),
    - Free-market sub-segment 3 (ST3), and
    - Sub-segment for shares of the issuer undergoing bankruptcy proceedings
  - Bonds market
  - Market for other securities.

2. An Over-the counter ("OTC") market.

The FBH Market is the place where "blue-chips" are being traded. In order to be listed at this market segment, an issuer has to meet certain requirements, as listed below.

The FBH Free market is the segment of the Stock Market that arranges the connection between the supply and demand aimed at trading with securities that were not listed at the Stock Market. TheST1 sub-segment lists the shares of the 30 most liquid issuers of the Free Market which also have a free-float factor of at least 25% or alternatively, have a free-float

karanovic/partners

market capitalization available for the investors of at least approx. EUR 1 million. These issuers regularly fulfil their reporting obligations. Shares are initially listed on the sub-segment ST2, where they stay until they fulfil the criteria for transfer to another sub-segment. Shares of issuers which fulfil their reporting requirements irregularly or not at all, are transferred to the ST3 sub-segment. Investing in these shares is considered risky, given the fact that no or limited financial information about those issuers exist and that therefore an (accurate) market price cannot be defined. Investors are urged to pay increased attention when trading in those securities. Shares of an issuer are transferred from ST2 to ST3 in case that the issuer ignores a written warning sent to him seven days after the proposed deadline, and after a temporary suspension of trading in his shares as an additional measure. The trading suspension in this case is used to warn possible investors about dangers of investing in these shares.

The return of an issuer from ST3 to ST2 is only possible if all following conditions are met:

- The issuer applied for the pre-segmentation back to ST2,
- The issuer has signed an agreement regarding the publication of his disclosure reports with SASE, and
- The issuer delivers the missing reports for the last three (3) business years.

The Stock Market in RS is structured as:

- Official Stock Exchange Market ("RS Market") which comprises the following segments:
  - Prime Shares Market - List A,
  - Standard Shares Market - List B,
  - Starting Shares Market – List C,
  - Closed Investment Funds,
  - Open Investment Funds,
  - Bonds and other debt securities,
  - EU Connect Market, and , and
  - other securities.
- The Free Market ("RS Free Market") comprises the following segments:
  - Shares,
  - Closed Investment Funds,
  - Open Investment Funds,
  - Bonds,
  - Share Packages,
  - Shares of Issuers in Delay with Financial Reporting;
  - Shares of Issuers undergoing Bankruptcy or Liquidation Procedure, and
  - other securities.

The RS Market is established to perform activities on connecting supply and demand in securities trade; to determine and publish information on demand, supply, price lists and any other data on securities, i.e. for organized, transparent, liquid and efficient trading in securities and provision of relevant information, in compliance with the law and other regulations.

The RS Free Market means an organized securities market where the securities not listed on the RS Market are being traded.

The RS Market is an important part of the market where, in addition to the general conditions, it is necessary to meet specific criteria related to the size of capital, ownership dispersion, business performance and objectivity of financial reporting. Considering the current situation regarding the capital market in RS, the RS Free Market is emerging as the segment that comprises most of the securities that arise in privatization processes since the issuer has to fulfil only the general conditions related to securities in order to be issue securities on the RS Free Market. The RS Free Market also consist of the securities which are excluded from the RS market in cases where such securities are not withdraw completely.

3. Key Listing Requirements

3.1. FBH

In accordance with the Rules of SASE an unlimited number of transferable securities which are fully paid, and which meet the following criteria can be listed on the FBH Market:

3.1.1. for shares:

- the issuer is a joint stock company established and operating in accordance with the regulations of the FBH,
- the sum of the share capital and the capital reserves of the issuer including the profit or loss in the previous fiscal year amounts to a minimum of approx. EUR 22 million,
- Financial reports of the issuer have to be audited and

available for minimum of 3 years,

- at least 25% of the share class that stands as the subject of the listing request needs to be issued by a public offer, unless the market is operating satisfactorily with a lower percentage, in which case the approval of the Commission is required,
- minimum share class size (considered to be the book-keeping value of share if the securities are not listed in organized trading, otherwise market capitalization) in the amount of approx. EUR 1 million, and
- share class owners - at least 150.

3.1.2. for bonds:

- the issuer is a joint stock company established and operating in accordance with the regulations of the FBH;
- the sum of the share capital and the capital reserves of the issuer, including the profit or loss in the previous fiscal year amounts to a minimum of EUR 2 million,
- Financial reports of the issuer have to be audited and available for minimum of 3 years, and
- the minimum nominal value of the bond series must be approx. EUR 1,5 million.

3.1.3. for other securities:

- the issuer is a joint stock company established and operating in accordance with the regulations of the FBH;
- the sum of the capital stock and the capital reserves of the issuer including the profit or loss in the previous fiscal year amounts to minimum of approx. EUR 2 million, and
- Financial reports of the issuer have to be audited and available for minimum of 3 years.

A security can be listed on the FBH Market even if it does not meet the criteria of the minimum value of class / series of securities or the number of owners of securities if those differences are not important or if there is a reasonable expectation that these requirements will be met shortly upon listing.

The FBH Commission can approve the listing of securities of a newly established company incorporated by merger, in which case it will be considered that all requirements have been duly met, regardless of the fact that the securities of at least one merged or one divided company were listed on the FBH Market prior to the restructuring procedure.

3.2. RS

In order to be listed on the RS Market, the securities must fulfil the general following conditions:

- that they are fully paid in,
- that they are freely transferable,
- that they are issued in non-materialized form.

3.2.1 for shares

The shares will be listed on the List A of the RS Market if the issuer (in addition to the above listed general conditions), fulfils the following special criteria:

- Three years of operation,
- shares book value, or market capitalization if the shares have already been listed in the organized market, is at least EUR 20 million for ordinary shares and EUR 2.5 million for preference shares
- the free float is at least 15% or EUR 5 million,
- the minimum number of shareholders is 300,
- issuer has adopted a own written code of conduct or accepted the standards of corporate governance passed by the RS Commission,
- issuer has an Internet pages where the information on an issuer is available in English language as well,
- audited annual financial statements have been prepared in accordance with law – with unqualified or qualified auditor's opinion,
- shares have been traded at least on 30% of trading days for the last six months with average daily turnover of at least EUR 2,500,
- issuer has not continually reported losses for the last three business years according to audited financial statements.

When determining the percentage of the shares in public ownership, the following securities shall not be considered:

- shares owned by the Management Board of the issuer,
- shares owned by those shareholders holding more than 10% of shares.

When determining the percentage of shares in public ownership, the shares owned by investment funds will not deducted. Shares may be listed on the List A, even if it fails to comply with one of the special conditions, provided such failure is not deemed as a material discrepancy or if there are reasonable expectations that such a requirement will be met shortly after the security has been listed.

The RS Commission may also list on the List A of the RS Market, the securities of a new joint stock company that has been established by a merger of two or more companies, or by the division of an existing company if the shares of any of

those companies have already been listed on the official Stock Exchange market.

In order to be included on the List B of the RS market, the following conditions must be fulfilled:

- Two years of operation,
- Audited financial statements,
- shares book value, or market capitalization if the shares have already been listed in the organized market, is at least EUR 5 million for ordinary shares and EUR 500,000.00 for preference shares,
- the free float is at least 10% or EUR 500,000.00
- The minimum percentage of the stock in public ownership is 15%,
- the minimum number of shareholders is 200.
- issuer has adopted a own written code of conduct or accepted the standards of corporate governance passed by the RS Commission

On the List C shares of issuers that do not fulfil or ceased to fulfil listing criteria for the List A or List B shall be listed. In order to be included on the List C of the RS market, the following conditions must be fulfilled:

- two years of operation,
- audited annual financial statements have been prepared in accordance with law – with unqualified or qualified auditor's opinion,
- shares book value, or market capitalization if the shares have already been listed in the organized market, is at least EUR 500,000.00,
- the free float is at least 10% or EUR 250,000,
- the minimum number of shareholders is 10,
- issuer has adopted own written code of conduct or accepted the standards of corporate governance passed by the RS Commission.

On the Market for Securities of the issuers from the EU shares, bonds and depository receipts shall be listed. Special criteria for the listing on EU Connect Market are:

- that issuer has already listed shares on the Stock Exchange from the EU or that the issuer is a subsidiary of the company that has already listed shares on the Stock Exchange from the EU,
- that the issuer is seated in EU country,
- that the value of listing is at least EUR 500.000,
- that issuer has audited annual financial statements with unqualified or qualified auditor's opinion,
- that issuer has at least 10 shareholders,
- that issuer has the prospectus which is approved by the RS Commission and
- to have written agreement with the listing sponsor while it is listed on the Stock Exchange.

3.2.2. Bonds and other securities

Bonds and other long- and short-term debt securities can be listed on the RS Market, if in addition to general criteria, the insurer have to fulfil the following special criteria':

- Two years of operation;
- Audited financial statements;
- The total nominal value of the listing amounts to EUR 500,000.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

The prospectus is governed by the FBH and the RS Securities Law and related by-laws. The publication of the prospectus is a mandatory step in the process of issuing securities by public offering.

4.2. Local market practice

4.2.1. FBH

Issuer in the sense of FBH Law is a legal entity that, by virtue of the law, may issue securities for the purpose of raising funds and which, has obligations specified in the security towards the owners.

The issuer is obliged to prepare a prospectus which should contain enough information for the investor to evaluate the status of the assets, liabilities, losses and profits, financial position of the issuer, and the rights contained in the securities to which the prospectus relates. The prospectus must be approved by the FBH Commission.

The prospectus used in the public offering of shares must contain information on:

- the issuer;
- the securities that are the subject of the issue (indication of the type, class, number of and the total number and rights they contain),
- the price or method of determining the price of the secu-

rities, and a description of the manner in which the securities are distributed,
- the place, manner, term and time of registration and payment,
- the agent and the sponsor, if the emission is performed with the mediation, and the guarantor if the issuance is guaranteed,
- investment risk and risk causes,
- pre-emptive rights and the proxies, if applicable,
- restrictions on purchases, the scope of the restrictions and the persons concerned, if applicable;
- the activities and business operations of the issuer,
- authorized representative of the issuer,
- a signed statement of the issuer's authorized representative;
- the depositary bank of the issuer, and
- investment statement.

The prospectus for the issuance of debt securities must also contain statements on the calculation of interest, payment of interest, delay with payment of interest, consequences in case of delay with payment of principal and interest and possible early redemption of debt securities.

In case the bonds that are being issued give the right to exchange for other securities (conversion) this must be stated in the prospectus as well.

In the closed issuance of shares, the issuer prepares the abbreviated prospectus. The FBH Commission approves the listing on the basis of the submitted application and the abbreviated prospectus and other documentation but does not give an opinion on the proposed investment, nor is it responsible for the completeness and accuracy of the information contained in the abbreviated prospectus.

4.2.2. RS

When issuing new securities in RS with public offer the issuer is obliged to prepare and publish the prospectus. In case of a public offer, the issuer may publish the preliminary prospectus with the aim to feel the interest of the investors.

The prospectus and the preliminary prospectus must contain complete, accurate and objective information about the assets and liabilities, financial position, purpose of raising funds, risk factors, and rights the securities provide on the basis of which the potential investor can objectively assess the investment risks and make an investment decision. The preliminary prospectus and prospectus shall be published upon approval by the RS Commission.

The accuracy and completeness of the information published in the preliminary prospectus are the responsibility of the issuer, the authorized persons of the issuer and the auditor.

The prospectus must contain the following:

- information on the issuer,
- information on the securities that are the subject of the issue,
- information about the issuer's business operations,
- information on the place, manner, term and time of subscription and payment of securities,
- a statement on investment,
- information on the authorized representatives of the issuer,
- information on the issuance guarantor,
- statement of the authorized representatives of the issuer, and
- the data and signature of the agent of issuance, if engaged.

The preliminary prospectus contains all above mentioned information, except for information on the place, method, term and time of subscription and payment of securities.

4.3. Language of the prospectus for local and international offerings

Local Stock Exchange regulations do not differentiate between domestic and international securities offerings in terms of language. The prospectus should be submitted in one of the official languages of BH (Bosnian/Serbian/Croatian), as well as in English if the issuer has more than 100 shareholders - applicable in FBH, while in RS the prospectus will be delivered in English only if it relates to List A and investment funds.

5. Prospectus Approval Process

5.1. Competent Regulator

5.1.1. FBH Commission

Functioning under a number of local pieces of legislation, the

mission of the FBH Commission is: (i) to support the establishment and the development of the capital market; (ii) to regulate, maintain and promote a fair, secure and transparent capital market; (iii) to protect and promote investor protection; to build trust in the efficiency and fairness of the local capital market.

Based on the provisions of the local legislation there is a basic division of jurisdiction between the FBH Commission and the SASE. The FBH Commission may freely inspect books, letters and other documents of brokerage firms and banks, referring to dealing in securities. It may also authorise the SASE or another legal person to carry out individual tasks related to monitoring.

The monitoring of SASE focuses mainly on detection of members' malpractices such as insider trading, price manipulation, dishonest applications and cancellations of trades, front running, and on finding acts contrary to good business practice.

5.1.2. RS Commission

Established under the local securities legislation, the RS Commission is the financial services regulator. It is a permanent and independent legal entity, which through regulation, promotion and monitoring shall attempt to achieve its primary objectives of: supporting the establishment and the development of the capital market; the efficient functioning of a regulated, fair, open securities market in order to gain the confidence of all market participants; protection of investor and other market participants' interests. Timeline, number of draft submissions, review and approval process

5.2. Timeline, number of draft submissions, review and approval process

The procedure of approval of the prospectus is performed within the procedure of approval of the request for emission of securities ("Request"). The Request must be submitted within 90 days as of the date of issuance of the decision on emission to the FBH Securitas Commission. The Request must be submitted 60 days before the date determined by the issuer as the date for registration of the securities. Together with the Request the following documentation must be delivered:

- the decision on emission;
- the Articles of Association;
- excerpt from the court registry of companies;
- an agreement between the issuer and the depositary bank;
- agreement between the issuer and the registry of issuers;
- financial and audit reports in accordance;
- the proposal of the prospectus;
- proof of payment of the fee;
- the opinion or consent of the body competent to supervise the operations of financial organizations, if the issuer is a financial organization;
- other documents as requested by the FBH Commission.

The FBH Commission must decide on the Request within 60 days as of the date of the receipt of the Request. With the decision on approval of the Request, the FBH Commission confirms that the issuer acted in accordance with the law and other regulations and that the prospectus contains all necessary elements.

RS

The request for approval of the prospectus is submitted by the issuer or stockbroker on behalf and for the account of the issuer. Together with the prospectus, the issuer must submit:

- the proposal of the prospectus;
- the decision of the competent authority to include a particular security in the trading system on the RS Market;
- the Memorandum of Association;
- excerpt from the court registry of companies,
- annual financial statements (individual and consolidated if prepared) for the preceding two years and the corresponding reports of the certified auditor, and the last periodic statement if the prospectus approval application is submitted after 31 July of the current year,
- the financial statement and the corresponding report of the certified auditor for a period shorter than the period specified in previous item, if the issuer operates for a shorter period,
- the relevant document of the RS Commission on the assignment of an ISIN and CFI number,
- proof of payment of the fee.

In case that the issuer requests approval of the unique prospectus, both for the issuance of the securities and for listing of the securities to the RS market, the following documentation must be submitted, together with the prospectus proposal:

- the decision on issuance of the securities,
- the minutes of the meeting of the competent body at which the decision on the issue was made, with the list of members present, and if the decision on the issue was made by the shareholders assembly, the minutes should contain the

list of present and represented shareholders, as well as the individual number of votes used in determining the quorum for the work,

- the decision of the competent authority to include a particular security in the trading system on the RS Market,
- Memorandum of Association,
- excerpt from the court registry of companies,
- the agreement between the issuer and the bank on the opening of a temporary account for the deposit of payments based on the purchase of the issued securities;
- annual financial statements (individual and consolidated if prepared) for the preceding two years and the corresponding reports of the certified auditor, and the last periodic statement if the prospectus approval application is submitted after 31 July of the current year;
- the financial statement and the corresponding report of the certified auditor for a period shorter than the period specified in previous item, if the issuer operates for a shorter period,
- confirmation of the authorized bank for payment operations on the balance of the issuer's business accounts for the last 60 days until the day of application (liquidity certificate);
- the agreement concluded between the issuer and the stockbroker for the purpose of sale of the issued securities on the RS Market,
- the agreement concluded between the issuer and the agent, the transferee or the guarantor of the issuer, if such agreement is concluded,
- the relevant document of the RS Commission on the assignment of an ISIN and CFI, and
- proof of payment of the fee.

If the issuer is a bank or other financial organization, the written approval of the competent regulatory authority for the issuance in question shall be also delivered.

The foreign issuer, when requesting the approval of the prospectus, besides the above listed documents, must deliver the written confirmation from the its country's competent authority that the securities for which the request is submitted are the same class as the securities offered in the issuer's home country, based on the approved prospectus, that is, traded on the regulated market in the home country.

6. Listing Process

a. Timeline, process with the stock exchange

FBH

The procedure for issuance of the securities in the FBH Market is initiated based on the request by the issuer or by the authorized person together with the following documents:

- copy of the decision on registration of the issuer at the FBH Commission,
- Article of Association,
- copy of audit reports for the last three business years,
- the proof of registration of securities,
- list of the top ten security owners and their shares,
- list of securities in the ownership of the issuer's Managements board,
- the prospectus,
- evidence on payment of fee.

Upon the submission of the request, the FBH Commission must review whether all assumptions for the decision-making on the request are completed within seven days:

- if the request was submitted by an authorized individual,
- if the request template comprises prescribed information,
- if attachments listed above are attached to the request template.

It the request is complete, the FBH Commission within 15 days initiates the procedure for detailed examination of the request. The decision on the approval or rejection of issuance of securities is delivered to the applicant within five days after the decision. The decision should contain an introduction, the enacting terms, explanation and legal remedy.

The Rules of BLSE stipulate the following:

The procedure for listing on the BLSE shall start upon a request by the issuer or a person authorized by the issuer. The application form shall be accompanied by:

- document of registration securities in the registry of RS Commission,
- prospectus in electronic form,
- Articles of Association in electronic form,
- excerpt from the court register certified by the issuer,
- audited financial statements in electronic form,
- report of the percentage of securities held by the management and supervisory body of the issuer,
- a list of authorized people for communication with the Exchange,
- fee payment evidence,
- written code of conduct or decision to accept the standards of corporate governance passed by the RS Commission.

The RS Commission shall decide on the listing on the Stock

Exchange within 30 days after the application is submitted. The RS Commission may reject application for listing if:

- the issuer does not fulfil listing requirements,
- the issuer has not submitted the required documentation,
- there are circumstances that could threaten the interests of investors.

When the RS Commission determines that the requirements for listing have been fulfilled, it shall decide to list the securities to the Stock Exchange.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

7.1.1. FBH:

The FBH Company Law, which governs the corporate governance, stipulates that joint stock company organizes its work through the following corporate bodies:

- General Assembly,
- Management, and
- Supervisory Board.

According to the FBH Company Law, the Management of a joint stock company organizes the work and manages the business, represents the company and is responsible for the legality of the business. The Management of a joint stock company consists of a director or a director and one or more executive directors. The procedure for election, appointment, dismissal, composition and decision-making of the Management shall be determined by the company's Articles of Association.

The director acts as a chairman of the Management, manages the business, represents the joint stock company and is responsible for the legality of the business. The Management is appointed for the period of four years. The rights and obligations between the members of the management board and the company are regulated by a special agreement.

Since they fall into the category of persons with special duties towards a joint stock company, the director and the executive directors are obliged to report to the Supervisory Board any direct or indirect interest in the legal entity with which the joint stock company has or intends to enter into business relations. In the event that the director resigns, he / she shall continue to perform his / her duties within the notice period set by the Supervisory Board, and which may not be less than 30 days.

The Supervisory Board consists of the president and at least two members appointed and dismissed by the Company' Assembly, whereby the total number of Supervisory Board members must be odd. The members of the Supervisory Board are appointed at the same time for a period of four years, but after the expiration of a period of two years from the date of appointment, the Company Assembly votes on confidence of the Supervisory Board.

The Supervisory Board is in charge for supervision of the business of the joint stock company, supervises the Management Board, appoints the Management Board and the Secretary of the company, submits the annual report to the Company Assembly etc.

Of course, a person who has been convicted of a criminal offense and an offense incompatible with the duty of the duty of Supervisory Board member, may not be appointed, five years from the date of the final verdict, excluding the time of imprisonment, nor by a person who is prohibited by the court's judgment from performing activities as a Supervisory Board member.

The joint stock company has the Secretary appointed by the Supervisory Board. The Secretary is responsible for keeping the minutes of the Company Assembly and the documents determined by the FBH Company Law and the Articles of Association. The Secretary is also authorized to implement the decision of the Company Assembly, Supervisory Board and the Management Board.

Additionally, the Audit Committee is formed in the joint stock company with at least three members. The Audit Committee is obliged to audit the semi-annual and annual accounts and at the same time to control the compliance of the Company's business operations and the functioning of the Company's bodies in line with the FBH Company Law, other relevant regulations and basic principles of corporate governance, and to report to the Assembly and the Supervisory Board at the latest eight days after the completion of the audit.

7.1.2. RS:

RS Company Law stipulates that open joint stock company organizes its work through the following corporate bodies:

- General Assembly;

- Management Board, and
- Supervisory Board.

The number of members Management Board of an open joint stock company is determined by the Memorandum of Association. The Management Board has at least three members and a maximum of 15 members. These members are appointed for a maximum term of five years with the possibility of re-election, but their engagement may be terminated at each annual meeting of General Assembly if the annual business report is not adopted.

Open joint stock companies whose shares are listed on the official stock market must have a majority of non-executive members of the Management Board, of which at least two are independent members.

An independent member of Management Board is a person who, alone or with family members, in the two previous years:

- was not employed by the company,
- did not paid to the company or received from the company payments of more than EUR 10,0001,
- does not own more than 10% of the shares or interests, directly or indirectly, in the entity who paid or received from the company an amount greater than EUR 10,000,
- does not directly or indirectly (including other related parties within the meaning of this Law) own the shares of the company representing more than 10% of the share capital of the company,
- was not a director of the company or a member of the Management Board, unless he / she was an independent member and,
- was not an independent auditor of the company.

The chairman of the Management Board is elected by the members, i.e. by a majority of the total number, unless a Memorandum of Association or Articles of Association specifies a different majority.

The company may have one or more executive directors which act as representatives of the company. In case there are more than one executive directors, the Management Board appoints one executive director as General Director and the Executive Board is being formed. The General Director represents the company. The General Director of a joint stock company convenes and chairs the Executive Board, organizes its work and takes care of keeping minutes of those sessions.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

The respective laws contain limited provisions on underwriting - it recognizes the underwriter as an investment company which provides underwriting services in relation to placing of financial instruments on the firm commitment basis.

While over-allotment is not clearly regulated under BH laws, it could be deemed as possible and available, since there is no explicit ban with that respect.

8.2. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Stabilisation is not defined by the respective BH laws as they do not contain adequate provisions related to the stabilisation. However, stabilisation is listed as a section of a prospectus but there are no additional definitions and terms of the stabilisation in that respect.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

In accordance with FBH Law, the issuer is obliged to submit to the SASE the following reports by the 30 April of the current year for the previous year:

- a semi-annual and annual reports on its business operations,
- reports on events that significantly affect financial business of the issuer,
- prospect of any new security issued,
- reports on the results of each new public offer of securities.

In cases when the accounting standards or other regulation requests drafting of consolidated accounting reports the following information must be included in the annual report:

- The name of companies included in the consolidation;
- Auditor opinion on consolidation accounting report,
- Consolidated Balance Sheet, Consolidated Income Statement and Consolidated Statement of Cash Flows on the same items as those indicated in the Audit Report or Prospectus, respectively, for the business year to which the annual report relates and for the previous financial year.

The semi-annual and annual report must contain the following

information on:

- members of the Supervisory Board and the Management Board and the number of shares they own;
- shareholders holding more than 5% of the voting shares;
- legal entities in which the issuer holds more than 10% of the shares;
- representative offices of the issuer;
- the Shareholders meeting held during the reporting period;
- balance sheet and income statement at the end of the period;
- the use of capital acquired through the previous issue of securities through a public offering;
- decrease or increase of the issuer's assets by more than 10% compared to the situation in the previous report, with the facts that influenced it;
- reduction or increase of the incompetence or loss of the issuer by more than 10% compared to the situation in the previous report, with the facts that affected on it;
- transactions in assets exceeding 10% of the value of the total assets of the issuer at the date of the transaction;
- the issue of securities performed during the reporting period indicating the type and class of securities; and

Issuers whose securities are listed are obliged to submit to the SASE quarterly financial reports on their operations within 30 days after the end of the accounting period. The complete report of the external auditor on the performed audit of the annual report on the Issuer's business operations shall be submitted electronically by the date of the general meeting of the issuer at which the report will be considered, and not later than six months after the end of the business year.

The events that significantly affect financial business of the issuer are:

- reorganization of the issuer and related parties;
- the decision to issue and any initiated, suspended or terminated issue of the securities;
- the acquisition of more than 5% of the voting shares of a single shareholder;
- payment of financial liabilities to shareholders;
- the decision to convene a Shareholders meeting;
- change of auditor;
- a one-time increase or decrease of the issuer's assets by more than 10%; and
- a one-time transaction in the amount exceeding 10% of the value of the total assets of the issuer.

The RS Law provides an obligation to the issuer to submit the following reports:

- a semi-annual and annual reports;
- reports on events that significantly affect financial business of the issuer;
- the audit report if applicable;

Furthermore, in case an issuer fulfils the following conditions: a) issues shares by public offering, b) has more than 100 shareholders, c) has a share capital of at least EUR 5 million, and d) has a total annual income of at least EUR 5 million, additional following reports are to be submitted:

- quarterly financial statements within 30 days of the last day of the quarter,
- annual financial and business reports, including consolidated financial statements within 60 days after the end of the business year,
- the audit report within 5 days from the date of receipt of that report.

Additionally, the events that affect the financial business year of the issuer in RS are:

- the decision to convene a shareholders meeting,
- change of name or reorganization of the issuer,
- proposals for decisions regarding status changes merger and division), and a change in the principal activity of the issuer,
- establishment of a subsidiary or joint venture in which the issuer would participate with more than 10% of the total value of its fixed assets,
- sale, transfer or pledge of fixed assets in excess of 10% of the total fixed value of the property,
- borrowing that exceeds 10% of the total assets of the issuer,
- conclusion of agreements that could possibly lead to the increase in the value of revenue or expense in excess of 10% of the value of revenue or expenses of the issuer in the current accounting period,
- initiation of liquidation or bankruptcy proceedings,
- proceedings before the courts and other state bodies, with an assessment of the outcome of the proceedings,
- obtaining or losing a concession, patent, license or similar right,
- business events that result in a decrease or increase in total assets as a percentage greater than 10% of its value,
- the decision to issue securities, except in the case of a public offering,
- the decision to acquire its own shares,
- resignation or dismissal of members of the Management Board, Supervisory Board and auditors,

- the final judgment of the court against members of the Management Board and the Supervisory Board,
- development plans and their impact on the economic and social position of employees,
- related party transactions,
- measures to improve working conditions and changes in employee earnings,
- the decision to allocate retained earnings and
- other decisions of the issuer's shareholders assembly, and other events that may have a significant impact on the value of the securities of the issuer.

9.2. Ad hoc disclosures

9.2.1. FBH

The issuer shall, as soon as possible but no later than eight days after the occurrence of the event, inform the SASE on the event which significantly affects the financial operations of the issuer. Additionally, the issuer must submit the following information:

1. Data on business and other events, changed business conditions and events from the environment which might influence the legal and financial position of the company and issued securities' price with the emphasis on:

- business interruptions,
- relevant changes in the main business activity,
- intended relevant changes in the company's accounting policy,
- changes in the Management Board,
- relevant legal procedures before the state institutions, arbitrage and similar institutions,
- significant changes on the market,
- previous company's business result perspectives, as well as possible relevant perspective alterations,
- gained or lost patents, licences, brands of importance which are of the high importance for the main activity,
- new products, i.e. services or parties which influence the business activity and the derived business results.

2. Decisions and resolutions, as well as other events which might influence the capital structure, such as:

- intended increase or reduction of share capital,
- changes in the content of the class right of securities admitted to the Stock Exchange listing and securities in which securities admitted to the Stock Exchange are replaceable,
- pre-emptive right at the new issue of securities
- conducted purchase or sale of the issuer's own shares,
- revocation of debt securities admitted to the Stock Exchange listing, before they are due,
- inability to fulfil the obligations due to the issued debt securities
- inability to pay dividends.

3. Projected data changes with the issuer and the amendment of the issuer's legal and organizational structure which might influence the issued securities' price, such as:

- acquisition of the issuer to the other company or vice versa,
- merging with another company,
- change of legal form,
- other changed circumstances and events which cause the change of data stated in the leaflet for admission of securities to the listing, considering the issuer's later announcements.

4. Other events and circumstances not well known which might have significant influence on the issued securities' price.

9.2.2. RS

The issuer is required to disclose to BLSE the following events:

1. changes in financial and legal position,

2. changes of issuer's equity,

3. convening general shareholders meetings,

4. decisions of general shareholders meetings,

5. Management and Supervisory Boards' decisions,

6. changes in the status of issuers,

7. acquisition of significant ownership in other entities,

8. acquisition of securities by the issuer's management,

9. press conferences,

10. other events that may affect the price of securities or upon the request of the Exchange.

The Author:

- Amina Djugum
Independent attorney at law in cooperation with
Karanovic & Partners
amina.djugum@karanovicpartners.com
+38733844000

BULGARIA

By Damyan Leshev, Managing Associate, Petar Ivanov, Associate, and Nikolay Bebov, Managing Partner, Tsvetkova Bebov Komarevski

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

The past three years were somewhat flat in terms of major ECM and DCM transactions floating from Bulgaria. There have been notable exceptions, though.

In 2018, Bulgarian Energy Holding, a state-owned holding company which consolidates the participation of the state in the Bulgarian energy business, issued its third EUR 400 million Eurobond issue, which was subsequently tapped to EUR 600 million. The Eurobonds were double listed on Euronext Dublin and Bulgarian Stock Exchange (BSE). In addition, during the past three years a number of local bonds were placed on the domestic market, the biggest of EUR 15 million in size.

On the ECM side, 2018 has seen one relatively sizeable IPO in Bulgaria, the ca. EUR 25 million IPO of Gradus AD, a poultry farm. While no major IPOs have been placed in Bulgaria in 2019, good news came in early 2020: Eleven Capital AD, venture capital structure, chose to fund its business through the capital market and completed the first Bulgarian IPO since 2018 in March 2020. Even though the IPO was relatively small, it is an important step towards the Bulgarian capital market for the local start-up ecosystem, as Eleven Capital AD is the first venture capital structure in Bulgaria which decided to fund its business through the capital market. TBK assisted as the single legal counsel for this transaction.

Several other ECM transactions scheduled for 2020 have now been postponed due to the COVID–19 pandemic and the uncertainties on the domestic and international markets. Not officially postponed is the most notable of these transactions – a planned up to BGN 200 million (ca. EUR 102 million) capital increase of First Investment Bank AD.

2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

There are two regulated markets in Bulgaria, both operated by the Bulgarian Stock Exchange, the BSE Main Market and BaSE Alternative Market.

BSE Main Market is the main market and is divided in several segments. The prime share segment is called the Premium Segment and the other main segment is Standard Segment. There are also several other special segments, such as the Special Purpose Vehicles Segment, where the shares of REITs are traded, and a Bonds Segment.

Less liquid issues are traded on the BaSE Alternative Market. Their admission is made only ex officio by the Bulgarian Stock Exchange through relocation from the BSE Main Market if the issue or its issuer no longer comply with the requirements of the main market.

2.2. Non-regulated market for equities

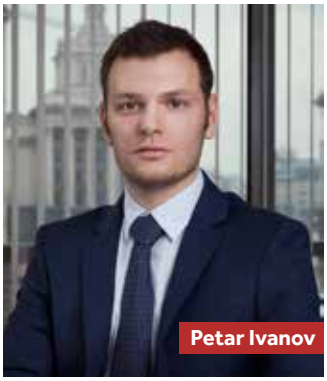
Bulgarian Stock Exchange runs also a MiFID II SME Growth Market, called BEAM (Bulgarian Enterprise Accelerator Market). The efforts of BSE in the past year were mainly focused on the development of this multilateral trading facility (MTF) by attracting small and medium sized companies to list their shares on BEAM. This market is quite new which is why there are still no companies listed on BEAM. Some companies have already announced their plans for a listing on BEAM.

3. Key Listing Requirements on the BSE

3.1. ECM

The key listing requirement for equity securities listings on the


Damyan Leshev


Petar Ivanov


Nikolay Bebov

TBK | TSVETKOVA BEBOV KOMAREVSKI

regulated market segments of the BSE is the publication of a listing prospectus approved by the Bulgarian competent authority, the Financial Supervision Commission (FSC) (see item 4 below). In addition, the following applies:

For the Premium Segment the equity issuer must have been profitable at least for two out of the preceding five years, must comply with the corporate governance standards (including to be disclosing information in English), as well as must meet requirements for:

(i) financial history – at least 5-year of financial history;

(ii) free float – at least 25% free float or free float amounting to at least BGN 5 million (ca. EUR 2.5 million) in market cap;

(iii) total market cap – at least BGN 50 million (ca. EUR 25 million), alternatively the equities to have been previously listed on the Standard Segment for at least one year;

(iv) monthly average turnover – at least BGN 300,000 (ca. EUR 153,000) monthly average turnover in the equities listed on the BSE for the preceding six months; alternatively, the issuer must have an arrangement with a market maker; and

(v) number of transactions – at least a monthly average of 150 transactions in the listed equity securities within the preceding six months; alternatively, the issuer must have an arrangement with a market maker.

The requirements for listing on the Standard Segment of the BSE are less strict and include a monthly average turnover in the listed equity securities within the preceding six months of at least BGN 4,000 (ca. EUR 2,045) and at least a monthly average of 5 transactions in the equity securities within the last six months.

Listings on BEAM require the production of a listing memorandum (instead of a prospectus), the employment of an BSE approved advisor, and compliance with several other requirements.

3.2. DCM

For the listing on the Bonds Segment of BSE, the remaining maturity of the bonds must be at least one year and the total outstanding principal amount under the bonds must be at least (the equivalence of) BGN 1 million, denominated in BGN, EUR or USD.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

The new Prospectus Regulation, i.e. Regulation (EU) 2017/1129, applies in full as of 21 July 2019. This Regulation, together with its supporting legislation (the "New EU Prospectus Legislation"), applies directly across the European Union, including Bulgaria, and in the EEA as a whole, both for equity and debt instruments. A draft bill amending Bulgaria's Public Offering of Securities Act (POSA), which set out the local prospectus regime under the predecessor Prospectus Directive, was circulated for public discussion in February 2020 and is expected to be enacted in the near future. Until then, the "old national regime" prior to the new Prospectus Regulation, is temporary kept in order to achieve a smooth transition.

According to the New EU Prospectus Legislation, except where certain exemptions apply, a prospectus must be drafted, approved by the competent regulator, the FSC, and published, prior to the beginning of a public offer of securities in Bulgaria and/or the admission of securities to trading on a regulated market.

The prospectus can be drafted either as three separate documents (i.e., a registration document, a securities note, and a summary), or in one single document, which covers the required information from the three aforementioned documents. While the preferred option for issuers in Bulgaria in the last

fifteen years has been the preparation of a three-component prospectus, local practices are evolving towards a more commonplace use of a single document prospectus.

The prospectus must contain, as part of the registration document, information about the issuer and its organizational structure and management, the risk factors to which the issuer's activities are exposed, a business review of the issuer, as well as information on the issuer's financial condition. In addition, the securities note section of the prospectus must contain information on the terms and conditions of the securities and their offer and the risk factors inherent to the offered securities. The summary must contain a brief resume of the information provided in the registration document and the securities note, and must make it possible for potential investors to understand easily the characteristics of the issuer and the offered securities.

Special rules apply to prospectuses in relation to securities issued by REITs. In addition to the minimum content of the prospectus, as provided in the New EU Prospectus Legislation, the prospectus for REITs must contain information regarding the investment policy, investment restrictions and the characteristics of assets which may be acquired by the respective REIT, as well as data about the custodian bank, the servicing companies and the evaluators of the REIT and applicable management fees and fees for servicing companies.

In relation to debt instruments issuances, where a publication of prospectus is not mandatory (e.g., private offerings), the Bulgarian Commercial Act provides for a minimum content of the offering circular, which must include the most important information about the offered bonds and the terms and conditions for subscription, such as information on the size of the offered bonds, face value and issue value of the bonds, their maturity and repayment schedule, the interest payment structure, the collateral (if any) under the bonds, the terms and conditions for subscription of bonds, et cetera.

The prospectus or offering circular for mortgage-backed bonds (the issuers of which may only be banks) must contain specific additional information to meet the requirements of the Mortgage-Backed Bonds Act of 2000. This includes: an outline of the rules on the cover pool register (ways of making entries into and access to the register), which the issuing bank must maintain for each issue of mortgage bonds; details of the mortgage assets included in the cover pool (including details of the mortgage loans such as remaining term to maturity, interest and fees features, risk qualification of the loans; and details of the mortgaged properties together with valuation); and detailed breakdowns of the cover pool assets in terms of outstanding principal amounts, term to maturity upon issue of the bonds, interest rate levels, risk qualification, ratio between outstanding principal amount on the mortgage loans and the mortgage property valuation. The Mortgage-Backed Bonds Act will be reshuffled in the context of the transposition of the Cover Bonds Directive in Bulgaria.

4.2. Local market practice

After the New EU Prospectus Legislation became applicable, the local market practice follows the new regime. Nonetheless, there are still certain local specifics, which need to be taken into consideration.

4.2.1. Liability for the information included in the prospectus

The POSA provides, as required under the new Prospectus Regulation, that the members of the management body of the issuer, its procurators, as well as the offeror, the person asking for admission to trading, and (where applicable) the guarantor, are jointly liable for any damages arising out of untrue, misleading or omitted information in the prospectus.

However, it is noteworthy that according to Bulgarian law, in excess of the Prospectus Regulation requirements, the officers responsible for the preparation of the financial statements of the issuer are also jointly liable with the foregoing for any damages arising out of untrue, misleading and omitted data in the financial statements of the issuer. The issuer's auditors are liable for damages arising out of the audited financial statements of the issuer.

On the other hand, there are no special rules on the liability of experts, whose expertized opinions may be referenced in a prospectus.

In addition to civil liability and administrative sanctions that may be imposed by the FSC, the Penal Code provides that there is a criminal liability for any person who, in relation to public offer of securities, knowingly uses untrue favorable information in a prospectus, or does not disclose unfavorable data, which is of material importance in the making of an investment decision to acquire such securities.

Still, there are no explicit requirements, under Bulgarian law or when it comes to local transactions market practice, for the carrying out of a due diligence of the information included

in the prospectus. Following the lead of Bulgaria-originated capital markets transactions, domestic practices are gradually starting to evolve towards the including of due diligence processes with the help of external advisors (legal, tax, technical, etc.), acceptable to the lead managers, aiming at reducing any potential risks of claims by investors against the issuer and/or the managers arising out of deficiencies in the prospectus.

4.2.2. Publication of the prospectus

According to the New EU Prospectus Legislation, the prospectus must be published in an electronic form on the issuer's website and/or on the websites of the lead managers. Usually the prospectus is not published on the website of the Bulgarian Stock Exchange until the offered securities are listed.

Pursuant to Bulgarian law the FSC must be notified for the place where the prospectus will be published at least two days prior to the publication.

4.2.3. Notice for the public offer

Albeit no explicit requirement exists in the New EU Prospectus Legislation, the local market practice, as well as the "old prospectus regime" under the POSA, requires a notice for the public offer to be published prior to the beginning of the subscription period of the offered securities. This notice must contain the terms and conditions of the public offer and be published at least in one national newspaper or on the web site of an information agency or other eligible media, as well as on the web site of the issuer and the managers. The publication must take place at least 7 days before the initial date of the subscription period. According to the draft Bill of amendment of the Public Offering of Securities Act circulated in February 2020, this rule is expected to continue to apply in the future.

4.3. Language of the prospectus for local and international offerings

The general principles of article 27 of the Prospectus Regulation apply. Absent the practice of the FSC to date with approving prospectuses of non-Bulgarian issuers or of Bulgarian issuers which do not intend to offer their securities in Bulgaria, the FSC reviews draft prospectuses prepared in the Bulgarian language. This practice is likely to evolve towards use of the English language even in the prospectus approval process.

Irrespective of the above rules, the preparation of English (unofficial) versions of Bulgarian prospectuses (even where an offer of securities thereunder will be made only in Bulgaria) has become relatively commonplace expect in the case of smaller issuers or issuers. This trend is encouraged by certain BSE rules and corporate governance rules even though they would strictly apply to the post-IPO disclosure of information by issuers.

5. Prospectus Approval Process

5.1. Competent Regulator

The Financial Supervision Commission is the competent local regulator in relation to the Bulgarian capital market. The FSC approves prospectuses and supervises the trading in financial instruments. The FSC is also the competent regulator and supervisor for public companies. Its powers include ongoing supervision of public companies in relation to their compliance with transparency requirements, the Market Abuse Regulation regime, and corporate governance standards set in Bulgaria and the protection of the rights of the investors in financial instruments at large.

5.2. Timeline, number of draft submissions, review and approval process

The procedure for approval of the prospectus by the FSC usually takes around two months for first-time issuers and around a month and a half for follow-on offerings by more frequent issuers. However, after the introduction of the New EU Prospectus Legislation the practice of the Bulgarian regulator is gradually evolving towards shortening of the terms for prospectus approval to meet the international standards for scrutiny of prospectuses.

As a matter of practice, two submissions of drafts are necessary to obtain the approval of the prospectus by the FSC: after the first draft submission the FSC typically reverts with instructions for revisions and updates of information contained in the draft and subsequently approves the so revised draft prospectus if the FSC finds that the identified deficiencies have been remedied.

The approval procedure is strictly formal and ongoing coordination with the regulator is not possible.

According to the POSA, the FSC has special powers to reject approval of the prospectus also in cases where the public offer of shares will dilute existing shareholders due to the fact that the issue value of the offered shares is lower than the book value of the outstanding shares from the capital of the issuer, as well as where the FSC establishes that the rights of inves-

tors are not fully protected.

Notably, as a supporting measure for the development of the Bulgarian capital markets, the FSC does not collect prospectus approval charges until the beginning of 2021.

A decision of the FSC not to approve a prospectus may be appealed before court. The grounds for appeal are, however, limited to breach of procedure or law. In line with general Bulgarian administrative paradigms, the discretion applied by the FSC in the course of approval proceedings is not subject to judicial review.

6. Listing Process

6.1. Timeline, process with the stock exchange

The listing on the BSE typically takes two to three weeks after the public offer is finalized, and is not concurrent with the closing (end of placement and release of proceeds to the issuer) of a capital market transaction. The reason is that the respective securities ought to be registered with the Central Depository AD (Bulgaria's CSD), as well as with a special register of issues and pubic companies, maintained by the FSC. The listing application with the BSE must be accompanied by (in addition to a copy of the prospectus) the FSC's approval resolution, and the CSD's registration certificate. The BSE grands listing by a resolution of its Board of Directors, wherein the first day of trading is determined.

Therefore, the local market is in expectation of reforms, which would make new issues immediately tradeable.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

Corporate governance of Bulgarian public companies is regulated both at the legislative level, as well as in the National Corporate Governance Code (2016) (NCGC), a soft law document applying the "comply or explain" principle.

Most notably, the applicable law sets out requirements regarding the remuneration and composition of management and supervisory bodies of a public company and the establishment of an audit committee. Various rules are also put in place to ensure the protection of minority shareholders' rights. For example, the most recent amendments to the POSA transpose certain aspects of the second Shareholder Rights Directive (EU) 2017/828.

According to Ordinance No. 48 of the FSC, issued upon delegation by the POSA, public companies are required to maintain and make public a remuneration policy which sets out details on the conditions for the award of fixed and variable remuneration and the provision of termination compensations to company directors and officers. The Ordinance sets out rules for deferral of variable remuneration, payment in instruments and the claw-back of payments, as well as allows public companies to form a remuneration committee. Furthermore, under the Independent Financial Audit Act, public companies are required to establish an independent audit committee, which is tasked with providing additional oversight over a public company's business and financials. Finally, under the POSA, public companies must appoint an investor relations officer and ensure that at least one third of the members of their board of directors, respectively supervisory board, is independent. As part of the ongoing obligations under the POSA (see item 9.a below) a public company must issue an annual corporate governance report on its compliance with the NCGC and provide information on the company's diversity policy or explain the reasons for not maintaining one.

The NCGC supplements the legal requirements with non-binding guidelines for good corporate governance. The NCGC is aligned with the OECD Principles of Corporate Governance and contains recommendations for the composition of corporate bodies, management of conflicts of interest, protection of shareholders and disclosure of information.

A particular feature of corporate governance of Bulgarian public companies is a scrupulous regime on the shareholder approval (or qualified board approval), under threat of nullity, of certain material transaction of the public company. The POSA sets a variety of materiality thresholds (lower if an "interested party" is the counterparty to the transaction with the public company), which trigger the application of the above rules. By way of example, shareholder approval is required where a public company enters into a transaction whereby its exposure to the counterparty will exceed one third of the lower of the values of the public company's assets according to the two latest balance sheets (which have been publicly disclosed and at least one of which is audited). The threshold is 1 percent. (of the lower of the two values) if the counterparty is an "interested party", e.g., where the same person directly or indirectly holds at least 25 percent of the votes in both the public company and the counterparty. Some would find this regime overly burdensome on public companies, others would support it in the name of protecting minority shareholders.

Yet another interesting aspect of the Bulgarian regime of public companies, touching upon corporate governance, is that shareholders have a non-waivable preemption right in case of share capital increase. This reflects on the leeway of majority shareholders (or company boards if authorized by the virtue of the company's bylaws or a general meeting delegation) when planning follow-on offerings, i.e. share capital increases, after the initial going public.

7.2. Any other ESG considerations

Due to the current state of development of the Bulgarian capital market, ESG considerations do not play a key role among issuers and investors. Furthermore, there is currently no dedicated legislation aimed at promoting such considerations. Nonetheless, the NCGC encourages public companies to implement policies on corporate social and environmental responsibility, which promote the development of sustainable business models through dialog with key stakeholders and incorporation of nonfinancial business objectives.

This status quo will change. The continuing implementation of the European Commission's Action Plan on Financing Sustainable Growth, and the active involvement of IFIs, creates incentives to Bulgarian issuers and investors to engage in sustainable investment opportunities (e.g., Green Bonds). Therefore, in the years ahead ESG considerations could increase their role on the local capital market.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

Over-allotment structures, such as greenshoe, have not been used on the Bulgarian capital market regularly in the past years. This is due to the lower liquidity of the local market, which generally hinders oversubscription, and the fact that security issues are generally placed by managers without a firm commitment (best effort placement). Thus, although the use of different over-allotment strategies is legally possible in accordance with general rules, e.g., on stabilization (see lit. c) below) or share buybacks, they have not been tested in practice.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

Under the current market practice, stock lending agreements do not play a role in the offering of securities in Bulgaria.

8.3. Stabilization – whether allowed and on what terms (MAR, local regimes)

Stabilization measures are generally allowed in Bulgaria. The conditions for stabilization follow the general requirements of the Market Abuse Regulation (MAR), as detailed in Commission Delegated Regulation (EU) 2016/1052, including i.a. any such measures/ transactions are subject to appropriate prior and subsequent disclosure and regulatory reporting and stabilization is confined to a 30-day stabilization period (60-days in the case of bonds) with restrictions applicable to the price levels during that period. Bulgarian law does not provide for specific local requirements.

Although allowed by law, stabilization measures are uncommon in domestic capital markets transactions in Bulgaria and therefore the available regulation is heavily underused. This lack of practice results in legal uncertainty as to the application of the rules on the side both of issuers and the competent regulator, the FSC.

9. Ongoing Reporting Obligations (Life as a Public Company)

The ongoing reporting obligations of issuers on the Bulgarian capital market are generally aligned with sectorial EU law and cover the disclosure of financial and other material information on an issuer, as well as the disclosure of information on certain shareholder activities. Most notably, these requirements stem from the Transparency Directive, as transposed in the POSA, and from the MAR.

9.1. Annual and interim financials

Issuers domiciled in Bulgaria that have listed equity or debt securities on a regulated market or have offered such securities to the public in Bulgaria are required to disclose regular financial information in accordance with Title 3, Chapter VIa of the POSA.

These disclosures include the following types of information:

(i) annual financial report (containing, i.a., audited annual financial statements, audit report and a corporate governance report) – to be published on an individual basis within 90 days after the end of the financial year (in general December 31) and – where relevant – on a consolidated basis within 120 days thereafter; for 2020 these terms are extended to July 31 due to the COVID-19 pandemic;

(ii) semi-annual financial report (containing, i.a. six-month financial statements) – to be published on an individual basis within 30 days after the end of Q2 and – where relevant – on a consolidated basis within 60 days thereafter; for 2020 these terms are extended to September 30 due to the COVID-19 pandemic;

(iii) quarterly statement on the financial condition (containing key financials) or a more granular quarterly financial report – to be published on an individual basis within 30 days of the end of Q1, Q3 and Q4 and – where relevant – on a consolidated basis within 60 days thereafter; for 2020 these terms are extended to September 30 due to the COVID-19 pandemic.

In principle, financial information should be prepared in accordance with the IFRS, if the issuer reports based on its consolidated situation, but it can also be prepared following the Bulgarian National Accounting Standards, if the issuer reports on an individual basis only. Disclosures must be made (also) in Bulgarian language if the securities are offered or traded only locally and in the case of dual listings. The biggest issuers, and a number of other issuers report in both Bulgarian and English voluntarily. Where the securities are listed only on a foreign regulated market, the issuer should preferably report its financials in English.

The information must be made public through a news agency ensuring its efficient dissemination to the public in Bulgaria and the other EEA member states. Annual and semi-annual reports must be maintained for a period of at least 10 years, and quarterly reports for a period of at least 5 years.

An important exemption from the disclosure requirements under items (i) and (ii) above applies to issuers exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100,000 or its equivalent in another currency. This exemption, however, does not apply to the requirement under item (iii) above and is also of limited practical value due to obligations of a bond issuer to provide similar information to the bondholders trustee.

Furthermore, Commission Delegated Regulation (EU) 2017/565 sets general requirements for the disclosure of financial information by issuers, whose securities are admitted to trading on a Bulgarian MTF (see item 2.b) above). Under this Regulation MTFs must ensure that issuers publish annual financial reports within 6 months after the end of each financial year, and semi-annual financial reports within 4 months after the end of the first 6 months of each financial year. Operators may exempt debt issuers that have no equity instruments traded on MTF from the requirements to disclose semi-annual financial information. The details on these reporting requirements are left to the rules of each MTF.

9.2. Ad hoc disclosures

Ad hoc disclosures form another important category of ongoing obligations for issuers in Bulgaria. Its most notable example is the ad hoc disclosure of inside information under the MAR. In a broader sense, this category includes also other disclosure requirements triggered by the occurrence of certain circumstances, such as the disclosure of managers' transactions under the MAR and the disclosure of qualified holdings under the POSA.

9.3. Disclosures under the MAR

Bulgarian issuers of equity or debt securities traded, admitted or applying for admission to trading on a regulated market or an MTF are required to disclose to the public any issuer specific inside information, i.e. price sensitive non-public information, of which they become aware, as soon as possible after identifying a piece of information as such. The public disclosure of inside information can be delayed, where an issuer has legitimate interest in doing so or – in the case of issuers that are credit or financial institutions – due to financial stability considerations. The decision on the delay of disclosure must be properly documented by the issuer and comply with additional requirements aimed at preserving market integrity and confidentiality of the piece of inside information concerned.

In addition, an issuer must disclose certain transactions in or related to its instruments made by persons discharging managerial responsibilities within its structure or persons closely related to the latter, so-called "managers' transactions". For this purpose, the above persons are required to notify the issuer for each of their transactions in such issuer's equity or debt securities (or related derivatives) after reaching an individual threshold of EUR 5,000 in gross transaction value per year. Issuers must fulfill their obligation within three business days of the relevant person entering into a notifiable transaction.

Both types of disclosures should be made through a media (news agency) which ensures the efficient dissemination of the information to as wide a public as possible on a non-discriminatory basis, free of charge and simultaneously throughout the EEA. Issuers are further required to post and maintain on their websites any information made public for a period of at least 5 years.

9.4. Disclosures under POSA

Bulgarian equity issuers, whose securities are listed on a regulated market or have been offered to the public (public companies) are further required to disclose to the public any notifications received from persons who directly and/or indirectly have acquired or transferred voting rights representing 5% or a multiple of 5% of all voting rights in the general meeting of the respective issuer. The disclosure obligation must be fulfilled within three business days of receipt of the respective notification through a new agency ensuring the efficient dissemination of the information to the public throughout the EEA.

The Authors:

■ Damyan Leshev
Managing Associate
damyan.leshev@tbk.bg
+359 2 439 0707

■ Petar Ivanov
Associate
petar.ivanov@tbk.bg
+359 2 439 0707

■ Nikolay Bebov
Managing Partner
nikolay.bebov@tbk.bg
+359 2 439 0707

CROATIA

By Damir Topic, Senior Partner, and Marija Gojevic Sparavec, Attorney, Divjak, Topic & Bahtijarevic

1. Market Overview

The Zagreb Stock Exchange (ZSE) was established in 1991 by 25 banks and 2 insurance companies. Currently, the ZSE is owned by around 40 banks and brokerages. In 2007, the Varazdin Stock Exchange merged into the ZSE and since then the ZSE has been the sole Croatian securities market. In 2015, the ZSE acquired shares in the only Slovenian stock exchange – the Ljubljana Stock Exchange – and subsequently introduced a common trading system to enhance trading on these two markets and enable simultaneous floating of shares.

Despite the fact that from 1995 to 2000 market capitalization of the ZSE increased ten times (982.6%), the market was severely hit by the 2008 crisis and was not as strong as it was before the crisis. The current COVID-19-related economic turmoil hit the market again and it remains to be seen when and how the market will be at least remotely close to what it was immediately before.

In the past few years, the market was dominated by trading of shares in some Croatian blue-chip companies, whilst IPOs were almost unknown. The main drivers of trading were high-profile takeovers which spur speculative trading in expectation of gains in mandatory takeover offers which followed such takeovers. Trading of bonds and other debt securities was very modest, with only one or two notable issuances per year. The main players on the market have been pension funds, which are loaded with cash and which have constantly been putting pressure on the local securities regulator to ease conditions for their investments because their demand for investment was higher than the potential of the market. The reason for this shallow market situation was a large number of sizeable companies which decided to delist because of widespread sentiment that the downsides of the listing were greater than its benefits. Another blow to the market was the collapse of the largest Croatian private company, Agrokor, whose subsidiaries accounted for a significant portion of the most attractive companies listed.

2. Overview of the local stock exchange and listing segments (markets)

Trading of securities on the ZSE is conducted through an electronic trading system – Xetra – which enables all participants to trade in real time. Trading hours on business days are from 9:00-16:30 CET, with pre-trading period from 8:00-9:00 CET.

ZSE operates the Regulated Market and multilateral trading platform (CE Enter Market).

2.1. Regulated market

On the Regulated Market, transparency requirements encompass publication and delivery of all the important information regarding issuers and listed securities which may have an effect on traded instruments, as prescribed by law and the ZSE Rules. In addition, listing on the Regulated Market generally involves the publication of listing prospectus, as previously approved by the local financial services regulator.

Financial instruments which may be traded on the regulated market are those for which the ZSE has obtained the regulator's approval or in respect of which the approval stems from the provisions of the Capital Markets Act (CMA), specifically:

- shares or other securities equivalent to shares which represent an interest in the capital or in the shareholders' rights in a company, as well as depositary receipts;
- bonds and other types of securitised debt, also including depositary receipts related to such securities;
- any other securities which entitle their holders to acquire or


Damir Topic


Marija Gojevic Sparavec

DTB
DIVJAK TOPIC BAHTIJAREVIC Law Firm

sell such negotiable securities or which constitute the grounds for a cash payment of the amount determined on the basis of negotiable securities, currencies, interest rate or yields, commodities, indices or other measures of size;
- money market instruments: treasury bills, central bank bills and commercial paper, certificates of deposit, and other instruments which are customarily traded on the money market; and
- units in collective investment undertakings, in accordance with the provisions of the CMA.

2.1.1. Listing Segments

The Regulated Market has the following listing segments (in order of rank and transparency):

- Prime Market
- Official Market
- Regular Market

The Prime Market is the most demanding market segment with regard to the requirements imposed on the issuer, especially in relation to transparency. The issuers on the Official and Regular markets must submit only a minimum of information stipulated by the CMA, plus additional requirements as set out in the ZSE Rules.

2.2. Multilateral trading platform

The CE Enter Market is a multilateral trading facility consisting of the following segments:

- CE Enter - Alter
- CE Enter - Fortis
- CE Enter - X

The CE Enter Market is an alternative market managed by the ZSE. The main characteristics of the CE Enter Market are lower transparency requirements for the issuers and financial instruments compared to the regulated market and, consequently, a higher associated risk of investing in the financial instruments traded on the CE Enter Market. The ZSE provides a sufficient level of publicly available information on the financial instruments traded on the CE Enter Market to ensure orderly trading and pricing. The provisions of the CMA, other regulations and subordinated legislation adopted pursuant to such regulations concerning market abuse shall apply to trading on the CE Enter Market.

3. Key Listing Requirements

The listing requirements for the admission of equity and debt securities can be divided into general requirements, applicable on all listed securities, and specific (per segment) requirements.

The general terms for regulated market listing on the ZSE are:

- the financial instruments being listed on the regulated market shall be those which may be traded in a fair, orderly and efficient manner;

- the issuer shall be duly registered or otherwise validly established in accordance with the regulations of the Republic of Croatia or the country of the issuer's domicile;

- the applicant shall comply with the obligation to publish the prospectus and disclose other information, in accordance with the provisions of the CMA;

- financial instruments must be freely negotiable;

- efficient transaction settlement must be provided in respect of any financial instruments for which an application for listing on the regulated market has been submitted (this criterion will be deemed to be met if a financial instrument is issued in a dematerialised form and registered with the central depository or central register and included in the clearing and/or settlement system);

- the use of LEI is mandatory for issuers of financial instruments listed on regulated market; and

- pre-bankruptcy, bankruptcy or liquidation proceedings have not been instituted against the issuer of a financial instrument.

3.1. Equity Capital Markets

When it comes to listing of shares on the Prime Market (in addition to the general requirements listed above), the following requirements must be met:

- the issuer must have an investor relations function in place;
- free float min. 35%;
- at least 1000 shareholders;
- market capitalization of min. HRK 500,000,000.00;
- the issuer of shares shall enter into a market making contact with at least one market maker;
- the supervisory board of the issuer must have at least one independent member;
- at least one member of the audit committee shall be independent of the issuer;
- the audit report must not contain modifications of the auditor's opinion;
- total fees received by the statutory auditor or the audit firm from the issuer do not exceed the threshold laid down in Article 4(3) of Regulation (EU) No 537/2014;
- the issuer of shares must not have imposed a market protection measure under the ZSE Rules for a period of 1 (one) year prior to the date of submission of the Prime Market listing application; and
- the issuer shall develop and disclose its dividend policy to the public.

The requirements for listing of shares on the Official Market (in addition to the general requirements listed above) are:

- at least 25% of the shares shall be distributed to at least 30 shareholders. In exceptional cases, shares may be listed even if they do not meet the free float requirement, if at least 10% of the issue or total value of shares is held by 50 shareholders;
- market capitalization min. HRK 8,000,000.00; and
- the issuer must have an investor relations function in place.

For the shares to be listed on the Regular Market (in addition to the general requirements listed above), at least 15% of the shares must be distributed to the public. In exceptional cases, shares may be listed even if they do not meet the free float requirement, since, considering a large number of same-class shares and the free float ratio, this does not compromise orderly market functioning.

3.2. Debt Instruments

Debt instruments may be traded on the Regular Market and on the Official Market. In addition to the general requirements for listing all securities (referred to above), for debt instruments to be listed on the Official Market, the nominal amount of the loan for debt securities may not be less than HRK 1,500,000.00.

4. Prospectus Disclosure

4.1. Regulatory regimes and local market practice

Rights and obligations pertaining to offering of securities to the public and admitting securities to trading on the regulated market in the Republic of Croatia (RoC), including the obligation to publish a prospectus and exemptions related thereto, are regulated by the Capital Market Act (CMA), as well as the European Union legislation.

The Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses lays down the rules for the preparation of prospectus and, in Croatian legislation, was implemented through the provisions of CMA. The respective Regulation was fully replaced by the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on the regulated market, and repealing Directive 2003/71/EC (the "Prospectus Regulation"), representing a new prospectus regime in the European Union.

Since the Prospectus Regulation is directly applicable in all EU Member States since July 2019, CMA also needed to be amended and supplemented in order to meet the requirements set out in the Prospectus Regulation. In the light thereof, in February 2020 amendments to CMA have entered into force in order to ensure full application of the Prospectus Regulation, appointing the Croatian Financial Services Supervisory Agency (CFSSA) as the Croatian competent authority and providing other novelties related to prospectuses within the new European Union regulation. A novelty related to the obligation to publish prospectus for public offerings of securities was introduced by raising threshold to EUR 8,000,000 (previously EUR 5,000,000), thus lowering the costs of the issuance of the securities in RoC and unburdening the issuers and the CFSAA.

Furthermore, the prospectus regime in RoC is governed by the delegated legislation which includes the Commission Delegated Regulation (EU) 2019/980 relevant for the format, content, scrutiny and approval of the prospectus (the "PR Regulation") and the Commission Delegated Regulation (EU) 2019/979 relevant for the technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal (RTS

Regulation). When drafting a prospectus, it is also necessary to take into account documents issued by the European Securities Markets Authority (ESMA), such as ESMA Guidelines on Alternative Performance Measures and bylaws issued by the CFSAA.

The Prospectus Regulation lays down that prospectus is to be published in two cases: (i) when the securities are offered to the public in the territory of RoC and (ii) when the securities are admitted to trading on the regulated market in RoC. Based on the issuer's nature, type of the securities offered to the public or admitted to trading on the regulated market and circumstances of the issuer, prospectus contains all necessary information to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer and of any guarantor, as well as of the rights related to the respective securities. Therefore, information contained in the prospectus must be accurate and complete and presented in an easily analysable and comprehensible form.

Prospectus may be drawn up as: (i) a single document (containing all the information in one document), (ii) separate documents (information is contained in several separate documents), composed of: registration document (containing information on the issuer) and securities note (containing information on securities to be offered to the public or admitted to trading on the regulated market), and summary (providing, in a brief manner and in non-technical language, the essential information enabling investors to make an informed assessment of the characteristics and risks associated with the issuer, any guarantor and the securities).

Among other, the Prospectus Regulation requires the following information to be included in prospectus:

(i) information on the issuer, issuer's business operations, organisational structure and assets, and details on the products and services it provides and the factors which affect the issuer's business;

(ii) risk factors specific for the issuer and offered securities in a limited number of categories, informing potential investors of the material risks. The risk factors need to be specific for the issuer's industry and defined by taking into account the probability of their occurrence;

(iii) audited financial information covering the latest three financial years prepared in accordance with IFRS or in accordance with national accounting standards where these standards are considered equivalent to IFRS for a third country issuer;

(iv) details of any legal proceedings having a significant effect on the issuer's and or group's financial situation, involving the issuer in the last year;

(v) information on significant changes in trends or financial position of the issuer since the last financial period for which financial information has been published;

(vi) listed information on the members of the administrative, management or supervisory bodies, senior management and founders of the issuer with remuneration, benefits and interests in the shares of the issuer and with respect to the company's corporate governance;

(vii) details of any major shareholders of the issuer, whose interest must be notified under the issuer's national laws;

(viii) details of related party transactions that the issuer has entered into since the date of the last financial statements and up to the date of the prospectus;

(ix) description of the issuer's policy on dividend distributions and any restrictions thereon;

(x) brief summary of material contracts entered into outside of the ordinary course of business by the issuer's group in the past two years preceding publication; and

(xi) responsibility statements from the company, the directors and any proposed directors, confirming that they accept responsibility for the information contained in the prospectus and that, to the best of their knowledge (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and contains no omission likely to affect its import.

4.2. Language of the prospectus for local and international offerings

General information about the language of the prospectus in relation to offer of securities to the public or the admission of securities on the regulated market and the language of publication of regulated information is provided in the Prospectus Regulation and the CMA. In this section, overview of the requirements related to the prospectus language under the CMA will be set out.

Local offering of the securities to the public or admission to the trading on the regulated market necessitates a prospectus

to be drawn up in the Croatian language.

With respect to the language for international offerings or admissions, provisions of the CMA generally provide choice between Croatian and English to the issuer, the offeror or the person asking for admission to trading on the regulated market, with certain obligations to make prospectus summary available in the Croatian language.

Regarding international offerings within the EU, when an offer of securities to the public is made or admission to trading on the regulated market is sought in one or more Member States, excluding the RoC as a home Member State, a prospectus for the purpose of security and approval by the CFSAA may be drawn up in Croatian or English language, at the choice of the issuer, the offeror or the person asking for admission to trading on the regulated market. In case of international offerings in which the RoC is a host Member State, but where the prospectus has not been drawn up in Croatian, the prospectus summary must be available in Croatian language.

In case of international offerings in more than one Member State including RoC as a home Member State, the prospectus may also be drawn up by choice in Croatian or English language. However, if English is opted for, the CFSAA requires the prospectus summary to be available in Croatian, as is the case where the RoC is a host Member State and the prospectus has not been drawn up in Croatian language.

A general rule for the final terms and the summary of the individual issue is they shall be drawn up in the same language as the language of the approved base prospectus. In the event final terms are communicated to the CFSAA, as the competent authority in the host Member State, the summary of the individual issue annexed to the final terms must be made available in Croatian (when base prospectus, final terms and the summary have not been drafted in Croatian). In case the RoC is a home Member State, regardless of the fact whether an offer or an admission is related also to the Croatian market, base prospectus, final terms and the summary of the individual issue annexed to the final terms can be drawn up in Croatian or English language. Provided the Croatian market is included and English language is opted for, summary of the individual issue annexed to the final terms needs to be made available in Croatian language.

Prospectuses for admission to trading on the regulated market of non-equity securities and admission to trading on the regulated market in one or more Member States may be drawn up in Croatian or English, at the choice of the issuer or the offeror, regardless of whether the admission is carried out in the RoC as a home Member State. The same applies in case the RoC is a host Member State.

5. Prospectus Approval Process

5.1. Competent Regulator

Competent authority for reviewing and approving prospectuses in the RoC, as well as for supervision of the Prospectus Regulation application, is the CFSAA. The CFSAA is authorised for the approval of a prospectus, supplement to a prospectus, registration document, securities note and summary note relating to securities to be offered to the public or admitted to trading on the regulated market in the RoC. In order to facilitate efficient and timely approval of prospectuses, CFSAA prepared guidelines for the scrutiny and approval process.

5.2. Timeline, number of draft submissions, review and approval process

A prospectus approval process begins with submission of an application for approval to the CFSAA via its electronic submission system. Technical part of the procedure is governed by the CFSAA's Technical instruction for the drafting and submission of an application for approval of a prospectus in electronic format via electronic means which provides rules for the registration process and modes of operations of the persons authorised to access CFSAA's system. Along with application, all documents and other information relevant for the review of the prospectus need to be submitted (e.g., brief with explanation of application for approval, registration document, or a securities note and a summary).

The duration of the first review by the CFSAA is limited to 10 business days from the submission of the draft prospectus or to 20 business days in case the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on the regulated market and has not previously offered securities to the public (prolongation is only applicable to the initial submission of the draft prospectus). When reviewed, the CFSAA will notify the issuer, the offeror or the person asking for admission to trading on the regulated market of its decision regarding the approval of the prospectus within.

If the draft prospectus does not meet the prescribed standards necessary for its approval, or where supplementary information is needed or amendment of the prospectus is required, the CFSAA will promptly (or within the time limits set above

at the latest) inform the issuer, the offeror or the person asking for admission to trading on the regulated market thereof, and clearly specify the changes or supplementary information that are needed.

The approval of the prospectus can follow once the CFSAA clears the prospectus of comments that need to be resolved.

Throughout the process, applicants have the possibility to directly communicate and interact with the authorised persons of the CFSAA.

Once approved, the prospectus shall be made available to the public by the issuer, offeror or a person demanding admission to trading on the regulated market, at the latest at the beginning of the offer to the public or the admission to trading of the securities on the regulated market. In the case of an initial public offer of a class of shares not already admitted to trading on the regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six business days before the end of the offer.

After the approval of the prospectus, the CFSAA shall notify ESMA about the approval, as well as about any supplement thereto as soon as possible but no later than by the close of the first business day after that approval has been notified to the issuer, offeror or other person seeking admission to trading on the regulated market.

Prospectus, whether a single document or consisting of separate documents, is valid for 12 months after the day of its approval, if a prospectus is completed by any supplement containing new information on the issuer and securities to be offered to the public or admitted to trading on the regulated market. Where a prospectus consists of separate documents, the period of validity shall begin upon approval of the securities note.

6. Listing Process

6.1. Timeline, process with the stock exchange

As prescribed by the CMA and further regulated by the ZSE's Exchange Rules (ER), the ZSE is responsible for deciding on the listing / admission of financial instruments to trading on the regulated market. As mentioned above, financial instruments may be listed on three different segments of the regulated market: the Official Market, the Regular Market, and the Prime Market.

As a general rule, the issuer (or a person authorised by the issuer) may submit an application to the ZSE for admission of financial instruments to trading. Exceptionally, an application for admission to trading may be submitted by another person, in accordance with the provisions regulating the resolution of credit institutions and investment companies. Furthermore, an application for listing an open-end investment fund on the regulated market is submitted by the management company. Transferable securities may be listed without an approval from the issuer, in accordance with the provisions of the CMA, the ER, and other ZSE acts.

Where an application for listing on the Official or Regular market relates to financial instruments which are already listed on the regulated market of another EU Member State, ZSE may refuse the application if the issuer of financial instruments fails to fulfil its obligations arising from listing on the regulated market of another EU Member State.

An application for admission of financial instruments to trading must be submitted by using a form which is published online on the ZSE website. The content of the form and the obligatory accompanying documentation differs depending on the financial instrument and the segment of the regulated market in question. There are five forms for application for listing different financial instruments on the regulated market which are published online on ZSE website – application for listing of: (1) stocks; (2) debt securities; (3) money market instruments; (4) ETF units; (5) structured products. The application for admission to trading refers to any and all shares of the same class, with the exception of the cases laid down in the CMA, and to all equally ranked debt securities.

General provisions with regard to the requisite documents are laid down in Article 78 of the ER; however, the ER also prescribes additional requisite documents and/or information for each specific financial instrument and segment of the regulated market. In general, the applicant must enclose the following documentation:

(i) a prospectus and/or other information, or a declaration to the effect that the applicant is exercising a right to an exemption from the obligation to prepare the prospectus and/or other information;

(ii) a declaration to the effect that the applicant is complying fully with the provisions of the CMA and other regulations, and that it has obtained all requisite permissions, licences and approvals from competent authorities;

(iii) copies of all permissions, licences and approvals issued by

the competent authority with regard to the listing / admission to trading procedure;

(iv) a declaration to the effect that it has been informed by the ZSE about the requirements arising from the listing / admission of its financial instruments to trading on the regulated market, at first admission of the financial instrument to trading on the regulated market;

(v) a statement confirming that the applicant has an appropriate internal organisation, systems and procedures in place to ensure timely availability of information to the market, also stating data on the person responsible for investor relations;

(vi) proof of payment of the listing fee according to the price list.

The ZSE will deem an application orderly if it is submitted by the authorised person, duly signed by the authorised person and accompanied by all requisite documents and information, as well as those requested by ZSE. ZSE may, in the interest of investor protection, subject the listing to any appropriate special condition, however, the applicant must be explicitly notified thereof.

On the other hand, the ZSE will reject an application if it has not been submitted and signed by the authorised person, if some of the requisite documents and/or information and those requested by the ZSE which are necessary for deciding have not been enclosed, or if the information available to the ZSE indicated that the listing might damage the investors' interest or the orderly functioning of the market.

According to CMA, the ZSE is obliged to inform CFSSA of any received requests for listing of financial instruments, as well as of its decision regarding the listing or rejection of the request for listing. The deadline for the ZSE's decision on the listing must be reached and the applicant must be notified within 30 days from the day of receipt of the application. In exceptional cases, the deadline is prolonged to 60 days. If the decision of the ZSE is not reached within the prescribed deadline, the request for listing is considered to be rejected. The applicant may challenge such refusal before a competent commercial court. Financial instruments are deemed listed / admitted to trading on the regulated market on the day of adoption of the ZSE's decision, which must be sent to the CFSSA without delay and published on the ZSE website. In its decision, the ZSE must specify the first day of trading. In cases where the decision is adopted pursuant to an application which was submitted by a person without the approval of the issuer, the ZSE must inform the issuer within three days from the admission to trading that its transferable securities are being traded on the regulated market managed by the ZSE.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

All companies with a listing on the ZSE must apply the Corporate Governance Code (CGC). The current version of CGC became effective on 1 January 2020. The CGC was drafted and endorsed by the ZSE and the financial services regulator (HANFA), and with the support of the European Bank for Reconstruction and Development. Certain parts of the CGS overlap with the CMA and the ZSE Rules. However, the CGC provides more detailed and more demanding standards of corporate governance. The most important novelties introduced in the last version of the CGC relate to responsibilities and liabilities of management and supervisory boards, diversity (particularly gender diversity) and their independence.

The companies which apply the CGC must report their compliance it twice a year in the form of pre-set questionnaires. One questionnaire comprises the statement of the relevant company on adhering to the CGC rules (compliance questionnaire) and in the second they have to present detailed information on their practices in corporate governance (corporate governance practices questionnaire). These reports must be submitted to the financial services regulator and the compliance questionnaires are published on ZSE web page.

The CGC covers matters such as the selection, composition and responsibilities of the board and its committees and executive remuneration. It also deals with matters such as risk management, internal control and audit practices, transparency and reporting requirements, as well as social responsibility. Each of the aforementioned topics is dealt with in a separate chapter, and within each chapter the CGC elaborates on the purposes which are deemed to be achieved, the main principles applicable on the respective topic and operative clauses.

The supervisory and management boards should have enough members to enable them to carry out their responsibilities effectively. The supervisory board should develop a supervisory board profile and a management board profile which specifies the minimum number of members and the combination of skills, knowledge and education, as well as required professional and practical experience. The supervisory board should include members of different gender, age, background

and experience to ensure it brings different perspectives to its decision-making, with the majority of all supervisory board members being independent - either president or deputy president of the supervisory board should be independent.

With regard to the board committees, the supervisory board should establish at least a nomination committee, a remuneration committee and an audit committee, and stipulate the mandate and activities of each committee.

7.2. Any other Environmental, Social, and Governance (ESG) considerations

According to the Code, supervisory and management boards must ensure that the company's strategy takes account of the potential environmental and social impact of its activities, and that its policies, culture and values promote ethical behaviour, respect for human rights, and a stimulating working environment. Therefore, the supervisory and management boards should adopt policies on assessment of environmental and social impacts of the company's activities and on management of the associated risks, as well as on safeguarding human rights and the rights of employees, and prevention of corruption and bribery.

When the management board seeks the supervisory board's prior approval on resolutions, the supporting documents should explain how the recommended action is consistent with the policies. Furthermore, the supervisory and management boards should jointly identify who they consider to be the company's key stakeholders. The management board should ensure that there are effective mechanisms in place for regular engagement with those stakeholders, and that the supervisory board is informed of the results of the engagement.

The supervisory board should be allowed to organise meetings with external stakeholders in cases where it considers it necessary to improve its understanding of matters relevant to the company, including their views on the company's performance and reputation; however, the president of the management board should be notified in advance.

8. Documentation and Other Process Matters

8.1. Over-allotment

An over-allotment is an option available to the underwriters allowing the sale of additional shares from what a company plans to issue in an initial public offering or a secondary/follow-on offering. The underwriters may elect to exercise the over-allotment option, but the exercise of such right is not obligatory. Therefore, the underwriters may purchase from the issuer or the selling shareholder a specified number of additional shares beyond the number in the original offering at the offering price.

There are two types of over-allotment structure:

(i) greenshoe structure – when the underwriter exercises its option to obtain additional shares at the initial offering price; and

(ii) brownshoe structure – when the option gives the underwriter the right to sell the shares to the issuer at a later date.

The greenshoe option (a type of the call option) is convenient for the underwriters in case the market price exceeds the offering price because under such market conditions they cannot buy the shares back without incurring loss. In such circumstances, the greenshoe option makes it possible for the underwriters to buy back shares at the offering price. The option to acquire additional shares is limited to 15% of the size of the original offering and the option can be exercised within 30 days of the equity offering.

Under a brownshoe ("reverse green shoe") option, the underwriter is allowed to sell the shares back to the issuer, but only if the share price falls below the offering price. This option represents a form of put option and basically has the same effect on share price as the greenshoe option.

8.2. Stabilisation

Stabilisation refers to any purchase or offer to buy relevant securities, or any transaction in related instruments equivalent to them, by investment firms or credit institutions, undertaken in connection with the significant distribution of such relevant securities, solely for the purpose of maintaining the market price of the relevant securities for a predetermined period of time, due to selling pressure.

Stabilisation will not be considered market abuse if certain conditions are met. Firstly, stabilisation may be undertaken only for a limited period of time. Secondly, issuers, offerors or persons undertaking the stabilisation must publish the following information:

(i) that stabilisation may be undertaken, with no assurance that it will be undertaken, and that it may be stopped at any time;

(ii) that stabilisation transactions are aimed to support the

market price of the relevant securities;

(iii) the beginning and the end of the period during which stabilisation may occur;

(iv) the identity of the stabilisation manager;

(v) the existence and maximum size of any overallotment facility or greenshoe option, and any conditions for the use of the overallotment facility or exercise of the greenshoe option.

Exceptionally, the above described information does not need to be published if it is contained in the prospectus. Finally, issuers, offerors or persons undertaking the stabilisation are obliged to notify the CFSSA about the details of the stabilisation transactions. They must also notify the public whether the stabilisation took place, disclose the date of its commencement and last occurrence, and the price range.

Finally, in cases of offers of shares (or other equivalent securities), stabilisation cannot be executed above the offering price. Also, in cases of offers of securitised debt convertible or exchangeable into shares (or equivalent securities), stabilisation cannot be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

9. Ongoing Reporting Obligations (Life as a Public Company)

Shareholders and potential investors should have regular access to consistent information regarding listed companies, all in order to be able to assess results and management of such companies and make their investment decision on the basis of reliable sources. Inadequate or unclear information hinders such decision-making and attraction of investors. Therefore, the listed companies are required to comply with various ongoing reporting obligations, which vary based on the market segment in which the securities are included on the ZSE, and the nature of the securities offered.

In addition to the statutory provisions, there are other rules that apply to issuers, such as rules stemming out of the prospectus rules, corporate governance code, the MAR and so forth.

9.1. Annual Financial Statements

All companies with listed shares must publish audited annual financial statements within four months of the end of financial year. The annual financial statements must comprise annual accounts, the management report and statements of persons responsible for preparation of the financial statements concerned. Contemporaneously with the publication of annual reports, the company must publish resolution of a corporate body in charge for approval of financial statements (usually, shareholders' meeting resolution) and its resolution on dividend distribution or coverage of losses, as the case may be.

The content of the reports is governed by the applicable accounting rules of financial reporting (IFRS).

The issuers of securities traded on the ZSE must publish annual overview of all information published in the previous 12-month period.

The issuers listed on the Premium Market of the ZSE must, before the beginning of the financial year, publish information on the date of publication of financial statements, date of shareholders meeting and date of dividend payment.

9.2. Periodic Reporting

Issuers whose shares or debt instruments are traded on the ZSE must publish their interim accounts within two months of the end of the interim financial period. In addition, issuers of shares traded on the ZSE must also publish quarterly reports within 30 days of the end of the financial quarter.

The information on change in shareholding structure must be published by the shareholders who either reached or fell below certain shareholding thresholds (5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%) and by issuers who have received such information.

Issuers must inform on any disposal or acquisition of its treasury shares, any change in shareholding rights, any new debt securities issuance and any change in its constitutional documents.

Issuers listed on the Premium Market of the ZSE must publish information on any acquisition of shares in other companies and information on the sources and purpose of acquiring treasury shares, as well as the applicable purchase price.

The Authors:

■ Damir Topic
Senior Partner
damir.topic@dtb.hr
+38515391600

■ Marija Gojevic Sparavec
Attorney
marija.gojevic@dtb.hr
+38515391600

CZECH REPUBLIC

By Tomas Sedlacek, Partner, BBH

1. Market Overview

1.1. Czech capital market history

As in most of the post-communist countries, the Czech capital market has undergone significant development in the last 30 years, since being created literally from scratch. The Prague Stock Exchange (PSE) was established in 1993 and enabled trading mainly of equity securities and bonds, and other financial instruments to a certain degree. In the same year, a smaller stock exchange, the RM-System, was also founded. The segment was supervised by the Ministry of Finance. Later, as relevant legislation was implemented, supervision of the capital market fell to the Securities Committee (1998-2006). The legislative and regulatory environments gradually became more established while the capital market stabilised (the fundamental legislation in the Czech Republic in this area is the Act on Business Undertakings on the Capital Market (the "Capital Markets Act" or CMA)). In 2006, the Czech National Bank (CNB) became the sole supervisor of the entire financial market. The country's central bank has acted in that capacity ever since.

As a result of the accession of the Czech Republic into the European Union, Czech capital market legislation was harmonised with European law in all aspects, from licensing procedure, through reporting and transparency obligations, right up to sanctions and penalties.

Throughout this time, the PSE developed and grew in size, but liquidity and traded volumes remained low. The biggest volumes were traded on the PSE in the period between 2001 and 2008. According to the PSE's 2018 Annual Report, the total volume of share trades reached approximately EUR 5.7 billion in 2018 while bonds trailed at EUR 0.37 billion (compare the figures with the record-breaking EUR 79.5 billion worth of trades in 2001).

On the other hand, the second Czech stock exchange –the RM-System – is focused mainly on small and medium-sized investors. Trading volumes are much lower than at the PSE – in 2018 a mere EUR 0.112 billion.

1.2. Regulatory framework

The Czech capital market has two key regulators who split the regulation and supervision between themselves – the Ministry of Finance and the CNB. While the Ministry of Finance is the penholder and leader in creating the legal framework for the Czech capital market, including the adoption of laws and regulations that transpose EU Directives and Regulations with impact on the capital market, the CNB has the position of the regulator and supervisor.

The legal and regulatory framework of the Czech capital market today is fully harmonised with the EU legislation and compliant with the EU rules, including MiFID II. As mentioned above, the key piece of legislation for the capital markets in the Czech Republic is the CMA. The other laws and regulations relevant for the Czech capital market are the Bonds Act, the Business Corporation Act, Act on Management Companies and Investment Funds, and the Civil Code.

Over the last few years, the market participants have also been required to comply with the requirements of EU regulation EMIR, MAR, MiFID, Benchmark regulation, PRIIPs, SFTR, CSDR and other requirements adopted locally such as central register of contracts (the central evidence of accounts).

In April 2019, changes to the CMA have been introduced, which, among other things, make it easier for issuers, especially from among small and medium-sized enterprises, to enter the capital market. Another objective of the changes is to simplify the conditions for the publishing and approving of prospectuses, which frequent issuers will find especially beneficial.

1.3. Biggest ECM and DCM transactions in recent years

The most notable IPO transactions which took place in the Czech Republic in recent years are the IPO of AVAST in 2018 and GE Money Bank (now Moneta Money Bank) in 2016.

AVAST is a Czech technology firm which actually went public in London and has a dual listing on the PSE.

The IPO of Moneta Money Bank in 2016 was a non-traditional form of solving the situation whereby GE wanted to divest its Czech banking operation, but the M&A process did not lead to finding a suitable purchaser interested in buying the institution under conditions which would be attractive enough for the sellers. GE therefore executed an IPO and gradually reduced its stake, and today Moneta Money Bank is the only bank in the Czech Republic without a majority shareholder, but rather with a truly diversified shareholding structure.

On the debt capital market side the largest offerings are state bond issues and bank mortgage bond issues. Corporate bond issues are usually smaller in volume. Among the most notable in size actually placed in recent years are the SAZKA Group's EUR 200 million bond issue in 2019, J&T Global's X EUR 180 million bond issue in 2018, PPF Financial Holdings B.V.'s Tier 2 EUR 160 million bond issue in 2018, and EPH Financing's CZ EUR 200 million bonds in February 2020, which is currently being placed.

2. Overview of the local stock exchange and listing segments (markets)

As mentioned above, there are currently two main stock exchanges operating in the Czech Republic – the PSE and the RM System. Both operate regulated and non-regulated markets within the meaning of EU legislation.

The PSE is the largest and oldest organizer of the securities market in the Czech Republic. Businesses normally organise their IPOs through agents while trading on the PSE is possible exclusively through brokers who are members of the stock exchange. If a common investor decides to invest in the exchange, he/she needs to contact one of the exchange members.

The PSE closely cooperates with Vienna Stock Exchange as its majority shareholder. At the international level, this cooperation enables joint measures to increase the visibility of both markets and to acquire professional market participants such as data vendors and index licensees, institutional investors and trading participants for the member exchanges. The PSE is a member of the Federation of European Securities Exchanges and has qualified as a designated offshore securities market as determined by US SEC.

The PSE operates the following markets: Prime Market, Standard Market, Free Market and START Market. In addition, bonds may also be traded on the Official Market and Regulated Market of the PSE.

2.1. PSE Prime Market

The Prime Market is a regulated market intended for trading in the largest and most prestigious issues of shares in the Czech and foreign companies.

Companies with shares listed on the Prime Market are subject to higher demands. They must meet the following criteria:

- market capitalization of the issue at EUR 1,000,000
- free-float of 25% at minimum
- issuer's operation period at least 3 years

2.2. PSE Standard Market

The Standard Market is another regulated market intended for trading in the large and prestigious issues of shares in the Czech and foreign companies. The Standard Market may accept either the issues which meet the demanding statutory requirements of the official securities market or the statutory requirements of the regulated market. The PSE also allows shares to be admitted without the consent of the issuer if they have already been traded on another regulated market in the EU.

Companies with shares traded on the Standard Market must meet the following statutory criteria:

- market capitalization of the issue at EUR 1,000,000

- free-float of 25% at minimum
- issuer's operation period at least 3 years

2.3. PSE Free Market

The Free Market is a segment of the Multilateral Trading Facility (MTF). Trading on the Free Market is open to investment instruments admitted to trading on the basis of their issuer's request, as well as investment instruments traded on other global stock exchanges, admitted to trading without the issuer's consent.

The following types of investment instruments are traded on the Free Market:

- Shares
- Bonds
- ETFs
- Investment certificates
- Warrants

2.4. PSE START Market

START is a non-regulated multilateral trading facility for small innovative businesses valuation of between EUR 1 million to EUR 80 million that want to raise new capital or whose owners want to withdraw partially or completely from the current business to capitalize their existing activities. It was set up in 2018 and the market allows a minimum investment of about EUR 4,000. The advantage of START over other similar markets in Europe is minimal costs for the issuer. The price of new capital is therefore competitive compared to any other form of funding or exit. Below are the requirements and main features of listing on START market:

- CZK 25 million < total value < CZK 2 billion
- Simplified prospectus, Czech accounting standards, independent analysis
- Flexible re-subscription option

To date there are six companies listed on the START market.

2.5. PSE Official Market

The Official Market is a regulated market intended exclusively for trade in the largest and most prestigious bonds issued by the entities coming from the sector of public administration, corporations and financial sector. If they adhere to the statutory rules of the Official Market they must primarily meet the criterion of minimum issue volume of EUR 200 000.

2.6. PSE Regulated Market

The Regulated Market is intended for trade in the major bonds and other debt securities issued by the entities coming from the sector of public administration, corporations and financial sector. The Regulated Market may accept the issues which meet the less demanding statutory requirements of the Regulated Market.

2.7. RM System

The RM System is the smaller of the two exchanges and as such it is primarily focused more on small and medium-investors that are interested in investing on capital markets. Among the largest benefits of trading on the RM System is the large range of stocks and certificates that are traded in Czech Koruna and extended trading period.

The RM System has two markets – the official regulated market and the open market. The official regulated market meets the legal requirements for acceptance on this market according to valid legislation.

Securities traded on the official market must fulfil specific conditions defined by the law regarding business on capital markets, primarily concerning conditions for accepting trades and the obligation towards shareholder disclosure or the obligation to accept take-over bids.

The open market is legally defined as a multi-sided trading system (MOS) with more open conditions for accepting securities without the disclosure and other obligations established by the law regarding business on capital markets.

3. Key Listing Requirements

As the RM System is a considerably smaller exchange than the PSE, the below text will now focus only on the PSE.

3.1. Equity Capital Market

The listing requirements vary depending on the market and the instrument that is being listed. Below is a summary of the listing requirements for equity securities for the different markets.

3.1.1. PSE Prime Market

For admission of shares to trading on the Prime Market (being the most prestigious market of the PSE for trading of shares issued by the Czech and foreign blue chip companies) the

following criteria must be met: (i) market capitalization of the issue at EUR 1,000,000, and (ii) free-float of 25% at minimum.

If these conditions are satisfied, the following documents/information must be provided to the PSE in order to have the shares admitted to the trading at the Prime Market:

a) application for admission (in Czech, Slovak, or English);

b) prospectus approved by the Czech National Bank or passported for admission to trading in the Czech Republic (the prospectus is not required if an exception from the obligation to publish the prospectus applies, see Art. 1 (5) of the Regulation (EU) 2017/1129);

c) certification of ISIN allocation or that of similar identification code;

d) signed framework agreement between the issuer and the PSE;

e) confirmation from the Central Depository regarding the registration of the issue;

f) certificate of incorporation in the Commercial Register or similar foreign register;

g) Memorandum of Association or Articles of Association of the issuer, or similar document under the legislation of the issuer's country of origin; and

h) annual financial statements for the last 3 years (certain limited exemptions may apply).

The Exchange Listing Committee must decide on the admission of an issue within 15 days of the delivery of the respective application.

3.1.2. PSE Standard Market

The same listing requirements also apply to the Standard Market. However, for the Standard Market the decision on admission is made by the PSE CEO, not the Exchange Listing Committee. The CEO must decide on the admission of an issue within 10 days of the delivery of an application.

3.1.3. PSE Free Market

The following documents especially need to be submitted to ensure the successful admission of an investment instrument to the Free Market:

a) an application for admission (in Czech, Slovak, or English)

b) a prospectus or information document,

c) a certificate of allocated ISIN or a similar identification code

d) a signed general agreement between the issuer and the stock exchange (for issues admitted with the issuer's consent)

e) proof of the registration of the issue by the Central Depository

f) a certificate of incorporation in the Commercial Register or a similar foreign register

g) a Memorandum of Association or Articles of Association of the issuer, or a similar document under the legislation of the issuer's country of origin

The CEO of the PSE must decide on the admission of an investment instrument within 10 days of the submission of an application.

3.1.4. PSE START Market

The START Market requires that in addition to the above-mentioned general information and documents, the following documents also be submitted:

a) an analysis of the shares prepared by a member of the PSE or an authorized analyst,

b) an affidavit of the issuer with the declaration of the issuer of the fact that the legal due diligence took place and that its results are included to the prospectus, information document or are published as an independent document prior to the commencement of trading of shares on the START Market; the issuer shall specify an authorized legal advisor that conducted the legal due diligence.

The CEO of the PSE must decide on the admission of an investment instrument within 10 days of the submission of an application.

3.2. Debt Capital Market

Bonds (debt securities) issues can be accepted to the Official Market or to the Regulated Market of the PSE.

The Official Market may only accept the issues which meet the statutory requirements of the regulated securities market.

Debt securities may be accepted to the Official Market or Regulated Market if the following documents are submitted:

a) an application for admission (in Czech, Slovak, or English)

b) a prospectus

c) certification of ISIN allocation or that of similar identification code

d) a signed framework agreement between the issuer and the PSE

e) confirmation from the Central Depository of the registration of the issue (for dematerialised securities), or samples of the certificates (for certificated securities), or confirmation of registration of the issue in a similar foreign register

f) a certificate of incorporation in the Commercial Register or similar foreign register

g) financial statements for the last 3 years (in case of the Official Market)

The Exchange CEO must decide on the admission of an issue of bonds within 10 business days of the delivery of an application.

4. Prospectus Disclosure

Securities issued by a company may only be admitted for trading on a Czech regulated market if a prospectus has been drawn up and approved by the Czech National Bank or a foreign competent authority and passported for admission to the regulated market in the Czech Republic.

The contents and other aspects of a prospectus are determined by the Prospectus Regulation and the delegated legislation which includes the Commission Delegated Regulation (EU) 2019/980 ("PR Delegated Regulation") which sets out the details for the format, content, scrutiny and approval of the prospectus and the Commission Delegated Regulation (EU) 2019/979 ("Prospectus RTS Regulation") which sets out technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal.

According to the requirements of the Prospectus Regulation a prospectus needs to be written in an easily analysable, concise and comprehensible form and must contain the necessary information on the basis of which an investor may make its informed assessment of the financial position, etc. of the issuer, the rights attaching to the securities being offered and the reasons for the issue and impact on the issuer. Prospectus may be published as a single document or in three separate documents comprising a registration document (containing information relating to the issuer), a securities note (containing information concerning the securities being offered) and a prospectus summary.

The prospectus for listing purposes may be drawn up either in Czech or English language. Prospectus drawn up in another language must be translated. Even in cases of a prospectus in Slovak language (which is due to historical and linguistic proximities very close and often may be used in communication with Czech authorities) a Czech or English translation is required. If a prospectus is drawn up in English, the prospectus must contain a Czech language summary.

Key information that the Prospectus Regulation requires to be included in a prospectus includes:

- risk factors informing potential investors of the material risks to the issuer, its industry and the securities being offered. These should be specific to the issuer or shares or bonds being offered, be grouped into a limited number of categories with the most material factor listed first and, where possible, there should be a quantitative assessment of each risk. The CNB pays extreme attention to this part of the prospectus and reviews and considers all of the risk factors very closely and in detail and also often stresses the requirement for the risk factors to be written in plain and easily understandable language.
- the last three years' audited financial information prepared in accordance with IFRS or, in the case of a non-EEA issuer, in accordance with national accounting standards where these standards are considered equivalent to IFRS. If a company has been operating for a shorter period of time, subject to certain conditions, the three year's audited financial information requirement may be exempted;
- details of any significant changes in the financial or trading position of the company since the date of the latest published audited or interim financial information included in the prospectus;
- a working capital statement covering the 12-month period from the date of the prospectus;
- an operating and financial review describing the company's financial condition, changes in financial condition and results of operations for the periods covered by the historical financial information included in the prospectus;
- summaries of material contracts entered into outside of the ordinary course of business by the company's group in the past two years (or longer if material obligations or entitlements remain outstanding);
- details of any significant shareholders of the issuer, whose interest is notifiable under the issuer's national laws;
- details of any related party transactions that the company has entered into during the period covered by the historical financial information and up to the date of the prospectus;

- details of any legal proceedings that the company has been party to in the last year;
- prescribed information on the company's directors and senior management, including remuneration, benefits and interests in the shares of the company (including share options) and also with respect to the company's corporate governance; and
- responsibility statements from the company, the directors and any proposed directors, confirming that they accept responsibility for the information contained in the prospectus and that, to the best of their knowledge (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and contains no omission likely to affect its import.

The prospective issuers can omit information from a prospectus in limited circumstances where the CNB may authorise that disclosure of such information would be contrary to the public interest, seriously detrimental to the issuer (provided that the omission would not be likely to be misleading the public) or the information is of minor importance in the specific situation and would not influence the assessment of the financial position and prospects of the issuer.

A supplement to the prospectus must be drawn up, approved by the CNB and published if any significant new factor, material mistake or inaccuracy relating to the information included in the original prospectus arises during the period after publication of the original prospectus but before the later of the securities being admitted to trading and the closing of the offer to the public.

At same time in case of the issuance of a supplementary prospectus any investor who had previously agreed to purchase shares in the offering may withdraw from the subscription. This right is exercisable before the end of the second working day after the day on which the supplementary prospectus was published.

5. Prospectus Approval Process

5.1. Competent Regulator

The competent regulator authorised to review and approve prospectuses in the Czech Republic is the CNB. For the purposes of listing the securities on any of the markets of the PSE the company will need to submit a application to the PSE and comply with the relevant listing rules of each particular market.

5.2. Timelime, number of draft submissions, review and approval process

The CNB has 20 business days to approve a submitted prospectus in cases of issuers which have not yet had a prospectus approved by the CNB. In case of issuers which have already had a prospectus approved by the CNB the time period for the CNB to approve the prospectus is reduced to 10 business days and in case of frequent issuers, 5 business days. During the approval process the CNB may raise questions and request additional information to be provided and modifications be made. In case of such a request, the time period for approving the prospectus is extended by the time which it takes until the additional information or amendments are provided to the CNB.

In practice the procedure is however such, that issuers supply a near final draft of the prospectus to the CNB for an informal review and comments. It usually takes the CNB around 7 - 10 days to revert back with its comments. The CNB reviews and assess the prospectus in a very detailed manner and often raises a significant number of questions, comments, requests. In order to have the process as efficient as possible, it is usually helpful to set up a call with the respective CNB team member who is in charge of the review of the prospectus to discuss comments which are not clear or where there is a different point of view to find a reasonable approach which will work for both sides. Once clarified a second draft is submitted to the CNB for informal review and comments. The usual practice is that the CNB reverts back once more with a set of comments and remarks. Usually this time the number of comments is lower. On average there are three to four rounds of CNB comments to the prospectus. Once the prospectus has been so finalised in the course of this informal interaction with the CNB, the issuer and the CNB agree on commencing the formal approval proceedings by the issuer submitting to the CNB a formal request for the approval. In practice this is however just a formality as the contents of the prospectus have already been agreed and preapproved by the CNB during the informal interaction. The formal approval is hence issued within several days of submitting the application for the approval. Overall the whole process with the CNB approval (both the informal and formal parts) usually take from 4 – 8 weeks depending on number of comments, time of year (e.g. during the summer holiday season the CNB response rate is slower) and complexity of the issuer structure or securities to be issued.

6. Listing Process

As mentioned above, the process of listing of securities on

any of the PSE markets is quite straight forward. The issuer prepares all documents required for such listing (for more details please see the Listing Requirements chapter above) and then files a formal application to the PSE. Depending on the type of the market the PSE has from 10 to 15 business days to decide whether the securities will be admitted for trading on the respective market.

In practice the PSE is approached by issuers during the early stages of the informal interaction with the CNB, often with a draft of the prospectus being submitted for informal review by the PSE as well. Once the process with the CNB gets closer to finalisation and approval, the issuer discusses the exact timing of submitting the listing application to the PSE so that the formal approval of the prospectus by the CNB is as close as possible to admission of the securities for trading at the given market.

In practice the whole interaction with the PSE takes around 3 weeks, but if well timed, the listing is effected almost simultaneously with the approval of the prospectus, its publication and determination of the issue price.

7. Corporate Governance

Czech law does not prescribe for particular codes that must be complied with by the issuers applying for admission of their shares or other securities to the Prime Market or any other PSE market.

There has been a corporate governance code developed in the Czech Republic and the PSE's web site draws attention to this. Regardless of this, there is no obligation for any issuer to adopt this in order to have securities listed on a PSE market.

However, if the issuer has adopted a code of corporate governance and management (regardless whether mandatorily or voluntarily), the issuer must inform about this in the application and then also in its periodical reporting to the PSE.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

An over-allotment relates to the rights of the underwriters to sell additional shares in excess of the originally planned amount of shares in an initial public offering or secondary/follow-on offering.

The underwriters of such an offering may elect to exercise the overallotment option when demand for shares is high and shares are trading above the offering price. This scenario allows the issuing company to raise additional capital.

Other times, the purpose of issuing extra shares is to stabilize the price of the stock and prevent it from going below the offering price. If the stock price drops below the offering price, the underwriters can buy back some of the shares for less than they were sold for, decreasing the supply and hopefully increasing the price. If the stock rises above the offering price, the overallotment agreement allows the underwriters to buy back the excess shares at the offering price, so that they don't lose money.

There are two types of structures that address the above: (a) greenshoe structure and (b) brownshoe structure, otherwise known as "reverse greenshoe". A greenshoe structure is when the underwriter has a right to obtain additional shares at the initial offering price from the issuing company, whilst the brownshoe option gives the underwriter the right to sell the shares to the issuer at a later date.

The greenshoe option to acquire additional shares is limited to 15% of the size of the original offering and the option can be exercised within 30 days of the equity offering.

In a brownshoe or "reverse green shoe" option instead of buying shares, the underwriter is allowed to sell the shares back to the issuer, but only if the share price falls below the offering price.

Both options have been used in Czech IPO structures.

8.2. Stock lending agreement

Stock lending is stabilisation technique pursuant to which the stabilisation manager has the right to borrow up to 15% of issued shares from the selling shareholders in secondary offerings. The manager uses these shares to settle any over allotments made in connection to the offer. The stabilisation manager is required to return equivalent shares to the over-allotment shareholder by a specific day as agreed in the stock lending agreement.

8.3. Stabilisation

Stabilisation is a process during which stock is purchased by underwriters to stabilize or support the secondary market price of a security immediately following an IPO. After an IPO, the price of the newly issued shares may falter or be shaky in trading. The terms of the stabilisation are usually agreed in the

underwriting agreement. It is important to note that stabilisation may only be used to support the market price of the shares and not to increase the price in excess of the offering.

Under MAR stabilisation is exempted from the prohibition on insider dealing, market manipulation and unlawful disclosure of inside information so long as:

- the undertaking of the stabilisation is for a limited period (in respect of shares the time period is no longer than 30 calendar days whilst in respect of bonds it is no longer than 60 days);
- relevant information is disclosed to the competent authority;
- disclosure is made in the offering documents; and
- the undertaking is in compliance with adequate limits with regard to price.

The European Securities and Markets Authority ("ESMA") indicated that disclosure obligations will include further requirements, namely that (a) prior to the stabilisation, issuers must disclose where the stabilisation measure may occur (whether it be on or outside a trading venue); and (b) after the stabilisation, issuers must disclose the trading venue on which the stabilisation transactions were carried out.

Both MAR and ESMA recommendations and guidelines are applicable in the Czech Republic.

9. Ongoing Reporting Obligations (Life as a Public Company)

Each issuer of securities which are listed on a regulated market must comply with various ongoing reporting obligations which differ depending on the market on which they are listed and on the type of securities that are listed. Generally speaking, the reporting obligations for companies with listed shares are more extensive than for the companies with listed debt securities or other instruments. In addition, both listed and unlisted companies will need to ensure that they meet the ongoing obligations under MAR.

9.1. Annual Reports

All companies with securities (regardless whether equity or debt) listed on a regulated market are under the obligation to prepare and publish annual audited accounts no later than within 4 months after the end of the financial year.

In addition, the above-mentioned issuers must also publish semi-annual financial accounts within three months of the end of the interim financial period. These accounts do not need to be audited, but where an auditor reviews or audits these accounts, then the audit or review report must also be published.

Where a company is domiciled in the EU, the financial statements must be prepared in accordance with IFRS as adopted by the EU.

9.2. Other reporting obligations

In addition to the financial accounts the issuers of securities listed on Prime market are required to submit to the PSE periodically the following information:

a) calendar regarding the fulfilment of the disclosure obligations, always before the commencement of trading and thereafter, always within 30 days of the beginning of the financial year for that financial year, but always before the publication of the first information from that calendar. The issuer shall keep the calendar updated and shall fulfil its disclosure duties in accordance with the known deadlines. This calendar in particular contains data on the publication of preliminary financial results, the annual report and the semi-annual report, interim report and date of the general meeting.

b) without undue delay preliminary financial results to the extent of selected indicators from the balance sheet and profit/loss statement or to the extent of the complete balance sheet and profit/loss statement if the company compiles them;

c) an annual report and consolidated annual report, no later than 4 months after the end of each fiscal year;

d) a semi-annual report or consolidated half-yearly report, if the issuer is obliged to compile consolidated semi-annual reports, within 3 months following the end of the first 6 months of each fiscal year;

e) companies operating in the mining, timber or forest industries or businesses, must submit a report on remuneration paid to a state no later than 6 months after the end of each fiscal year;

f) without undue delay an interim report or interim financial statements for the first and third quarter of each fiscal year, if made up and published by the issuer,

g) a Declaration on the Code of Corporate Governance that the issuer complies with (if any) in the same form as is a part of the annual report;

h) in addition, any information on the company's business results and commentary on its financial situation as required by the PSE listing committee;

i) without undue delay information about the convocation of an annual or extraordinary General Meeting, distribution of dividends, the issuance of new shares, the exercising of rights from convertible or priority bonds and the exercising of subscription rights;

j) without undue delay, a draft resolution for an increase or decrease of registered capital;

k) percentage of own shares, but at the latest two trading days after the acquisition or sale, if these shares reach, exceed or fall below the thresholds stipulated by the CMA;

l) without undue delay personnel changes to the board of directors, supervisory board, top management;

m) without undue delay minutes of regular and extraordinary general meetings of the issuer;

n) without undue delay changes to the entry in the Commercial Register involving the issuer;

o) without undue delay all changes to rights relating to the listed shares;

p) without undue delay all information required for the protection of investors or for securing the smooth functioning of the market (e.g. legal and commercial disputes, new patents and licenses, closure or cancellation of new contracts, appointment of a new auditor);

q) without undue delay each change in the rights associated with a particular class of shares or similar securities representing the right to a share in the issuer's business, also if there are changes made to the rights associated with an investment instrument which the issuer has issued and with which a right is associated to acquire shares issued by the issuer or similar securities representing the right to a share in the issuer's business;

r) information regarding the shareholder structure, always upon the receipt of an extract from the register of shareholders and the designation of the persons acting in concert;

s) without undue delay information about ownership interest of the issuer in the businesses of other parties;

t) without undue delay notification of the decision of the issuer on the exclusion of the shares concerned from trading on the regulated market, including information about whether and when a public offering for a contract has been made in accordance with the law and the full wording of the public offering.

Reporting obligations of other PSE markets are reduced, but the principle and objectives are the same, i.e., to ensure transparent and timely disclosure in order for the market participants to have full and accurate information for their trading activities.

The Author:

Tomas Sedlacek
Partner
Tsedlacek@bbh.cz
+420 234 091 355

ESTONIA

By Raino Paron, Partner, and Kadi Sink, Senior Associate, Ellex Raidla

1. Market Overview

There are currently only 16 companies listed on the Main List of Nasdaq Tallinn and a further two companies listed on the Secondary List. The Bond List includes 8 corporate issuers. As of April 2020, the market capitalisation of Tallinn Stock Exchange is about EUR 2.4 billion (whereas in January 2020 the market capitalisation was EUR 2.9 billion).

Although the Estonian Capital Markets Diagnostic project carried out in 2019 (the "Diagnostics Report") did not identify regulatory barriers and deemed the business and economic environment in Estonia to be generally favourable for the development of capital markets, for a number of years the Estonian capital markets have remained rather inactive and illiquid. One of the key reasons behind such inactivity identified by the Diagnostics Report is the issue of limited demand and supply. The IPO of Tallinna Sadam, a state-owned company, on Nasdaq Tallinn in 2018 has been seen as a positive development towards creating a more active capital market by market participants and the Estonian Government has included a goal to continue listing of minority stakes of certain state-owned companies on the Tallinn Stock Exchange.

In comparison to earlier periods, recent years have been more active in terms of new listings of companies and bonds on Nasdaq Tallinn. When during the period of 2010-2015, only one company was listed on Tallinn Stock Exchange, operated by Nasdaq Tallinn Aktsiaselts ("Nasdaq Tallinn"), during the period from 2017 to date three companies have entered the Main List of Nasdaq Tallinn.

Recent listings ON the Main List and Bond List on Nasdaq Tallinn with emission size are the following:

- Eften Real Estate Fund III shares, 2017 (EUR 3.5 million)
- Admiral Markets subordinated bonds, 2018 (EUR 1.8 million)
- Tallinna Sadam shares, 2018 (EUR 165 million)
- UPP Olaines bonds, 2018 (EUR 6.2 million)
- Baltic Horizon bonds, 2018 (EUR 50 million)
- LHV Group subordinated bonds, 2018 (EUR 40 million)
- Coop Pank shares, 2019 (EUR 39 million)
- Inbank subordinated bonds, 2019 (EUR 8 million)
- PRFoods bonds, 2020 (EUR 10 million).

2. Overview of the local stock exchange and listing segments (markets)

Tallinn Stock Exchange, operated by Nasdaq Tallinn, is the only stock exchange in Estonia. Nasdaq Tallinn operates two principal markets, a regulated market for the purposes of the Directive 2014/65/EU of the European Parliament and of the Council on Markets in Financial Instruments (MiFID II) and First North, a multilateral trading facility or "alternative market" which does not have the status of an EU-regulated market.

Nasdaq Tallinn together with Nasdaq stock exchanges in Riga and Vilnius have formed the Baltic Market which means common presentation of all listed Baltic companies in a joint list. In legal terms, however, the companies are listed on their home market, i.e. the exchange in Tallinn, Riga or Vilnius and supervised by their local financial supervision authority.

The regulated market has four market segments for different financial instruments. The structure of the lists of securities traded on the Nasdaq Baltic stock exchanges is as follows:

- Baltic Main List (shares)
- Baltic Secondary List (shares)


Raino Paron


Kadi Sink

Ellex Raidla

- Baltic Bond List (debt securities)
- Baltic Fund List (fund units)

The Main List and Secondary List are both regulated markets, however, the eligibility requirements for securities and their issuers for admission to Secondary List are not so high than requirements set forth for securities listed on the Main List. In addition to corporate bonds, the Bond List includes also sovereign bonds. To date, the Estonian government has no listed bonds and so the Baltic Bond list only includes Latvian and Lithuanian government bonds.

First North has separate lists for equities and bonds:

- First North Baltic Share List (shares)
- First North Baltic Bonds List (debt securities).

First North has been established to enable smaller and growing companies who do not meet the criteria to be listed on the regulated market access to capital markets.

3. Key Listing Requirements

A company wishing to list its securities on Tallinn Stock Exchange must meet the criteria and comply with the requirements established by Nasdaq Tallinn rulebook. For the purposes of this overview, we will focus on the eligibility requirements applicable for companies wishing to list its shares or bonds on the Main List or the Bonds List of Nasdaq Tallinn or First North relevant lists respectively.

Main List. For a company's shares to be eligible for listing and admission to trading on the Main List, the company must have, as a rule, at least three years of operating history in its main field of activity and an established financial position. The market capitalisation of the company must be above EUR 4 million. The company must prepare its financial reports in accordance with the International Financial Reporting Standards. The shares must be freely transferable, and the expected free float must be at least 25%.

Bonds List. A company applying for the first listing of its bonds to the Bond List, shall have been engaging in its main field of activity for at least two years. Generally, the bonds must be nominated in euro and the total nominal value of the bonds submitted for listing must amount to at least EUR 1 million.

First North. Admission is based on a First North separate rulebook under which the eligibility criteria are more relaxed, for instance, no duration requirement is established for the company's operating history and there are no thresholds for the quantity of securities or market capitalisation of the company. The company seeking admission to First North must appoint a Certified Adviser whose role is to support the issuer in the admission process and thereafter upon complying with the First North rulebook, in particular with the continuous compliance with the disclosure requirements.

4. Prospectus Disclosure

If a company intends to offer transferable securities to the public and/or seeks admission of those transferable securities to trading on a regulated market in Estonia, it will need to prepare and publish a prospectus. As of July 2019, the prospectus regime is harmonised on the EU level and companies can draw up the prospectus following the requirements established by the directly applicable Regulation (EU) 2017/1129 of the European Parliament and of the Council (the "Prospectus Regulation") and its implementing acts, in particular the Commission Delegated Regulations (EU) 2019/980 and (EU) 2019/979.

The specific disclosure items to be made in the prospectus depend on the issuer and the type of securities and are established by the Prospectus Regulation regime. As a general principle, the prospectus must contain all necessary information which is material for an investor to make an informed assessment of the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor, the rights attaching to the securities and the reasons for the issuance and its impact on the issuer. Omission of information

from a prospectus is possible only in very limited circumstances upon authorisation from the Estonian Financial Supervision Authority (EFSA).

In Estonian practice, the prospectus is typically prepared as a single document and to date, tri-partite prospectus format (i.e., prospectus comprising of three separate documents, registration document, securities note and summary) has not be used. For bond programmes, issuers have also prepared the offering document in base prospectus format.

Estonian Securities Market Act establishes that a prospectus registered with the EFSA must be generally prepared and published either in Estonian or English language. Until recently, most of the prospectuses registered with the EFSA were prepared in English with only the summary of the prospectus translated into Estonian. This allowed the same offering document to be used for both the international and local offering. This practice may be subject to change as due to a recent legislative amendment, if the prospectus registered with the EFSA is in English, but the securities are also wished to be offered in Estonia, the issuer must prepare and publish a translation of the full prospectus into Estonian.

5. Prospectus Approval Process

The EFSA acts as competent authority in Estonia for the approval and review of the prospectus under the Prospectus Regulation.

Before a prospectus can be published, it must be approved by the EFSA. The approval process by the EFSA takes place in accordance with the procedure established by the Prospectus Regulation. There is no requirement for the number of filings of the prospectus to be made to the EFSA, but in practice, a debut issuer should plan a minimum of three filings. Pursuant to the Prospectus Regulation, the EFSA must provide its feedback within 20 working days of the submission of the first draft of the prospectus and within 10 working days for each subsequent filing.

6. Listing Process

Under the Nasdaq Tallinn rulebook, the decision on the listing or on the refusal to list securities is taken within three months after the start of the listing procedure. This period can be extended to six months if so decided by Nasdaq Tallinn. In practice however, the listing procedures take less time and usually run concurrently with the prospectus approval proceedings with the EFSA.

7. Corporate Governance

Companies whose shares are listed on the Main List or Secondary List of Nasdaq Tallinn, are expected to follow the Estonian Corporate Governance Recommendations as adopted by EFSA (the "Code") which establishes the principles of good corporate governance for listed companies. The Code is binding based on a "comply or explain principle" which means that the requirements which are not fully followed by the issuer during any financial year shall be described in its corporate governance report to be made available in its annual report. The Code does not apply to companies admitted to trading on First North, but the companies are welcomed to apply it on a voluntary basis.

The Code covers matters such as guidelines for shareholder involvement, composition and responsibilities of the management and supervisory boards, executive remuneration, rotation of statutory auditors. The Code requires, inter alia, that at least half of the members of the supervisory board of the issuer are independent. If the supervisory board has an odd number of members, then there may be one independent member less than the number non-independent members.

The Code does not the issuers to establish specific committees and only requires that the details of any committees the issuer has established (such as remuneration or audit committee) are disclosed on the website of the issuer. Nevertheless, under Estonian law, companies whose securities are admitted to trading on a regulated market, must as a minimum have an audit committee composing of at least two members including one of whom must be an expert in auditing or accounting.

8. Documentation and Other Process Matters

8.1. Stabilisation

Stabilisation means the process of purchasing or offering to purchase the securities that is undertaken by an underwriter in the context of a selling pressure after a significant distribution of those securities exclusively for the purposes of supporting the market price of the securities for a predetermined period.

In order for the stabilisation transactions not to be regarded as insider dealing or market manipulation, any such transactions on Nasdaq Tallinn must be carried out in accordance with the requirements established by Regulation (EU) No 596/2014 of the European Parliament and of the Council (MAR) and its implementing acts. MAR is directly applicable in Estonia and there are no further local legal requirements for carrying out

stabilisation.

In accordance with MAR, the following key requirements apply to stabilisation activities:

• Stabilisation may be carried out in case of a "significant distribution of securities," i.e., IPOs and secondary/follow-on offerings;

• The securities that can be stabilised are shares and other securities equivalent to shares, bonds and other forms of securitised debt, securities debt convertible or exchangeable into shares or into other securities equivalent to shares;

• The stabilisation can be only carried out for a limited period (in respect of shares the time period is no longer than 30 calendar days whilst in respect of bonds it is no longer than 60 days);

• Pre-stabilisation and post-stabilisation disclosure and notification requirements must be followed;

• Adequate price limits must be complied with.

Notably, stabilisation transactions may not be effected with a price higher than the offering price of the shares. For example, if the price of shares in the aftermarket drops below the offering price, the stabilisation manager, acting on behalf of the syndicate, may purchase securities in the market, thereby supporting the share price. However, if the price of the shares in the aftermarket increases above the offering price, the stabilisation manager will not be allowed to engage in stabilisation. More detailed requirements for stabilisation are established by Commission Delegated Regulation (EU) 2016/1052.

From a practical perspective, there have been only a limited number of transactions in Estonia which have included a stabilisation arrangement. In those cases, stabilisation has been documented and handled in line with international practice, i.e. a stabilisation manager is appointed to act on behalf of the syndicate of banks and the terms of stabilisation are agreed in the underwriting agreement.

8.2. Over-allotment, greenshoe and share lending

An over-allotment is an option available to the underwriters that allows the sale of additional shares from what a company plans to issue in an initial public offering or secondary/follow-on offering. The over-allotment option gives the underwriters the right, but not the obligation, to purchase from the issuer or the selling shareholder a specified number of additional shares beyond the number in the original offering at the offering price.

Over-allotment option can be used as a stabilisation technique, together with stock lending and greenshoe structure. If the market price exceeds the offering price, underwriters cannot buy back those shares without incurring a loss. Greenshoe option allows underwriters to buy shares from the issuer or the selling shareholder at the offering price for the purposes of covering its short position taken. The option to acquire additional shares from the issuer or the selling shareholder is limited to 15% of the size of the original offering and the option can be exercised within 30 days of the equity offering. This means that greenshoe is a type of call option that allows underwriters to sell investors more shares than originally planned at the offering price.

For the purposes of facilitating and stabilisation, the stabilisation manager may enter into a share lending agreement with a shareholder of the issuer. This is done, inter alia, to allow the stabilisation manager to settle any over-allotments made in connection to the offer to the investors. If the stabilisation manager borrows any shares pursuant to the share lending agreement, it will be required to return the securities by a specific day as agreed in the share lending agreement.

8.3. Greenshoe vs brownshoe structure

Based on the limited examples available, greenshoe structure is accepted and workable in Estonia. Brownshoe structure has been also successfully used in Estonia in one instance, in case of Tallinna Sadam's IPO in 2018.

In case of a brownshoe or "reverse green shoe" option, the shares are sold to investors as part of the base offering (i.e. there is no over-allotment or share lending) but the stabilisation manager will retain a part of the proceeds from the sale of those shares as stabilisation reserve. In case during the stabilisation period the share price on the market drops below the offering price, the stabilisation manager may effect purchases by using the reserve and acquire shares in up to 15% of the original offer size. Upon end of the stabilisation period, the underwriter is entitled to sell back the shares acquired during the stabilisation period to the selling shareholder or the issuer as the case may be. In other words, a brownshoe is a form of put option which gives the owner the right to sell the shares to a given party by a predetermined date and at a specified price. In case the call option was granted by the issuer, upon exercise of the call option, the issuer will presumably reduce its share capital by cancelling the shares. Under Estonian corporate law,

a company is not allowed to hold more than 10% of its own shares.

9. Ongoing Reporting Obligations (Life as a Public Company)

Public companies are subject to various ongoing disclosure and reporting obligations, which vary based on the market on which the securities trade and the nature of the securities offered.

Periodic disclosures. Listed companies are subject to, by operation of the Estonian Securities Market Act (implementing also the Directive 2004/109/EC of the European Parliament and of the Council - the Transparency Directive) and Nasdaq Tallinn rulebook, periodic disclosure obligations. Among others, companies admitted on Tallinn Stock Exchange are required to make public its audited annual report, prepared in accordance with IFRS as adopted by the EU no later than four months after the end of the accounting period. The companies whose shares are admitted to trading on the regulated market are also required to compile quarterly interim reports which must be published no later than two months after the reporting period. Issuers of bonds and investment funds are not obliged to published quarterly reports, but semi-annual reports will suffice.

Ad hoc disclosures. MAR governs the disclosure of material, price-sensitive information which arises outside the periodical reporting cycle. Pursuant to MAR, companies are generally obliged to immediately disclose all inside information to the market, with only limited grounds for delaying such disclosure being available. Companies who do not have listed securities become subject to the requirements established by MAR as of requesting admission to trading on a regulated market or multilateral trading facility with Nasdaq Tallinn. MAR further imposes notification requirements to managers and persons close about transactions made with the financial instruments of the issuer, foresees black-out periods of 30 days before publication of interim reports annual reports during which conducting trades with the shares by the managers is not allowed and requires the issuers to establish and maintain insider lists.

In addition, Nasdaq Tallinn rulebook also prescribes a catalogue events and transactions which must be immediately disclosed to the market, regardless of whether the information amounts to inside information or not.

It is worth mentioning that Estonian companies are not obliged to publish notifications about managers trades under Article 19 of MAR via Tallinn Stock Exchange and the transactions are only required to be reported to the EFSA who will make the information available to the public via its regulated information system.

Companies that have securities admitted to trading on First North are subject to a less heavy disclosure regime established by the First North rulebook. However, since entry into force of MAR in 2016 which extended its application also to companies whose securities are admitted to trading on a multilateral trading facility (such as First North), these companies are nevertheless subject to a rather extensive ad hoc disclosure regime.

Both Nasdaq Tallinn and the EFSA exercise supervision over the trading activity on Tallinn Stock Exchange, including the disclosure of adequate information to the investors by the issuers, protection of the interests of the investors as well as their fair and equal treatment.

The Authors:

■ Raino Paron
Partner
raino.paron@ellex.ee
+372 506 9906

■ Kadi Sink Senior
Associate
kadi.sink@ellex.ee
+372 5656 7624

HUNGARY

By Csilla Andreko, Partner, and Levente Hegedus, Managing Associate, Kinstellar

1. Market Overview

The Hungarian Stock Exchange, the predecessor of today's Budapest Stock Exchange (BSE), was established in 1864 and operated as one of Europe's leading exchanges until it was disbanded in 1948. After the fall of communism in 1990, it was re-established with great impetus, and a total of 60 initial public offerings took place between 1990 and 1998. Despite significant economic growth, the annual number of listings has not increased since then, meaning Hungary still lags far behind in terms of the number of listings compared to Western European counterparts.

Although Hungary has a well-established stock exchange and the BSE is the second largest stock exchange in Central and Eastern Europe based on capitalisation and liquidity, IPOs are not that common, given that only a couple of companies choose to go public each year. Companies that opt to go public mainly belong to the financial, energy, pharmaceutical and telecommunication sectors, as it is mainly companies belonging to these sectors which tend to grow large enough for an IPO in Hungary to become an option in the first place. However, there is an increasing effort on the part of the central bank and the stock exchange to encourage more companies to go public.

In any event, large capital markets transactions that draw the intention of international investors have been somewhat rare on the BSE, however, substantial transactions definitely come by. Waberer's International Nyrt.'s IPO in 2017 serves as a perfect example of that, as it was the biggest capital market transaction of the last two decades in the life of the BSE. Apart from that, notable transactions in the last couple of years include the IPO of AutoWallis Plc. and the IPO of MKB Bank Nyrt. in 2019.

Before 2019, the local debt capital market had been relatively under-developed and did not provide financing to complement bank lending. However, in order to diversify and improve the debt capital market, the National Bank of Hungary (NBH) launched a corporate bond purchasing programme called Bond Funding for Growth Scheme (BGS) in 2019 with an initial total amount of HUF 300 billion, which was later extended by an add-on scheme. Under the BGS, the NBH purchases bonds having at least B+ ratings issued by non-financial corporations. The objective of BGS is to promote the diversification of funding to the domestic corporate sector and also to enhance financial stability. Listing of the BGS bonds is required on BSE' s newly established XBond platform. To this date, there are numerous companies (mostly SMEs) that participated in the BGS and registered their bonds on the XBond platform.

2. Overview of the local stock exchange and listing segments (markets)

The BSE is the dedicated stock exchange in Hungary. In addition, it is the only "regulated market" in Hungary within the meaning of the EU Directive on Markets in Financial Instruments (No. 2014/65/EC) (MiFID II), where equity and debt securities may be listed.

2.1. Regulated markets

The BSE has the following market segments that qualify as a regulated market within the meaning of MiFID II:

2.1.1. BSE Prime

To be listed on the Prime Market, the issuer must meet several criteria regarding market capitalisation, ownership structure (free-float) and corporate history. Carrying out a public transaction (IPO) is mandatory at listing, however, such obligation may be postponed in certain circumstances. The share series on BSE Prime Market are more liquid in general and have a broader ownership structure than the BSE Standard.


Csilla Andreko


Levente Hegedus

KINSTELLAR

2.1.2. BSE Standard

For small and medium-sized enterprises who instead of using BSE Xtend as the access point to access the regulated market consider executing a public transaction at their initial listing, BSE provides an opportunity to enter the market with less stringent listing requirements than those required by the Prime Market. Carrying out a public transaction (IPO) is not mandatory at listing (i.e., technical listing is possible).

2.2. Non-regulated market

The BSE has the following platforms that qualify as a multilateral trading facility (MTF) within the meaning of MiFID II:

2.2.1. BSE Xtend

The Budapest Stock Exchange opened its first multilateral trading facility called BSE Xtend in September 2017 as a replacement of the BSE T Category listing. BSE Xtend provides opportunities for small and medium-sized enterprises which are planning significant business growth, looking for external financing and are able to fulfil the requirements of the multilateral trading market to enter the capital market and obtain funds.

The companies entering the domestic multilateral trading facility market are subject to lower fees and less complicated terms, however, the lighter conditions enable them to get used to transparency in the stock market so that they are better positioned and prepared to later access the regulated markets of the BSE such as the Prime Market.

2.2.2. BSE XBond

BSE has established XBond as a new multilateral trading facility on 1 July 2019. This market is a trading venue for corporate bonds, including those issued within the BGS program of the NBH.

Trading rules of the BSE XBond are similar to those applied in the debt securities section of BSE's regulated market. The main difference between the two segments is the conditions of listing, since the MTF provides easier access and less administrative burden for bond issuers.

2.2.3. BETa Market

On the BETa Market multilateral trading facility platform of the Budapest Stock Exchange investors can trade with foreign equities. Trading is conducted in Hungarian forints, thus the BETa Market offers access to the equities of several European companies issued in foreign currency without the need to face currency conversion costs.

3. Key Listing Requirements

3.1. General requirements for listing on regulated markets

Only an entire series of securities may be admitted to trading on the BSE and the securities must be freely tradeable. In addition, for the purposes of admission to trading, the issuer must accept the rules and regulations of both the BSE and the Hungarian Central Depository and Clearing House (the "KELER"). KELER serves as the national and central securities depository in Hungary and provides securities settlement as part of the clearing services for the BSE. In order to list securities on the BSE, the issuer must accept the custodial certificates of KELER in relation to the proof of legal title of the securities to be listed on the BSE.

In general, unless a specific exemption is applicable under EU Regulation No. 2017/1129 (the "Prospectus Regulation"), listing of securities on a regulated market of the BSE requires the approval of the publication of a prospectus prepared in accordance with the Prospectus Regulation by the NBH, or the relevant authority of another EU member state in accordance with the Prospectus Regulation.

3.2. ECM

The listing requirements relating to equity securities vary based on the segments of the market. A Hungarian company to be listed on the regulated market has to be a public company limited by shares (in Hungarian: Nyilvanosan Mukodo Reszvenytarsasag or Nyrt.). Please see below the summarized key listing requirements with respect to the regulated market equity segments of the BSE Standard and BSE Prime as well as the

multilateral trading facility platform of BSE Xtend.

3.2.1. BSE Prime – regulated market

The BSE Prime category has the highest admission standard, requiring, in general (i) at least HUF 5 billion as a minimum market value of the shares to be admitted; (ii) at least 25% of free-float; or HUF 2 billion worth of shares in free float; or a minimum of 500 shareholders; (iii) at least 3 audited financial years (discretion is possible); and (iv) a public transaction (IPO) as the method of listing, however, issuers may request a one-year postponement of the IPO in case they comply with all additional listing criteria on this segment.

A prospectus and corporate governance report shall be submitted to the NBH. Only common shares can be listed. The IFRS accounting standards are applicable in this category.

3.2.2. BSE Standard – regulated market

In order to be listed in BSE Standard category, a company is required to have (i) at least HUF 250 million as a minimum market value of the shares to be admitted; (ii) at least 10% of free-float; or HUF 100 million worth of market cap; or a minimum of 100 shareholders; and (iii) at least 1 audited business year (discretion is possible).

A prospectus shall also be submitted to the NBH. However, no public transaction is necessary upon listing (i.e., technical listing is possible) and there is no corporate governance reporting obligation on listing. The IFRS accounting standards are applicable in this category.

3.2.3. BSE Xtend –MTF

The listing requirements for this multilateral trading facility are less burdensome. There are no applicable equity class requirements, no public transaction is necessary (i.e., technical listing is possible), there is no corporate governance reporting obligation, and there are no requirements for free float or minimum audited business years.

Only an information memorandum must be submitted to the BSE (i.e., no prospectus is required under the Prospectus Regulation), provided that the total issue value does not exceed EUR 5 million. The filing authority in respect of such information memorandum is the BSE itself. Only the Local GAAP accounting standards are applicable in this category.

3.3. DCM

With respect to listing of debt securities on a regulated market of the BSE, the general requirements are applicable, with some differences in respect of certain debt securities (such as the requirement of a market making agreement in respect of structured products).

Registering debt securities on BSE XBond may be possible based on an Information Memorandum approved by the BSE if certain pre-conditions are fulfilled and provided that the prospectus preparation obligation is not triggered under the Prospectus Regulation.

4. Prospectus Disclosure

The Hungarian capital markets are regulated at EU level mainly by the Prospectus Regulation and by other harmonized EU regimes. Act No. 120 of 2001 (CMA) is the national regulatory framework for capital markets, along with the decrees of the president of the NBH, while the BSE also adopts applicable rules and implementing instructions. The NBH acts as the Hungarian financial supervisory authority tasked with the supervision of the Hungarian capital markets and the BSE. The NBH cooperates closely with the European Securities and Markets Authority (ESMA).

For the purposes of listing securities in the regulated market of the BSE, the issuer must prepare a prospectus under the Prospectus Regulation.

The disclosure obligation under the prospectus is laid out in details in the Prospectus Regulation and the relating implementing and delegated acts such as (i) the Commission Delegated Regulation (EU) 2019/979 with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus; and (ii) Commission Delegated Regulation (EU) 2019/980 as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

Under the Prospectus Regulation, a prospectus must contain the necessary information which is material to an investor for making an informed assessment of: (a) the assets and liabilities, profits and losses, financial position, and business prospects of an issuer and of any guarantor; (b) the rights attaching to the securities; and (c) the purpose of the issuance and its impact on the issuer. Information included in the prospectus must be sufficient and objective and should be written and presented

in an easily analysable, concise and comprehensible form. The information which is included in a prospectus must be adapted to the type of prospectus, the nature and circumstances of the issuer, the type of securities, and whether the targeted investors are solely qualified investors. A prospectus should not contain information which is not material or specific to the issuer and the securities concerned.

The prospectus may be drawn up as a single document or as separate documents. A prospectus composed of separate documents shall divide the required information into a registration document (including information relating to the issuer), a securities note (including information concerning the securities offered) and a summary. In Hungary, issuers predominantly elect to prepare the prospectus as a single document.

Unless a specific exemption is available, the prospectus must include a summary that provides the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the relevant securities to aid investors when considering whether to invest in such securities. The summary of the prospectus must be short, simple and easy for investors to understand. It must be written in plain, non-technical language, presenting the information in an easily accessible way.

One of the most important part of the prospectus for investors is the section containing risk factors. The primary purpose of the risk factors is to ensure that investors make an informed assessment of the applicable risks and thus take investment decisions in full knowledge of the relevant circumstances. Risk factors must be limited to those risks which are material and specific to the issuer and its securities and which are verified by the content of the prospectus. A prospectus should not contain risk factors which are generic and only serve as disclaimers, as those could obscure more specific risk factors that investors should be aware of.

In addition, the prospectus must include, among others, the following information and statements:

(i) business overview with description of, and key factors relating to, among others, the nature of the issuer's operations and its principal activities; principal markets, strategy and objectives;

(ii) description of the issuer's material investments for each financial year for the period covered by the historical financial information;

(iii) organisational structure with description of the issuer's corporate group; key subsidiaries;

(iv) audited historical financial information covering the latest three financial years and the audit report in respect of each year;

(v) details of related party transactions, that the issuer has entered into during the period covered by the historical financial information;

(vi) details of any significant changes in the financial or trading position of the company since the date of the latest published audited or interim financial information included in the prospectus, or an appropriate negative statement;

(vii) a working capital statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirement;

(viii) an operating and financial review describing the company's financial condition, changes in financial condition and results of operations;

(ix) summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the past two years;

(x) prescribed information on the issuer's administrative, management and supervisory bodies and senior management, including remuneration and benefits, shareholdings and stock options in the issuer; and also, with respect to the company's corporate governance; and

(xi) a declaration by those responsible for the prospectus (including company, proposed directors, etc.) that to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the registration document makes no omission likely to affect its import.

NBH may authorise the omission from the prospectus of certain information to be included therein, where it considers that any of the following conditions is met: (a) disclosure of such information would be contrary to the public interest; (b) disclosure of such information would be seriously detrimental to the issuer or to the guarantor, if any, provided that the omission of such information would not be likely to mislead the public; (c) such information is of minor importance in and would not influence the assessment of the financial position and prospects of the issuer or guarantor.

Once the prospectus is published, any significant new factor, material mistake or material inaccuracy which could influence the assessment of the investment, arising after the publication of the prospectus but before the closing of the offer or the

start of trading on a regulated market requires a supplement to the prospectus without undue delay.

5. Prospectus Approval Process

5.1. Competent Regulator

NBH is the supervisory authority designated as competent authority within the meaning of the Prospectus Regulation and, as such, the NBH is the authority which approves the publication of a prospectus under the Prospectus Regulation in Hungary.

Otherwise, for the purposes of listing and admission to trading on BSE, the issuer must follow the general business terms of the BSE, including, in particular, 'The General Terms of Service of the Budapest Stock Exchange Ltd.' and, in particular, Book one thereof on 'Regulations on Listing and Continued Trading', which prescribes, among others, those documents that must be submitted by the issuer along with the approved prospectus for the purposes of admission to trading on the BSE.

5.2. Timeline, draft submissions, review and approval process

Once the prospectus has been drafted, it must be submitted to the NBH for approval. However, before the filing of the formal approval with the NBH, issuers usually file work-in progress / near to final drafts of the prospectus with the NBH on an informal basis to obtain and address initial comments of the NBH before the actual filing.

Otherwise, once the draft prospectus is in final form, the application for approval must be submitted to the NBH online, through the dedicated electronic submission system maintained by the NBH called ERA. It is worth noting that only pre-registered users may use the ERA system and only entities which have certified electronic signature capabilities can register themselves in the ERA system and, therefore, first-time issuers need to register themselves into such communication system before the actual filing.

Under the Prospectus Regulation, the NBH has a 10-working day deadline to decide on approval or rejection of the prospectus. However, this 10-day time limit is extended to 20 working days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public. However, failure of NBH to take a decision on the prospectus within the above time limits shall not be deemed to constitute approval of the application.

In addition, if the NBH finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed, it must inform the applicant within 10 working days by clearly specifying the requested changes or additional information. In such cases, the time limits set above shall apply only from the date when a revised draft prospectus or the supplementary information is submitted to the NBH.

The publication of the prospectus is subject to the approval of the NBH.

6. Listing Process

6.1. Timeline, process with the stock exchange

After the approval of the prospectus by the NBH, an application is submitted to the BSE for the listing and admission to trading. In practice, prior to formal submission of the application the issuers usually liaise with the officers of the stock exchange in order to informally agree with them on the documents to be submitted, as well as the contents thereof. Following the formal submission of the application, the stock exchange must examine the application from a formal perspective and also in terms of content, and must decide within 30 days whether the securities may be listed. If necessary, the stock exchange may request additional information from the issuer, which must be submitted within 10 working days. In this case, the 30-day deadline is extended by the number of days needed to submit the additional information.

Two days prior to listing, the issuer must publish the required documents which may be relevant to market players when making a decision on their investment. The application is approved only if all the necessary documents have been submitted and their content is in line with the legal requirements, otherwise the application is rejected. If the application is accepted, the company may begin trading.

7. Corporate Governance

7.1. Corporate governance code / rules

The rules regarding the operation of Hungarian companies are laid out in Act No. 5 of 2013 on the Civil Code (the "Civil Code") as well as in Act No. 57 of 1996 on the Prohibition of

Unfair and Restrictive Market Practices.

Under the Civil Code, Hungarian public companies limited by shares (in Hungarian: Nyilvanosan Mukodo Reszvenytarsasag or Nyrt.) can be organised under the one-tier or the two-tier board system. The two-tier board system, which is the more common, includes the board of directors (in Hungarian: igazgatosag) and the supervisory board (in Hungarian: felugyelo bizottsag) with both consisting at least 3 members. However, the supervisory board does not generally have a decision power (but can have approval rights). All decision making is retained by the board of directors and general shareholders' meeting. In a one-tier board system, the duties of the board of directors and the supervisory board are carried out by a single board, the management board (in Hungarian: igazgatotanacs) which consists at least 5 members. The powers to appoint or dismiss the members of the board of directors, the supervisory board and the management board or to define their remuneration are assigned to the meeting of the shareholders. Legal entities cannot serve as board members.

Except for the establishment of an audit committee, which is a regulatory requirement for public companies limited by shares, the board of directors in companies limited by shares is not required to have a committee system. However, the board of directors may establish a remuneration committee that establishes the remuneration policy of a company based on Corporate Governance Recommendations.

In addition, the BSE has issued recommendations with respect to Corporate Governance Rules, i.e., the Corporate Governance Recommendations (in Hungarian: Felelos Tarsasagiranyitasi Ajanlas) for public companies. An equity issuer seeking admission to trading on the Prime Market must publish a Corporate Governance Report before the admission to trading on the basis of Corporate Governance Recommendations of the BSE. Otherwise, equity issuers have to publish such Corporate Governance Reports along with their annual reports.

The Corporate Governance Recommendations of the BSE contain both recommendations that are binding for all issuers and non-binding proposals. Issuers may derogate both from binding recommendations and non-binding proposals. In the event of derogation from the recommendations, issuers are required to publish and justify the derogation in their corporate governance reports ('comply or explain').

Corporate Governance Recommendations of the BSE include, among others, recommendations on the holding of shareholder meetings; remuneration; transparency and publication; governance (including management selection principles and independence of directors), control, risk management; and external advisors/auditors.

7.2. Any other ESG considerations

Environmental, social and governance (ESG) stands for a set of standards with regards to a company's operations that is used by a new generation of investors to monitor how socially and environmentally conscious the company is, where they invested their money. It takes into consideration the company's environmental impact, how the company manages relationships with employees, suppliers, customers, and the communities where it operates and a company's leadership, executive pay, audits, internal controls, and shareholder rights.

These sustainable investment types are present on the Hungarian capital markets, however, ESG considerations are not yet part of the formal corporate governance and other similar requirements in Hungary with respect to public companies.

8. Ongoing Reporting Obligations (Life as a Public Company)

8.1. Annual and interim financials and other periodic reports

Issuers of securities admitted to trading on a regulated market (such as the BSE Prime or BSE Standard) must comply with reporting obligations as laid out in the CMA and the No. 24/2008 (VIII. 15.) Decree of Ministry of Finance.

In general, such issuers must disclose to the public on a regular basis substantial details of their financial position and the general course of their business. Issuers shall, at the same time, must notify such information to the NBH as well and must ensure that such disclosed information remains publicly available for at least ten years.

To this end, issuers must publish in accordance with the requirements laid out in the No. 24/2008 (VIII. 15.) Decree of Ministry of Finance:

- a detailed annual financial report (in accordance with the IFRS, where applicable) four months after the end of each financial year at the latest; and
- semi-annual financial reports as soon as possible following the end of each half-year period in question, but by no later than three months following such period.

Beyond the financial reports, listed companies are obligated to publish, among others, corporate governance reports on an annual basis with regards to the Corporate Governance Recommendations.

Issuers with security series in BSE Prime Market shall also disclose a corporate action timetable by the first day of their financial year (including proposed dates for publication of annual, semi-annual and quarterly reports, dates for press conferences to discuss the annual report, date of annual general meeting, etc.).

Issuers under the force of the CMA must also comply with additional reporting obligations set by the CMA by disclosing the number of voting rights and the actual share capital on a regular basis. Issuers not under the scope of the CMA may choose to follow the reporting obligations of their "home member state" (as defined by the Transparency Directive - Directive 2004/109/EC of the European Parliament and of the Council) after having published a statement in which they inform Hungarian investors about the reporting requirements of that state.

All regulated information must be published on the website of the issuer, on the website of the BSE as well as on the dedicated online platform of the NBH.

In general, issuers with securities registered on a multilateral trading facility (such as Xtend or XBond) are bound by the reporting obligations prescribed by the operator of such multilateral trading facility.

8.2. Extraordinary/Ad hoc disclosures

Listed companies are also obliged to disclose to the public without delay but in any event within one business day any information that concerns, directly or indirectly, the value or return on the securities of the company, and any information that may have an impact on the reputation of the company.

No. 24/2008 (VIII. 15.) Decree of Ministry of Finance contains guidelines and examples to be followed by issuers (under the force of the CMA) regarding their extraordinary disclosures). Issuers with home member states other than Hungary follow the rules of their jurisdictions.

The NBH, when deemed necessary as the financial supervisory authority may also impose extraordinary data disclosure obligations or carry out on the spot inspections on a global scale or with regards to an individual company as part of its supervisory measures.

8.3. MAR obligations

Regulation (EU) No 596/2014 on market abuse (MAR) applies to financial instruments admitted to trading on EU regulated markets, multilateral trading facilities, organised trading facilities and other financial instruments such as credit default swaps or contracts for difference. This means that companies listed on the BSE are subject to MAR. In addition, both BSE Xtend and BSE XBond fall within the definition of a multilateral trading facility and therefore, are subject to the disclosure requirements of MAR.

The requirements of MAR include, among others, the obligation to announce inside information as soon as possible (except under certain limited circumstances) and companies have to keep and maintain insider lists of people working for them and of advisors who have access to inside information.

Breach of MAR by an individual or legal person may result in, among others, criminal penalties (e.g., cases of insider trading and market manipulation) as set out in Act No. 100 of 2012 on the Criminal Code.

The Authors:

■ Csilla Andreko
Partner
csilla.andreko@kinstellar.com
+36 1 428 4404

■ Levente Hegedus
Managing Associate
levente.hegedus@kinstellar.com
+36 1 428 4403

LITHUANIA

By Laurynas Narvydas, Associate Partner, and Joana Baublyte-Kulviete, Partner | Attorney at Law, Walless

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

1.1.1. ECM

Initial public offering (IPO) of Lithuanian tour operator AB Novaturas, IPO value - EUR 22.1 million (2018).

Secondary public offering of food producer AB Auga, offering value EUR 36 million (2018).

1.1.2. DCM

USD 300 million bonds of Avia Solutions Group – a Lithuanian aviation services group (2019).

Debut EUR 300 million green bond issue by UAB Lietuvos energija (now IGNITIS GROUP) under its newly established EMTN programme (2017).

EUR 300 million green bond issue by UAB Lietuvos energija (now IGNITIS GROUP) under its EMTN programme (2018).

Debut EUR 300 million bond issue by UAB MAXIMA GRUPA under its newly established EUR 1 billion EMTN programme (2018).

2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

Currently there is only one stock exchange operator in Lithuania – AB NASDAQ Vilnius. It administers a regulated market and non-regulated market.

The regulated market consists of (i) Main List and Secondary list for equity securities, (ii) Bond List for debt securities, and (iii) Fund List for securities issued by collective investment undertakings.

2.2. Non-regulated market

The non-regulated market consists of the alternative market First North, which qualifies as a multilateral trading facility.

3. Key Listing Requirements

3.1. ECM

In order to be listed on the NASDAQ Vilnius stock exchange, a company must meet certain general requirements: i) the company must be of proper legal form and its economic status must not prejudice interests of the investors; ii) the shares to be listed must be free of any encumbrances, entitling their holders to equal rights and be fully paid up. Further requirements depend on the list and market that companies seek for listing. These requirements are listed below.

Issuer's history of operations – 3 years for the Main List, 2 years for the Secondary List, not applicable for the First North market.

Minimum capitalization – EUR 4 million for the Main List, EUR 1 million for the Secondary List, not applicable for the First North market.

Free float – at least 25 percent for the Main List (or the value of free float must amount to EUR 10 million), not applicable for the Secondary List, not applicable for the First North market.

Prospectus – required for listing on the Main and Secondary lists, not applicable for the First North market.

Reporting – An annual report and semi-annual or quarterly financial reports for listing on the Main and Secondary lists, annual and semi-annual financial reports for the First North


Laurynas Narvydas


Joana Baublyte-Kulviete

market. Listing on First North also requires the relevant issuer to enter into the agreement with a certified advisor of First North which shall advise and ensure that the issuer complies with reporting and other listing requirements.

Accounting - Financial reports to be prepared according to the International Financial Reporting Standards for listing on the Main and Secondary lists, financial accounting standards of choice for the First North market.

Language - Information disclosure in Lithuanian and English language for listing on the Main and Secondary lists, information disclosure in Lithuanian or English language for the First North market.

3.2. DCM

WALLESS

Issuer's history of operations – 2 years for the Bonds List, not applicable for the First North market.

Minimum denomination of bond issue – EUR 200 000 for the Bonds List, not applicable for the First North market.

Prospectus – required for listing on the Bonds List, not applicable for the First North market.

Reporting – Annual report and semi-annual or quarterly financial reports for listing on the Bonds List, Annual and semi-annual financial reports for the First North market.

Accounting – Financial reports to be prepared according to International Financial Reporting Standards for listing on the Bonds List, financial accounting standards of choice for the First North market.

Language – Information disclosure in Lithuanian and English for listing on the Bonds List, information disclosure in Lithuanian or English for the First North market.

GENERAL NOTE: Stock exchange may wave certain of the requirements, e.g., that of having certain operating history. The decision to wave requirements is based on considerations of the issuer's financial status, its position in the market, field of activity, reputation, prospects, and other factors.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

Disclosure related to the issue of equity and debt securities as well as related to listing of equity and debt is based on Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "Prospectus Regulation").

4.2. Local market practice

In accordance with limits permitted by the Prospectus Regulation, Lithuania does not require prospectus to be prepared for the public offering of securities if the total consideration in the EU is less than EUR 8,000,000, calculated over a period of 12 months.

The public offering of securities in Lithuania when the total consideration calculated over a period of 12 months is between EUR 1 000 000 and EUR 8 000 000 is subject to preparation and publication of the informational document. This document shall describe the issuer and securities to be offered. Requirements for the content of such informational document are established by the securities market regulator, i.e. the Bank of Lithuania. Notably, there is no requirement to have this document approved by any authority.

A listing prospectus is required for listing on a Lithuanian regulated market. However, should listing be sought on the First North market (i.e., the non-regulated market) informational document prepared in accordance with the rules of the First North would suffice. These rules to the large extent are similar to the requirements established by the Bank of Lithuania for the offering of securities when the total consideration calculated over a period of 12 months is between EUR 1,000,000 and EUR 8,000,000. In practice, issuers of such securities prepare only one informational document containing information as required by the regulator and by the First North and uses it both for the offering and for the subsequent listing on First

North market.

4.3. Language of the prospectus for local and international offerings

Where an offer of securities to the public is made or admission to trading on the regulated market is sought only in Lithuania, the prospectus shall be drawn up in the Lithuanian language. However, it is also permitted to request the regulator to accept the prospectus prepared in the English language.

As far as international offerings are concerned, the prospectus may be prepared in Lithuanian or English at the choice of the issuer.

5. Prospectus Approval Process

5.1. Competent Regulator

As discussed above, the competent authority for the review and approval of prospectuses prepared in accordance with the Prospectus Regulation is the Bank of Lithuania.

5.2. Timeline, number of draft submissions, review and approval process

The process and timeline for the approval of the prospectus by the Bank of Lithuania is based on the Prospectus Regulation. These requirements do not specify the maximum number of drafts allowed to be submitted. As such, the regulator may request to provide amended drafts as long as it finds that the previous drafts do not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed.

6. Listing Process

6.1. Timeline, process with the stock exchange

The process with the stock exchange is fairly simple. Apart from the relevant corporate resolutions it requires a formal application of the issuer to AB NASDAQ Vilnius. Usually assessment by the stock exchange takes 2-4 weeks (although the official term is 3 months), upon which the listing agreement is signed and listing commences.

When listing is being sought by a company that is undergoing an IPO, the process with the stock exchange usually is conducted as part of the preparations for an IPO in order to ensure that listing occurs immediately after the completion of the IPO. In such cases the stock exchange makes its assessment prior to the completion of the transactions and facilitates the listing to commence as required by the issuer and IPO team.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

Companies listed on the regulated market of AB NASDAQ Vilnius are subject the Corporate Governance Code (the "Code") of the NASDAQ Vilnius stock exchange. This Code lays down the principles and standards of corporate governance. It is not strictly mandatory, but the companies that do not comply with the provisions of the Code must describe and explain such non-compliance within the Corporate Governance Report that is part of the annual reporting.

The Code is drafted in a basis of analogous codes, standards, and principles of other states and international organisations, the key ideas and directions of which are reflected in the Principles of Corporate Governance of the Organisation for Economic Cooperation and Development.

The model of corporate governance required by the Code is in accordance with Lithuanian legal requirements for the corporate governance structure. Accordingly, companies must have a manager (CEO) of the company and either a one-tier management board or a two-tier board (management and supervisory boards). Certain matters are decided by the general meeting of shareholders. Where a supervisory board is not formed, the management board should also perform the supervisory functions.

Until recently one of the principles of the Code was a requirement that companies have an independent member on the supervisory or management board. Recently a similar requirement was introduced into the Lithuanian Law on Companies. According to the law, 1/3 of the members of the supervisory board (or 1/3 of the management board that performs supervisory functions) of listed companies must be independent. The criteria for independence are also provide in the law.

As far as committees are concerned, under the Code, companies listed on the regulated market should form at least nomination, remuneration and audit committees.

Committees should exercise independent judgment and integrity when performing their functions and provide the collegial body with recommendations concerning the decisions of the collegial body. Committees should normally be composed of

at least three members, although subject to the requirements of the legal acts, committees may be comprised only of two members as well. Members of each committee should be selected on the basis of their competences by giving priority to independent members of the collegial body. The chair of the management board should not serve as the chair of committees.

7.2 Any other ESG considerations

There are no formal requirements related to ESG except for the requirement that large listed companies with an average number of employees exceeding 500 to prepare a Social Responsibility Report as part of the annual reporting. This report shall cover matters related to protection of environment, social and staff issues, protection of human rights, prevention of corruption and bribery.

8. Documentation and Other Process Matters

8.1 Over-allotment (greenshoe or brownshoe structure)

An over-allotment option is a common element of public offerings by Lithuanian entities. Over-allotment is also closely related to stabilisation activities. The legal framework for over-allotment and stabilisation is entirely based on the requirements established by Regulation (EU) No 596/2014 on market abuse and by Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

Stock lending arrangements are common for IPOs involving issues of new shares. Due to Lithuania's procedure for the registration of new shares, such new shares sold during IPOs cannot be listed immediately after the settlement of the IPO (it might take from 1 to 2 weeks for such shares to be registered and listed). In order to avoid this time gap it is customary for the underwriters to borrow existing shares from the current shareholders. Such borrowed shares are distributed to the subscribers during IPO. Borrowed shares are repaid by the underwriters upon registration of the new shares.

Although such stock lending is common there are no clear taxation rules related to this activity and thus tax impact for each participant shall be assessed beforehand on a case by case basis.

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Please see information under item 8.1 above.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

As disscussed above, issuers listed on the regulated market must prepare and publish annual and semi-annual (or quarterly financial) reports prepared according to the International Financial Reporting Standards (this requirement does not apply to certain issuers, e.g., issuers of debt securities with denominations of not less than EUR 100,000).

9.2. Ad hoc disclosures

In addition to the above, issuers are obliged to make public disclosures in accordance with requirements of Regulation (EU) No 596/2014 on market abuse which, amongst other items, regulates public disclosure of inside information and disclosure of manager's transactions.

Besides that, the issuers must disclose information about any person who has acquired 5, 10, 15, 20, 25, 30, 50, 75 and 95 per cent of the voting rights in that issuer. This obligation also applies where the specified limits are exceeded in the descending or the ascending order. A similar obligation also applies with respect to persons holding other types of financial instruments (e.g., options, swaps, etc.) that under the terms of those instruments give rise to acquisition of voting rights.

The issuers also must disclose acquisitions and transfers of own shares (votes), changes to the rights attached to the financial instruments issued by the issuer and changes to its constitutive documents (e.g., Articles of Association). Special rules and disclosure regimes also apply in relation to takeover, sell-out, and squeeze-out events. These requirements are generally in line with rules established by Directive 2004/25/EC on takeover bids.

The Authors:

Laurynas Narvydas
Associate Partner
laurynas.narvydas@walless.com
+370 640 41057

Joana Baublyte-Kulviete
Partner | Attorney at Law
joana.baublyte.kulviete@walless.com
+370 687 14642

MOLDOVA

By Cristina Martin, Partner, Carolina Parcalab, Legal Manager, and Nicolina Turcan, Associate, ACI Partners

1. Market Overview

Moldova's capital market started its existence in 1994, following a mass privatization process. Since then this sector has been subject to several reforms, which continue until today. Notwithstanding the continuing reform, Moldova's capital market is still characterized by insufficiently developed capital market infrastructure, a limited number of financial instruments, a limited range of financial intermediation services, and a limited number of private investors interested in investing in financial instruments.

The main regulatory act is the Law on Capital Market No. 171 of 11 July 2012 (the "Capital Market Law"), which transposed 11 EU directives, including MiFID, the Directive on Takeover Bids, the Investor Compensation Scheme Directive, the Market Abuse Directive, the Capital Adequacy Directive, and the UCITS Directive. The Capital Market Law was designed to open up the capital market to foreign investors, strengthen the powers and independency of the national regulator, and set higher capital requirements on capital market participants.

The Capital Market Law establishes the entities and systems that are part of the capital market infrastructure, including the regulated markets, financial intermediaries, multilateral trading facilities (MTF), central security depository, securities settlement systems, and independent registrars. The Law also regulates the activity of investment firms, public offering, and takeover bids, determines mandatory disclosure reaquirements, and conditions for financial investments.

The National Commission for Financial Markets (NCFC) is the independent regulatory agency that supervises the securities market, insurance sector, and non-banking financing in Moldova.

The capital market in Moldova is still under development and is limited to an equity securities market transacted on primary and secondary markets. A corporate bonds market in Moldova does not exist yet. The market of debt financial instruments is represented mainly by governmental securities, which are placed only on the interbank market. The NCFM currently is working on a new reform allowing govermental securities to be transacted on the regulated market as well.

Transactions related to the issuance of new securities takes place on the primary market, while the secondary market deals with the trading of securities already issued and admitted to trading.

The transactioning of securities on the secondary market may be performed on the regulated market, thourgh the multilateral trading facility or outside the regulated market, directly between the buyer and purchaser. Transactions on the regulated markets and MTF are not very popular, therefore a significant part of transactions are still acomplished over the counter.

The Moldovan Stock Exchange (MSE) is the only stock exchange duly licenced and operating in the Republic of Moldova. The MSE was initially created in 1994 and performed its first transactions in 1995. After capital market legislation was reformed in 2013, the MSE obtained a licence as market operator, and authorizations for the regulated market and for the multilateral trading facility.

The statistics of transactions registered both on the MSE regulated market and MTF are quite modest.

Thus, in the last two years the MSE released the following statistics:

2018

- Total number of transactions on the regulated market (units): 287


Cristina Martin

- The volume of transactions on the regulated market: MDL 1,930,299,737.11 (about EUR 96 milion)
- The number of transactions on the MTF (units): 92
- The volume of transactions on the MTF: MDL 3,273,952,028.83 (about EUR 163 milion)

2019


Carolina Parcalab

- Total number of transactions on the regulated market (units): 202
- The volume of transactions on the regulated market: MDL 47,223,790.54 (about EUR 2 milion)
- The number of transactions on the MTF (units): 46
- The volume of transactions on the MTF: MDL 5,756,258.10 (about EUR 287 thousand)


Nicolina Turcan

The most transacted securities on the MSE regulatory market are securities issued by Moldovan commercial banks. Among the most significant transactions registered on the MSE regulated market in the past 2 years are the acquisition of 96,69% of shares issued by BC Mobiasbanca – OTP Group S.A. for approximately EUR 75 million (in 2019); and the acquisition of 39.2% of shares in BC Victoriabank S.A. by Banca Transilvania and EBRD for about EUR 37 million (2018).

ACI PARTNERS

2. Overview of the local stock exchange and listing segments (markets)

Under the Capital Market Law, a regulated market represents a multilateral system, which is managed and used by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling orders in financial instruments that are admitted for trade in a way that results in contracts. The regulated market operates under its own rules and shall be authorized by the NCFM.

Currently, MSE is the only operator authorized to manage and operate a regulated market in Moldova. Transactions on MSE regulated market are performed according to the MSE Rules. As of 7 April 2020, the securities of 16 issuers are admitted for trade on the MSE regulated market, represented by 8 commercial banks, 2 insurance companies, and 6 issuers from other non-financial industries intending to perform public bids of securities.

The Capital Market Law also regulates the possibliity to trade securities though the MTF, representing a system operated by an investment firm or market operator which brings together multiple third-party buying and selling orders in financial instruments. In Moldova, MTFs can be operated by investment firms or market operators based on their own discretionary rules and are subject to broadly the same overarching regulatory and transparency requirements as the regulated markets.

Currenty, the only market operator authorized to operate through the MTF system in Moldova is the MSE. As of 23 March 2020, the securities of 50 issuers are admitted for trade on the MTF managed by the MSE.

3. Key Listing Requirements

The key listing requirements for the admission of securities on the MSE regulated market are:

1) publication of the public prospectus;

2) securities proposed for listing shall be fully paid, ecxept for the primary issuence of securities;

3) minimum market capitalization of EUR 1 milion;

4) minimum free float of 10%, except for primary issuance of shares;

5) issuer's net assets are not lower than the issuer's share capital;

6) documentary evidences, including:

(i) charter and excerpt from the trade register

(ii) registration certificates for each issuence of securities

(iii) public offer prospectus as approved by the NCFM

(iv) audited financial statements for the last 3 years, and for the previous quarter together with the auditor's reports

(v) resolution of issuer's governing bodies approving the listing of securities on the regulated market, etc.

4. Prospectus Disclosure

When an issuer seeks admission on the MSE regulated market the key disclosure document is a prospectus. The prospectus regime in Moldova is mainly governed by the Capital Market Law, the NCFM Regulation No. 33/1 of 16.06.2015 on Public Bids, the NFMC Rules No. 13/10 of 13.03.2018 on Steps, Terms, Method and Procedure of Securities Registration, and the MSE Rules.

A prospectus is to be written in an easily analysable, concise, and comprehensible form and shall contain the necessary information to allow an investor to make an informed assessment of the issuer, the rights attaching to the securities being offered, and the reasons for the issue and impact on the issuer. It may be published in a single document or in three separate documents comprising a registration document (containing information relating to the issuer), a securities note (containing information concerning the securities being offered), and a prospectus summary.

Key information to be included in a prospectus includes:

1) risk factors informing potential investors of the material risks to the issuer, its industry, and the securities being offered. These should be specific to the issuer or shares being offered, be grouped into a limited number of categories with the most material factor listed first and, where possible, there should be a quantitative assessment of each risk;

2) audited financial information for the previous three years;

3) details of any significant changes in the financial or trading position of the company since the date of the latest published audit or interim financial information;

4) an operating and financial review describing the company's financial condition, changes in financial condition, and results of operations for the periods covered by the historical financial information included in the prospectus;

5) summaries of material contracts entered into outside of the ordinary course of business by the company's group in the past two years (or longer if material obligations or entitlements remain outstanding);

6) details of any significant shareholders of the issuer;

7) details of any related party transactions that the company has entered into during the period covered by the historical financial information and up to the date of the prospectus;

8) details of any legal proceedings that the company has been a party to in the last year;

9) prescribed information on the company's directors and senior management, including remuneration, benefits, and interests in the shares of the company and also with respect to the company's corporate governance; and

10) responsibility statements from the company, the directors, and any proposed directors, confirming that they accept responsibility for the information contained in the prospectus and that, to the best of their knowledge (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and contains no omission likely to affect its import.

A supplementary prospectus will need to be published if any major new factor, material mistake or inaccuracy relating to the information included in the original prospectus arises during the period after publication of the original prospectus but before the securities are admitted for trading and the closing of the offer to the public. The issuance of a supplementary prospectus triggers withdrawal rights for any investor who had previously agreed to purchase shares in the offering. Such rights are exercisable before the end of the second working day after the day on which the supplementary prospectus was published.

The prospectus shall be in the Romanian language.

5. Prospectus Approval Process

5.1. Competent Regulator

The NCFM is the competent authority in Moldova for reviewing and approving the prospectus of public bids of securities to be issued by Moldovan issuers.

5.2.. Timelime, number of draft submissions, review and approval process

NCFM approves or refuses the approval of the prospectus within 10 business days from the date of prospectus submission together with all supporting documents. The term for

examination may be extended by an additional 20 days in case of primary issuence of shares.

The approval of the prospectus can follow once the NCFM clears the prospectus of comments.

There is no limited number of prospectus draft submissions. Any additional information or documents submitted to the NCFM for the prospectus approval restarts the term for the prospectus examination by the NCFM.

6. Listing Process

6.1. Timeline, process with the stock exchange

The application for admission of securities for trade on the MSE regulated market and supporting documents are to be examined by the MSE Department of Marketing, Listing and Ratings. The MSE needs to issue its decision to accept or reject the listing application within 10 business days of submission for domestic companies and 20 business days for foreign companies.

If the application is accepted, the applicant will be invited to sign the listing contract within 10 business days as of the application acceptance date. The applicant will also be issued a certificate confirming the listing of the securities on the MSE regulated market.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

An issuer whose securities are admitted to be traded on the regulated market is considered a public interest entity and is obliged to comply with the Corporate Governance Code approved by the NCFM in 2015 (the "Code"). The Code is also compulsory for other public interest entities, even if their securities are not admitted to be traded on the regulated market, if the entity is a financial institution, insurance company, leasing company, or voluntary pension fund. All other companies that are not public interest entities may follow the Code on voluntarily basis.

Public interest entities are also required to report their compliance with the Code in relation to (i) international coporate governance standards, (ii) protection of the legitimate rights and interests of shareholders, (iii) clarification of the roles of its governing bodies, (iv) functionability of the entity in a non-corupt environment, and (v) promotion of the interests of managers, employees, and shareholders, as well as by other measures.

The Code prescribes specific independence requirements for the directors of public interest entities. Under the Code at least 1/3 of the board must be composed of independent directors. The number of board members is to be sufficient to ensure the organization of the board's activity, including the ability to create board committees and allowing shareholders to elect the candidate for which the shareholder has voted. The Code also requires the board to create committees for the preliminary examination of the most important issues related to the entity's activity, such as a remuneration committee, a risk management committee, etc.

7.2. Any other ESG considerations

No special ESG consideration are expressly regulated by Moldovan legislation. However, in practice public entities integrate the ESG considerations in their Corporate Governance Codes, namely:

1) social responsibility and relation with interested parties;
2) relations with employees and organisations that represent their interests;
3) relations with clients;
4) relations with investors;
5) relations with the regulating and supervisory authorties;
6) community responsibility; and
7) protection of the environment.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

Over-allotment is not specifically regulated by Moldovan Capital Market Law. However, if an over-allotment is offered it has to be specified in the prospectus. In particular, the prospecutus shall disclose:

1) the eventual existence and volume of any over-allotment decision;
2) the over-allotment valability period; and
3) the conditions for application of the over-allotment decision.

The Moldovan Capital Market Law allows investment firms to provide underwrting or placement of financial instruments: (a)

based on a firm commitment, or (ii) without a firm commitment.

In case of underwriting/placement of financial instruments based on a firm commitment, the investment firm aquires the financial instruments issued by the issuer and register them onto the firm's account opened with the National Depository, with the purpose to re-sell the respective financial instruments to other investors at a later date. The underwriting/placement on a firm commitment puts the investment firm at a high risk that the financial instrument will not be sold to other investors.

In case of underwriting/placement of financial instruments without a firm commitment, the investment firm does its best to sell the financial instruments offered by the issuer, but not to purchase the securities for its own account. Any financial instruments that have not been sold by the investment firm will be returned to the issuer.

No public data is available in order to determine if over-allotment has been ever used on the Moldovan capital market.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

The Moldovan Capital Market Law allows investment firms to grant credits or loans to an investor so that the investor is able to carry out a transaction in one or more financial instruments, provided the firm granting the credit or loan is involved in the transaction.

No public data is available in order to determine if stock lending agreements have been ever used by the investment firms on the Moldovan capital market.

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Stabilization is not specifically regulated. However, if stabilization is offered by the issuer or the shareholder who indends to sell its shares, the prospectus must contain adequate disclosure on the following items:

1) the fact that stabilisation may be undertaken, or that there is no assurance that it will be undertaken, or that it may be stopped at any time;

2) the period of time during which stabilisation may occur;

3) the identity of the stabilisation manager for each relevant case unless this is unknown at the time of publication; and

4) the fact that stabilisation transactions may result in a market price that is higher than would otherwise be.

No public data is available in order to determine if stabilization has been ever used on the Moldovan capital market.

9. Ongoing Reporting Obligations (Life as a Public Company)

Public interest entities, including issuers whose securities are traded on the regulated market, are subject to special disclosure obligations. The information that is to be discoled by a public interest entity is expressly regulated by the Capital Market Law, and includes:

1) annual report of the entity;

2) quarterly report of the entity;

3) interim statement of the entity's management;

4) information about events impacting the economic and financial activity of the entity; and

5) the entity's articles of incorporation.

The purpose of the disclosure obligations imposed on public interest entities is to ensure that all investors have equal, equitable, and simultaneous access to information for making an informed assessment of issuers and their securities.

In addition, participants on the capital market have the obligation to immediately inform the NCFM on any material breach of laws relating to operations, manipulation activities, market abuses, or other breaches that may affect the market's stability.

Failure to comply with disclosure obligations may result in sanctions in the form of a warning, public warning, suspension or withdrawal of qualification certificates, suspension or withdrawal of managment, suspension or interdiction to perform certain activities on the capital market, suspension of license, withdrawal of license or authorization, or a fine of up to MDL 1 million (about EUR 50 thousand).

9.1. Annual and interim financials

(i) Annual reports: Public interest entities, including entities whose securities are traded on a regulated market, must publish an annual report before 30 April of the year following the reporting year, and shall take necessary measures to ensure that the reports are made available to the public for a period of minimum five years from the date of their publishing.

The annual report shall include:

1) annual financial statements, including auditor reports

2) the company's annual operating report;

3) a statement issued by the entity's responsible person for the preparation of the annual report, stating that, to the best of his knowledge, the annual financial report is prepared in line with the law, and reflects accurate and objective information about the assets, liabilities, financial position and performance, profit and loss, cash flows of the entity; description of the entity's expected future development, policy changes, as well as the major risks and threats faced by the entity.

(ii) Quaterly reports: A public interest entity, including an issuer whose securities are traded on the regulated market, must publish quarterly reports, not later than two months after the reporting quarter. The quaterly reports shall also be made available to the public for a minimum of 5 years from the date of its publishing, and shall contain:

1) financial statements for the respective quarter;

2) the company's operating report for the respective quarter;

3) a statement issued by the entity's responsible person for the preparation of the quarterly report, stating that, to the best of his knowledge, the quarterly financial report is prepared in line with the law, and reflects accurate and objective information about the assets, liabilities, financial position, performance, evolution and results of the company.

(iii) Interim management statements: Public interest entities are required to disclose interim statements of management for the first and second quarters. The interim statements are to be published during a period starting with the 10th week from the beginning of the quarter and ending 6 weeks before the close of the quarter.

The interim statements shall include:

1) a general description of major events and transactions performed during the reported period and their impact of the entity's and entity group's activity

2) a general description of the financial situation and results of the entity and of the entity's group

9.2. Ad hoc disclosures

The Moldovan Capital Market Law regulates specific ad-hoc discosure obligations for shareholders and issuers as follows:

(i) Notification of corporate developments that have an impact on the issuer's activity: A public interest entity is to disclose within 7 business days the occurence of any event that impacts the company's activity, such as:

- amendments to voting rights related to different categories of securities
- new issuances of securities
- payment of dividends
- conversions, fractioning, or consolidation of securities from previous issuances
- events that may influence the activity of the issuer or the price of the securities admitted to trade.

(ii) Notification of significant proportion of voting rights: An individual or a legal entity who directly or indirectly reaches, exceeds, or falls under 5%, 10%, 15%, 20%, 25%, 33%, 50%, 66%, 75% or 90% of the voting rights in a public interest entity or in a company whose shares are traded on the MTF, is to respectively notify the issuer and NCFM witin 4 business days.

The public interest entity that is the issuer of voting shares, upon receipt of the notification specified above, shall disclose the information contained in the notification to the public promptly and no later than within 3 business days days from the date of receipt.

(iii) Notification of acquisition of company's own shares: A public interest entity that acquires or sells its own voting shares, and after the transaction reaches, exeeds, or falls under 5% or 10%, is to disclose the information to the public promtly and no later than 5 business days.

The Authors:

- Cristina Martin
Partner
cmartin@aci.md

- Nicolina Turcan
Associate
nturcan@aci.md

- Carolina Parcalab
Legal Manager
cparcalab@aci.md

MONTENEGRO

By Dorde Kuzmanovic, Associate
(independent attorney in association with Karanovic & Partners)

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

Total turnover on Montenegro Stock Exchange (the „MSE") in 2018 amounts to EUR 147.355.442, which is 210% more than in 2017. About 95% of the turnover in 2018 was generated in the Free Market. In addition to this, total turnover on the MSE in 2019 amounted to EUR 318.175.436, which is an increase of 116% compared to the achieved turnover in 2018. Similar to 2018, about 88% of turnover in 2019 was generated in the Free Market.

The largest ECM transactions were carried out within the Elektroprivreda Crne Gore AD Niksic, Montenegrin power company, which issued 54,785,075 shares worth EUR 230.572.186,0300, in overall six transactions. These transactions relate to block trades, free market. First two transactions were made at 2018, and the rest of them at 2019. The single largest transaction was made in May 16, 2018 and amounts EUR 68.939.595,3600.

Second biggest transaction was made by the issuer Podgoricka banka AD Podgorica – Member of OTP group, and it amounts EUR 35.629.692,3700, in single transaction. This transaction relates to block trades conducted in multilateral trading platform, and it was made in 2019.

When it comes to DCM transactions, in Montenegro it usually refers to government-issued bonds. Exceptionally, companies issue them as well, but that is not such a common occurrence.

The State of Montenegro made in overall 52 transactions in period of last two years. This was done through five separate issuances, and total scope of these transactions is EUR 14.577.926,3200. With that being said, the biggest issuance was made with four transactions with amount of EUR 7.628.278,0000, three of them performed in 2019, and one in 2020.

Like stated above, corporative bonds are not so common in Montenegrin capital market, or put differently, they don't appertain to the active market. In stated period and mentioned field, 54 transactions were made by two entities. Total scope was EUR 6.377.036,3500. The issuers were banks, Universal Capital Bank AD Podgorica and Hipotekarna Banka AD Podgorica.

2. Overview of the local stock exchange and listing segments (markets)

MSE was founded back in June 1993, in accordance with the Law on Money Market and Capital Market. The first shareholders were the then Republic of Montenegro and four Montenegrin banks.

Subsequently, in 1995, the Law on Stock Exchanges, Stock Exchange Operations and Brokers was adopted, and MSE adjusted its operations in accordance with its provisions. In the meantime, the redefinition of the state union occurred, which enables the transposition and takeover of certain powers of the federal institutions by the institutions established in the Republic of Montenegro.

After taking over the responsibilities of the Federal Securities and Financial Markets Commission, and after determining the fulfilment of all necessary preconditions, the Securities Commission of Republic of Montenegro approved in December 2000 the operating license.

The transfer of the regulatory authorities of the securities market to the republics led to the adoption of the Montenegrin Securities Law, which did not regulate the issue of trading

karanovic/partners

with short-term securities. With the adoption of this law, long-term and equity securities began to be traded on MSE.

On 20 September 2001, the New Securities Exchange of Montenegro AD Podgorica (NEX Montenegro) was established by six Montenegrin financial institutions and the Brokers Business Association. During that period, activities at the MSE were minimized (due to non-fulfilment of legal requirements for trading in securities).

The final harmonization with the Montenegrin Securities Law was made in 2004, and thus, until the end of 2010, two stock exchanges operated in Montenegro. The beginning of operation of the NEX Montenegro is significant since, for the first time in Montenegro, the electronic trading system to close transactions was used.

At the beginning of 2011, two Montenegrin stock exchanges were integrated with the merger of NEX Montenegro with MSE.

The first working day at the unique MSE was 10 January 2011.

In December 2013, the Istanbul Stock Exchange became a strategic partner of the MSE by purchasing 24,38% of its shares.

Listing segments (markets)

When it comes to the listing segments, the MSE organizes and manages:

- Regulated market, consisting of the two segments:
- Stock Exchange Market (the "SE Market") and
- Free Market
- Multilateral Trading Platform (the "MTP ME Market")
- Multilateral Trading Platform for Developing Companies (the "MTP GROW Market")

In addition, SE Market, as one of the segments of the regulated market, is consisted of the following sub-segments:

- Prime Market and
- Standard Market.

MSE Rules (the "Rules") strictly define the financial instruments that can be traded on the regulated market, such as:

- shares or other securities of the same significance that represent a share in capital or membership rights in a company, as well as certificates of deposited shares,
- bonds and other types of securitized debt, including certificates of deposited securities,
- structured financial products,
- money market instruments: treasury, bills and commercial bills, deposit certificates, as well as other financial instruments commonly traded on the money market, and
- units of joint venture entities, pursuant to the Capital Market Law (the "Law") provisions.

As regards the specific requirements for the admission of financial instruments in trading on regulated market it mostly depend on the type of financial instrument to be traded with, as well as on each segment of regulated market, as explained below.

On the other hand, the MTP ME Market is an alternative market managed by the MSE. The main characteristic of MTP ME Market is lower transparency requirements for issuers and financial instruments in relation to the regulated market, and therefore the greater risk of investing in financial instruments traded on the MTP ME Market. The MSE seeks to ensure sufficient level of publicly available data on financial instruments traded on the MTP ME Market for the purpose of orderly trading and pricing. The provisions of the Law and other regulations, as well as the bylaws adopted pursuant to these regulations, relating to the prevention and detection of market abuse, shall apply to trading on the MTP ME Market.

When it comes to the types of financial instruments to be traded with, the MTP ME Market can be traded with the following financial instruments:

- shares or other securities of the same significance that represent a share in capital or membership rights in a company, as well as certificates of deposited shares,
- bonds and other types of securitized debt, including certificates of deposited securities, and
- units of joint venture entities in accordance with the provisions of the Law.

With respect to MTP GROW Market, it represents the development market of the MSE for newly established joint stock companies that do not meet two or more conditions for admission on the Free Market.

On the process of joining the MTP GROW market and the obligations of the issuer after entering the MTP GROW market, the provisions for Free Market will be applied.

The issuer whose shares are admitted on the MTP GROW market is obliged to submit the required information to the MSE in the English language at its request.

3. Key Listing Requirements

The listing requirements for the admission of equity and debt securities varies quite considerably dependant on the market. The following information outlines some of the key listing requirements for listing various financial instruments on the various markets. Since the Rules provide for certain terms that should be fulfilled in each case, while also prescribing some other requirements typical for the particular type of market or financial instrument, the following overview is set out in order to follow the structure of the Rules.

First of all, the MSE decides on the admission of financial instruments on regulated markets. The request for admission shall be submitted to the MSE in writing on a form determined by the MSE, and officially published on its website. The request for admission may be submitted by the issuer or the person having the issuer's authorization, except in cases specifically prescribed by the Law and applicable legislation, when the financial instruments may be admitted to the regulated market without the consent of the issuer.

Alongside the request for admission, the applicant is obliged to enclose the following documents:

- certified copy of the decision on the entry of the issuer into the corresponding register,
- Articles of Association,
- the annual financial report with the opinion of the auditor in order to prove the fulfilment of the financial conditions for admission to the respective segment of the regulated market, if the given data is not contained in the prospectus of the issuer,
- prospectus or the statement on using one of the rights to an exemption from the obligation to its composure and publishing,
- copies of all decisions made by the Capital Market Commission ("Commission") in relation to a financial instrument whose admission is required,
- statement that the issuer has acted in full compliance with the provisions of the Law and other regulations and that he has all the prescribed approvals and consents of the competent authorities,
- statement that it has been informed by the MSE of the obligations arising from the admission of its financial instrument on the regulated market, at the first admission of a financial instrument on the regulated market,
- statement certifying that there is an appropriate internal organization, systems and procedures that ensure the timely availability of information to the market,
- evidence of paid fee for admission in accordance with the MSE's price list, and
- other documentation that the MSE considers to be relevant for deciding on admission and for protecting investors.

Since these documents are required in any case, regardless the fact whether the financial instruments are ECM-based or DCM-based, there are certain documents that need to be provided additionally, depending on the financial instrument at hand.

In that line, if the request for admission refers to the shares, the applicant shall, in addition to the aforementioned documentation, also deliver:

- the minutes from the session of the managing authority at which a decision to include the issuer's shares on a regulated market was enacted, at the first admission of shares in trading on a regulated market, and
- the decision on the registration of the share capital increase in the appropriate registry, in case of extension of the admission on the newly issued shares.

Apart from that, if the request for admission refers to bonds, the applicant shall, in addition to the documents regularly required alongside the request for admission, also deliver:

- decision of the issuer's competent body on the issuance of a bond, or
- the decision of the Government of Montenegro, if the issuer is a local self-government or a state.

In addition, if the request for admission refers to structured financial products, the applicant shall, alongside the documents

regularly required alongside the request for admission, also deliver:

- the contract on the performance of market maintenance activities for structured financial products, concluded between the issuer and the market maker, and
- the statement of the assigned credit rating, where applicable.

Furthermore, if the request for admission refers to the investment units of an open-ended investment fund, the applicant shall, alongside the documents regularly required alongside the request for admission, also deliver:

- the license for the management company,
- the license for the operation of an open-ended investment fund whose investment units are the subject of a request for admission on a regulated market,
- the prospectus and approval of the prospectus of the fund,
- the rules and approval of fund rules,
- the key information for fund investors, and
- the latest annual audit reports.

Apart from that, there is a slightly different documentation that needs to be submitted when the request for admission refers to the money market instruments. If this is the case at hand, the applicant shall enclose with the request for admission the following:

- statement that the issuer has acted in full compliance with the provisions of the Law and other regulations and that he has all the prescribed approvals and consents of the competent authorities,
- statement that it has been informed by the MSE of the obligations arising from the admission of its financial instrument on the regulated market, at the first admission of a financial instrument on the regulated market, and
- information list containing at least:
  - key information about the issuer (name, head office and legal form of the issuer, significant investments, business overview, significant judicial and other procedures),
  - an annual financial statement with an opinion on the audit for the financial year preceding the filing of the request for admission or, if the issuer has published half-yearly or quarterly financial statements from the date of the last audited financial statements, they must be included in the information list, indicating whether revised or not,
  - the characteristics, quantity and description of the rights arising from the market money instrument,
  - other information that may be relevant for the assessment of market value and an estimate of investment in money market instruments,
  - information about the persons responsible for the accuracy and completeness of the information contained in the information list.

3.1. Regulated market

In order for the admission of financial instruments on the regulated market to happen, the financial instruments, as well as their issuers, have to meet certain general requirements prescribed by the Law, the respective by-laws and the MSE acts.

Financial instruments that can be traded fairly, neatly and efficiently can be admitted on a regulated market and the issuer must be duly registered or otherwise properly established. The applicant for admission must fulfil the obligation to publish prospectus and other information, if such obligation is prescribed by the respective Law provisions as follows:

- in the event that the obligation to publish prospectus and other information is required pursuant to the Law provisions, the applicant for admission is obliged to submit to the MSE that prospectus, as well as to state the information when and which authority approved the prospectus, and how the issuer fulfilled the obligation to make the prospectus public, or
- in the case where an exemption from the obligation to publish a prospectus in accordance with the Law provisions, the applicant for the admission shall be obliged to submit to the MSE the signed statement on the use of the exemption from the obligation to publish the prospectus and evidence that it has informed the competent authority, in accordance with the Law.

Financial instruments must be freely transferable and for those financial instruments for which the request for admission to the regulated market has been submitted, a transaction settlement system must be provided, whereby it is assumed that this condition is met if a financial instrument is issued in a dematerialized form and entered into a register of financial instruments and admitted to the clearing system and balances.

The opened bankruptcy or liquidation procedure over the issuer of a financial instrument would have as the consequence the rejection of request for the admission of financial instruments on the regulated market.

3.1.1. SE Market

Apart from the aforementioned general requirements that need to be fulfilled in order for the financial instrument to be admitted on the regulated market, there are additional requirements that needs to be fulfilled in order to achieve the admission of the financial instruments on the SE Market (as well as for Prime Market and Standard Market, as its sub-segments) and on the Free Market as well.

Therefore, in addition to the aforementioned general requirements, the issuer must fulfil the following additional requirements for including financial instruments on the SE market:

- that it has been registered as a legal entity for at least three years before the year in which the request for admission is submitted,
- that the book value of the share capital amounts to at least EUR 5,000,000.00,
- that the issuer does not delay in payment of dividends to shareholders or in pay-out of the principal and interest on issued other financial instruments,
- that there are no restrictions on the circulation of financial instruments or the rights of the owners of financial instruments, on any basis,
- that the issuer has accepted to apply the Corporate Governance Code in Montenegro (the "Code"),
- that once a year the use of the Code is evaluated by the ScoreCard Exchange method and that it is publicly available on the issuer's and MSE's website.

Since, as explained, the Prime Market and the Standard Market represent the sub-segments of the SE Market, there are certain specific requirements that need to be fulfilled in order to achieve the admission on these particular markets.

In that line, the issuer, in addition to the above mentioned general and additional requirements, must fulfil the following conditions for admission of shares in the Prime Market:

- that, according to the certified auditor, the financial statements in the last three years show a real and objective situation,
- that the issuer owns websites in Montenegrin and English language,
- that the minimum amount of capital in free trade is 20% of the total nominal value of the issuer's capital or the minimum amount of market capitalization in free trade is EUR 2,000,000.00,
- that at least 50% of all trading days at the MSE in the past year have been traded with the relevant financial instrument,
- that the issuer is owned by at least 1,000 shareholders, and
- that in at least two years from the last three years, it achieved the profit.

On the other hand, when it comes to the Standard Market, the requirements are not less strict that the ones above stated for the Prime Market. In that line, the issuer, in addition to the above mentioned general and additional requirements, must fulfil the following conditions for admission of shares in the Standard Market:

- that, according to the certified auditor, the financial statements in the last three years show a real and objective state or opinion with the reserve,
- that the issuer owns websites in Montenegrin and English language,
- that the minimum amount of capital in free trade is 10% of the total nominal value of the issuer's capital or at least the amount of market capitalization in free trade is EUR 1,000,000.00, and
- that the issuer is owned by at least 500 shareholders.

Having in mind the specific nature of the bonds, there are additional specific conditions in relation to those, since the issuer must fulfil the following additional criteria in order to achieve their admission to the Standard Market:

- that the accounts of the issuer have not been blocked in the past one hundred and eighty days, and
- that the issuer does not have tax debt.

3.1.2. Free Market

As previously noted, apart from the general requirements that need to be fulfilled in order for the financial instrument to be admitted on the regulated market, there are additional requirements that needs to be fulfilled in order to achieve the admission of the financial instruments on the Free Market.

In that line, apart from these general requirements, the issuer must fulfil the following additional requirements for admission of shares in the Free Market:

- to provide the MSE with a financial statement with the opinion of the auditor for the last year,
- the book value of the share capital is at least EUR

200,000.00,

- that it has a web page in Montenegrin language, and
- that the minimum amount of capital in free trade is 5% of the total nominal value of the issuer's capital or the minimum amount of market capitalization in free trade is EUR 100,000.00.

However, it is possible that Board of Directors of MSE approves the admission of financial instruments to the issuer that does not fulfil one of these conditions, all this in order to encourage the development of the market.

Having in mind the specific nature of the bonds, there are additional specific conditions in relation to those, since the issuer must fulfil the following additional criteria in order to achieve their admission to the Standard Market:

- that the accounts of the issuer have not been blocked in the past sixty days, and
- that the issuer does not have tax debt.

3.2. MTP ME Market

The financial instruments that could be traded on the MTP ME Market which do not meet the conditions for admission to any of the regulated market segments shall be admitted on the MTP ME market.

Approval for the admission of financial instruments on the MTP ME Market is subject to the MSE's executive director decision, based on the written request.

In order to achieve the admission of the financial instruments on the MTP ME Market, the respective financial instruments must meet the following conditions:

- must be issued in accordance with the legislation,
- must be freely transferable,
- establishment and legal status of the issuer of these financial instruments must be in accordance with the legal regulations of the country of the issuer's headquarters,
- must be in a dematerialized form, and
- the system of balancing the transactions of these financial instruments must be provided.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt and local market practice

The issuer is obliged to prepare and publish a prospectus, which is approved by the Commission prior to the public offering or admission of securities in the regulated market. The publication of a prospectus without the approval of the Commission is prohibited.

The prospectus must contain all the information that, in accordance with the characteristics and activities of the issuer and securities publicly offered or involved in trading on the regulated market, is necessary for investors to evaluate the assets and liabilities, financial position, financial success, possible results of the issuer's business and the guarantor, as well as the rights that these securities provide.

However, there are certain rules that set out the exemption of the mandatory publication of prospectus, and those exemptions differ depending on the classifying criteria.

Specifically, the exemptions are classified by the type of issues to be performed and the type of securities to be traded with.

In that line, the publication of a prospectus is not mandatory for the issues of securities:

- addressed solely to qualified investors,
- addressed to fewer than 150 natural or legal persons in Montenegro, other than qualified investors,
- addressed to investors who acquire securities for a total consideration of at least EUR 100,000.00 per investor, for each separate offer,
- whose denomination per unit amounts to at least EUR 100,000.00, and
- with a total consideration of less than EUR 100 000, which shall be calculated over a period of 12 months.

In addition, when it comes to the exemptions related to the type of securities to be traded with, there is no obligation to publish the prospectus for the public bids related to:

- shares issued in exchange for shares of the same class, if the issue of shares does not entail an increase in capital,
- securities offered as a method of payment in the takeover bid, provided that such securities have a document containing information that the Commission considers to be equivalent to the prospectus data, in accordance with the law governing the takeover of joint stock companies,
- securities offered, allocated or to be allocated in connection with the restructuring of the issuers, provided that a document is available containing the information deemed by the Commission to be equivalent to the prospectus data in accordance

with the law governing companies,

- dividends paid to existing shareholders in the form of shares of the same type as those to which dividend payments relate, provided that a document is available containing information on the number and characteristics of the shares, as well as on the terms and manner of payment of the dividend, and
- securities offered, awarded or to be allocated by the employer or affiliate to executives or employees, provided that a document is available containing information on the number and characteristics of the securities, as well as the terms and conditions of the offer.

Apart from these exemptions, the Law also prescribes the specific exemptions from the obligation to publish the prospectus for the admission of certain types of securities for trading on a regulated market, such as:

- shares which, in the previous 12 months, account for less than 10% of shares of the same class already involved in trading on that regulated market,
- shares issued in exchange for shares of the same class involved in trading in that regulated market if the issue of shares does not entail a capital increase,
- securities offered as a method of payment in a takeover bid, provided that the security document is available for those securities, which the Commission considers to be equivalent to the prospectus,
- securities offered or to be awarded in connection with the restructuring of the issuer, provided that the document is available containing the information that the Commission considers to be equivalent to the prospectus data,
- shares offered or to be allocated to existing shareholders as dividends paid in the form of shares of the same class as the shares in respect of which those dividends are paid, provided that:

i. those shares are of the same class as those already admitted for trading on that regulated market, and

ii. that a document is available that contains information on the number and rights of the shares with reasons and details of the offer,

- securities offered or to be allocated by the employer or affiliate to executives or employees, provided that:

i. these securities are of the same class as securities already admitted for trading on that regulated market, and

ii. that a document is available containing information on the number and nature of the securities and the terms and conditions and details of the offer.

- shares resulting from the conversion of other securities or the exercise of rights arising from other securities, provided that those shares are of the same class as those already involved in trading on that regulated market,
- shares already involved in trading on another regulated market, subject to the following conditions:

i. if those securities or securities of the same class have already been involved in trading on another regulated market for more than 18 months,

ii. that, for securities first accepted for trading on a regulated market, acceptance for trading on another regulated market is linked to an approved prospectus that was made available to the public in accordance with the relevant law,

iii. that current trading obligations in another regulated market have been fulfilled;

iv. that person seeking to engage in trading on that market makes an summary prospectus available to the public in a language accepted by the Commission,

v. that the summary prospectus is publicly available, and

vi. that the content of the summary prospectus fulfils the conditions prescribed for the summary prospectus by the Law and that the summary prospectus contains the information on the place where the valid prospectus and financial information published by the issuer in accordance with the law can be obtained.

Notwithstanding the abovementioned exemptions from the publication of the prospectus, the Law contains certain provisions that deal with the rules for publication of the prospectus.

In that line, and with respects to the manners for the prospectus publishing, the issuer, offeror or person asking for admission to trading on a regulated market shall ensure availability of prospectus to the public:

- by insertion in at least one newspaper widely circulated in the territory of Montenegro,
- in a printed form to be made available, free of charge, to the public at the offices of the regulated market on which transferable securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling transferable securities, including payment agents,
- on the issuer's website and, if needed, on the website of the financial intermediaries placing or selling transferable securities, including payment agents,
- on the website of the regulated market where the admission

to trading is sought, and

- on the Commission's website.

The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the source document approved by the Commission.

Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror or the person asking for admission to trading on a regulated market. If the public offering is done through a financial intermediary, the same obligation would be applied to financial intermediary concerned as well.

In addition, the Commission shall publish all the prospectuses approved over a period of previous 12 months on its website.

As a special manner of publishing the prospectus, it will be deemed as published by advertising, if:

- it is related either to an offer to the public of securities or to the admission to trading on a regulated market, and
- its aim is to specifically promote a possible subscription or acquisition of securities.

Those advertisements shall be clearly recognisable as such and the information contained in those shall not be inaccurate, or misleading and shall be consistent with the information contained in the prospectus. All information concerning the offer to the public or the admission to trading on a regulated market communicated by the issuer, the offeror or the person asking for admission to trading on a regulated market, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

Nevertheless, the Commission shall have the power to exercise control over the publication and advertising of a prospectus in accordance with the Law.

4.2. Language of the prospectus for local and international offerings

The prospectus needs to contain all information which (bearing in mind the particular nature of the issuer and securities publicly offered or admitted to trading on a regulated market), are necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, as well as of the rights attaching to such securities.

Information contained in the prospectus need to be (i) true, (ii) complete, and (iii) consistently, transparently and comprehensively presented.

The content of the prospectus differs depending on the type of the issuer and the type of the securities to be issued, but in general contains the following:

- summary prospectus - it needs to, in a brief and simple manner, contain the information on the essential characteristics and risks associated with the issuer, guarantor (if any) and the securities. Summary prospectus is not required if the prospectus relates to the admission to trading of debt securities having an individual nominal value of at least EUR 100,000,
- issuer's responsible persons,
- persons responsible for audits of financial information,
- selected financial information,
- risk factors,
- information about the issuer,
- business overview,
- organizational structure,
- operating and financial review,
- capital resources,
- research and development, patents and licences,
- trend information,
- profit forecasts or estimates,
- management,
- remuneration and benefits,
- board practices,
- employees,
- major shareholders,
- related party transactions,
- financial information concerning the issuer's assets and liabilities, financial position and profits and losses (along with relevant financial statements/auditor's reports),
- material contracts,
- third party information and statement by experts,
- documents available for insight,
- information on subsidiaries,
- information on securities which will be offered/admitted to trading,
- offer details,
- listing details,

- selling shareholders,
- offer costs,
- dilution details,
- certain additional information,

5. Prospectus Approval Process

5.1. Competent Regulator

The competent regulator in Montenegro with regards to the prospectus approval process is the Commission. Its role is strictly prescribed by the Law, in terms of enactment of the decision approving or rejecting the prospectus delivered for the approval by the issuer.

The Commission the statutory independent regulatory body set up to regulate and monitor the issuing and trading of securities in accordance with international rules and principles of the International Organization of Securities Commissions (IOSCO), the legal framework of the European Union in this field (EU Acquis) and the rules of the European Securities and Markets Authority (ESMA).

The Commission is a full member of IOSCO and also a signatory to the multilateral Memorandum of Understanding and Co-operation recognizing the capacity of the Commission for equal co-operation and exchange of information between IOSCO members. In addition, the Commission is a signatory to the Memorandum of Understanding and Exchange of Information with Regulators from the region and is a signatory to the Memorandum of Understanding and Co-operation in the field of money laundering and terrorist financing.

The Commission was accepted by the European Competent Authority for Capital Markets as a signatory to the Memorandum of Understanding on Alternative Investment Funds. The purpose of the signing of the Memorandum is to enhance cooperation, exchange of information and experience related to the supervision of alternative investment funds, while implementing the rules on confidentiality and exchange of information applicable to EU, ESMA and European Systemic Risk Board (ESRB).

b. Timeline, number of draft submissions, review and approval process

The timeline and the process of approval of prospectus in Montenegro is regulated by the Law.

Request for approval of the prospectus for the purpose of public offering of securities may be submitted to the Commission by the issuer, offeror or person asking for admission to trading on a regulated market.

In addition to the aforementioned request, the applicant shall submit the following:

- decision of its competent authority to issue securities or to ask for admission of securities to trading accompanied by all additional information to be submitted to the regulated market,
- its prospectus consisting of one or more documents,
- its Articles of Association and Articles of Incorporation,
- other documents stipulated by the Commission.

The content of the request and accompanying documents are prescribed by the Commission.

The Commission shall decide upon the request for approval of the prospectus within ten business days following the date of submission of the request. However, when the issuer who has not previously offered securities publicly offers securities to the public or applies for admission to trading on the regulated market for the first time, the CMA shall decide on the request within twenty business days following the date of submission of the request.

The period in which the Commission shall decide begins on the first business day after the date of the request receipt. If the Commission does not decide on request for approval of a prospectus within the set time limits, it shall be considered that the prospectus was not approved.

On the other hand, in case that the Commission determines that the documents provided are incomplete or that supplementary information is required, the time limits shall be counted only following the date on which such information is provided by the issuer. If this is the case at hand, the Commission shall, within ten business days following the date of submission of the request notify the issuer of the need for supplementing the documentation or additional information.

Furthermore, the Commission shall approve a prospectus for securities to be offered to the public or admitted to trading on the regulated market by a decision, when:

- the prospectus contains the necessary information prescribed by the Law, and
- all of the other relevant requirements have been complied with.

The Commission will approve the prospectus when it determines that the information contained in the prospectus and the documents submitted with the request are complete and in accordance with the Law.

After its issuance, the Commission shall submit the decision on approving or refusing the prospectus to the applicant.

The Law also defines the reasons for refusing the request for the issuance of the approval, while prescribing that the Commission shall refuse the request for approval to publish a prospectus when:

- the request was submitted by an unauthorized person,
- the request is incomplete, i.e. the prospectus or information submitted along with the prospectus do not meet the requirements set by the Law and the applicant failed to amend the request, i.e. remove the irregularities within the time limits,
- the approval of the competent authority was not obtained in accordance with the law,
- the certificate that a regulated market is ready to include securities to trading was not obtained,
- a prospectus contains incorrect, incomplete and misleading information or the essential facts are excluded causing incorrect, inaccurate or misleading information of investors, and the applicant did not remove the irregularities within the set time limits,
- the applicant is the issuer who failed to act in accordance with the measures imposed during the supervision by the Commission,
- data and information contained in the prospectus do not comply with the decision of the issuer to issue securities, their admission to trading or are not in accordance with other data required to be submitted along with the request,
- the prospectus relates to public offer of securities and the decision of the competent authority of the issuer on issuance of securities is null and void,
- a bankruptcy proceeding has been initiated over the issuer,
- the fee for issuance of the approval determined by the Law was not paid.

The Law also prescribed the rules which will be applied in case that the Commission is of the opinion that certain amendments or additional information are required. In that line, the Commission may require:

- the issuer, the offeror or the person asking for the admission to trading on a regulated market, to include in the prospectus supplementary information if necessary, for investor protection,
- the issuer, the offeror or the person asking for the admission to trading on a regulated market and the persons that control them or are controlled by them, to provide certain information and documents
- auditors and managers of the issuer, the offeror or the person asking for the admission to trading on a regulated market, as well as a financial intermediary entrusted with execution of public offer or admission to trading, to provide certain information and documents.

6. Listing Process

6.1. Timeline, process with the stock exchange

As previously explained in Section 3. "Key Listing requirements" the listing of various financing instruments is subject to prior decision of the MSE. Since the data contained in the aforementioned Section 3 clearly depict the necessary documentation to be submitted alongside the respective request, this section will be used for pointing out the relevant timeline and process information with the MSE.

The request for admission is considered to be correct if it was submitted by an authorized person, if the request was signed by the authorized person and if all the prescribed and requested documents were submitted to the MSE upon request.

The decision to include a financial instrument on a regulated market shall be made by the executive director of the MSE within sixty days from the day of receiving the complete documentation.

The financial instrument shall be deemed to be admitted to the regulated market as of the date of the decision enactment. In its decision, MSE determines the first trading day with such financial instrument, while also submitting the decision without delay to the Commission and publishing it onto website. Since the request for admission can be submitted to the MSE by the person without consent of the issuer, the MSE shall inform the issuer that its financial instruments are traded with on regulated market operated by the MSE.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

The MSE is organized on the principle of member firms, which trade on their own behalf and for their own account (dealers) and on behalf and for the account of their clients (brokers). A member of the MSE may be any legal entity that is registered as a stockbroker under the Law and fulfils the conditions prescribed by the MSE Statute. In addition, members of the MSE may be banks and insurance companies when they obtain the approval of the Commission to conduct stock trading.

The bodies of the MSE are:

- the assembly,
- the board of directors,
- the executive director, and
- the secretary.

The assembly is the highest body of the MSE. This position is based on its status and property powers of the assembly and is manifested in its authority prescribed by law and the statute.

The assembly is made up of all shareholders of the MSE. They prove their presence at the session by signing the attendance list. The session shall be convened once a year, and if necessary, may be convened several times during the year, under the conditions and in the manner prescribed by law.

The audit report is being considered at the assembly. For legitimate decision making, the number of people present at the session, a quorum, is indispensable. The assembly also adopts its rules of procedure, decides on the formation of funds and reserves that are not required by law, and decides on other issues.

The board of directors is a mandatory body of the MSE, which has a managerial and supervisory function over the day-to-day operations. The board of directors has a president and four members elected by the assembly, at each regular annual meeting. A person with the approval of the Commission may be appointed as a member of the board of directors and, as a minimum, have a higher education qualification or vocational qualification, personal reputation, appropriate professional qualifications and experience in the financial sector. Of course, a member of the board of directors may not be a person who has been convicted by a final court decision for an act that makes him or her unworthy of exercising his/her functions as a member, further, a deputy, councillor or person elected to work in state administration bodies and local self-government units, unless Montenegro has ownership interest in the MSE. Neither can the person who is a director, a member of the board of directors an employee or a person with qualified participation in another market organizer, the Central Depository and Clearing Company, and other organizations where a conflict of interest may arise, be a member of the board of directors.

The executive director is the independent executive body of the board of directors for the operational management of the MSE's operations. Its office term is four years, and it may be reappointed. The executive director, as stated above, is appointed and dismissed by the board of directors, and it is obliged to report to the board of directors on its work.

The executive director is obliged to execute the orders of the board of directors and to execute its decisions in connection with the operations, representation, management of the stock of the SMSE, conclusion of contracts, opening of accounts in banks, employment of persons and their distribution, etc. The executive director is specifically empowered to take care and responsibility for the legality of the MSE, to prepare and propose business members, candidates for employment.

The executive director shall be relieved of his/her duties by the board of directors if it requests so, as well as in cases when it was silent on the important facts for its position, does not act conscientiously and with due care, works against the interests of the MSE, uses property for his/her own use, uses confidential information, or does not enforce decisions and orders of the MSE bodies etc.

The secretary is an executive body that performs administrative tasks on behalf and on behalf of the MSE. It is also appointed and dismissed by the board of directors. What is interesting is that the same person may be elected executive director and secretary. The conclusion of a contract of employment, accountability, notification to the board of directors, the conditions of employment and the term of office of the executive director shall also apply to the secretary. The secretary has the right and the duty to organize the assembly and carry out activities related to informing the shareholders, then to provide expert assistance to the shareholders in the exercise and protection of their rights, to be available to the shareholders every business day for all questions regarding their rights. In addition, the secretary also organizes, and coordinates tasks related to the work of the board of directors, submits documentation to the competent authorities and other tasks regulated by regulations.

As regards supervisory authorities, the main bodies are the

independent auditor and the audit committee.

The independent auditor is selected and dismissed by the assembly and audits the financial statements at the end of the financial year.

The audit committee has three members, appointed by the board of directors. At least one member must have knowledge of accounting and auditing and must not be an employee, shareholder or member of the board of directors of the MSE. The audit committee monitors the process of financial reporting, the efficiency of internal control of the legal entity and internal audit, monitors also the statutory audit of annual financial statements, the independence of the certified auditors involved, makes recommendations to the assembly on the choice of the auditing company or authorized auditor and other.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

The Law contains limited provisions on underwriting - it recognises the underwriter as an investment company which provides underwriting services in relation to placing of financial instruments on the firm commitment basis.

While over-allotment is not clearly regulated under Montenegrin laws, it could be deemed as possible and available, since there is no explicit ban with that respect.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

Stock lending is not explicitly prohibited under the Montenegrin laws, however, as far as our knowledge goes, the stock lending agreement was not widely used in Montenegro, while the tax implications should be observed in each particular case.

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Similar as to the underwriting, the Law tends to regulate certain issues in relation to the stabilization. In that line, the prohibition on insider trading and on the market abuse shall not apply to trading securities or related securities stabilization instruments when stabilization is carried out over a specified period, or the stabilization is notified to the Commission, and when restrictions on compliance are observed price in accordance with market rules.

The issuer, the bidder or other entity carrying out the stabilization shall notify the Commission of all stabilization transaction data at the latest at the end of the seventh day of trading from the date of the transaction.

In order to achieve the clarity of these rules, the Law defined that the stabilization is the purchase or offer to buy securities or transactions equivalent to related instruments conducted by an authorized credit institution or investment firm within the meaningful distribution of those securities solely for the purpose of maintaining the market price of those securities during a predetermined period due to pressure on their securities sale.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

Even though the significant part of the piece of legislation regarding the capital market in Montenegro has adopted in 2018 or later, it recognized the need for establishing the legal framework for issuers' reporting obligations.

In that line, the most significant reporting obligations of the issuers can be divided in two parts:

- the reporting obligations towards the Commission, as prescribed by the Law, and
- the reporting obligations towards the MSE, as prescribed by the Rules.

Reporting obligations towards the Commission

The main reporting obligations that the issuer has towards the Commission can be divided depending on the frequency of the reporting obligation. Specifically, the main reporting obligations of the issuers are divided in the following manner:

- annual financial reporting,
- half-yearly financial reporting, and
- quarterly financial reporting.

The issuer shall make public on its website its annual financial report and shall submit it to the Commission, at the latest three months after the end of each financial year and shall ensure that it remains publicly available for at least ten years following the date of its publication.

Issuer's annual financial report shall contain:

- audited financial statements along with auditor's report,
- management report, and
- statements of issuer's responsible persons that:
  - the financial statement was prepared in accordance with the relevant accounting standards and gives a true and fair view of assets, liabilities, financial position and profit or loss of the issuer, as well as its subsidiary undertaking included in the consolidated report, and
  - the management report includes a fair review of the development and performance, as well as the issuer and subsidiary undertakings' position incuded in the consolidated report, together with a description of the principal risks and uncertainties that it faces.

Where the issuer is not required to prepare consolidated accounts, financial statements shall include balance sheet made in accordance with the law governing accounting. The auditor's report, signed by the person responsible for auditing the financial statements, shall be disclosed with the annual financial report. At the request of the Commission, the auditor is required to submit to it the required information and data in accordance with the provisions of the Law. Delivery of information by the auditor at the Commission's request shall not constitute a breach of any contractual or legal restriction on disclosure of information by the auditor.

The issuer shall make public a half-yearly financial report covering the first six months of the financial year on its website and submit the same to the Commission at the latest two months after the expiry of the reporting period and ensure that the half-yearly financial report remains available to the public for at least ten years following the date of its publication.

Half-yearly financial report shall contain:

- half-yearly financial statements,
- half-yearly management report, and
- statements of issuer's responsible persons that:
  - the financial report was prepared in accordance with the relevant accounting standards and gives a true and fair view of assets, liabilities, financial position and profit or loss of the issuer, as well as its subsidiary undertaking included in the consolidated report, and
  - the management report includes a fair review of important events that have occurred during the reporting period, the impact of important events on the condensed set of financial statements, the description of the principal risks and uncertainties for the remaining six months of the financial year and the data on major related parties' transactions.

The statements of the issuer's responsible persons shall contain names, surnames and positions of responsible persons.

The issuer having its registered office in Montenegro shall make public on its website its quarterly financial report and submit the same to the Commission at the latest one month after the end of each quarter and shall ensure that it remains publicly available for at least ten years following the date of its publication.

The quarterly financial report shall contain:

- quarterly financial statements,
- quarterly management report, which specifically contains the important events that have occurred during the reporting period, the impact of important events on the condensed set of financial statements, the description of the principal risks and uncertainties until the end of a financial year and the data major related parties' transactions.
- statements of issuer's responsible persons that:
  - the financial statement was prepared in accordance with the relevant accounting standards and gives a true and fair view of assets, liabilities, financial position and profit and loss of the issuer, as well as its subsidiary undertaking included in the consolidated report, and
  - the management report includes a fair review of the development and performance, as well as the issuer and subsidiary undertakings' position included in the consolidated report, together with a description of the principal risks and uncertainties that it faces.

The statements of the issuer's responsible persons shall contain names, surnames and positions of responsible persons.

When it comes to the responsibility, the issuer, its board of directors and accountant who prepared financial statements of the issuer shall be responsible for the accuracy and publication of the aforementioned reports Consequently, those persons shall pay compensation to any person who has suffered damage as a result of any false, misleading or incomplete information, however, those shall not be held liable if they prove that they were not aware of and could not be aware of any false, misleading or incomplete information, provided that they acted in accordance with the best practice.

However, there are certain exemptions with respect to these reporting obligations. In that sense, these reporting obligations would not be applicable towards the units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in collective investment undertakings of the closed-end type.

In addition, these reporting obligations shall not apply to:

- Montenegro and local self-government units, and
- an issuer exclusively of debt securities admitted to trading on the regulated market, the denomination per unit of which is at least EUR 100,000.00 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 100,000.00.

Reporting obligations towards the MSE

Apart from the reporting obligations (out of which main are pointed out above) to the Commission, the MSE prescribed certain reporting obligations as well, for those issuers whose financial instruments are admitted to SE Market (both Prime and Standard Market) and Free Market.

In that line, the issuer whose financial instruments are admitted to SE Market (Prime and Standard) should deliver to the MSE the following:

- financial statements (annual, semi-annually and quarterly) - within one month from the last day of the period for which the financial report relates,
- management report - qualitative opinion and an alignment of the results of the issuer in the reporting period, as well as determining the future movement of its operations - with the annual report,
- audit report - within the deadline set by the Law,
- report on changes in the significant share in the issuer's capital, within three days from the date when the changes occur,
- notification of acquisition or disposal of own shares - within three days from the date of acquisition or disposal,
- notification of the allocation and payment of dividends - within three days from the date of the decision,
- notification of changes in rights in issued shares - within three days from the day of making the decision,
- report on the application of the Code - with the annual report,
- notification of the convening of the session of the shareholders assembly, proposal of decisions and materials, and decisions and minutes from the session of the shareholders assembly, within eight days from the date of publishing the notice, or the date of the session,
- price sensitive and insider information, in accordance with the provisions of the Law, without delay,
- notification of the transactions of the managers - in accordance with the provisions of the Law, within three working days from the date of conclusion of the transaction,
- event calendar - a list of the dates on which the issuer owes to hold the session of the shareholder's assembly, publish the financial statements, pay dividends, and the dates of other events relevant to shareholders - at the latest fifteen days before the beginning of the business year,
- notification of the scheduled meeting of the board of directors and report after the meeting of the board of directors on which it is decided on: financial statements, pay dividends and interim dividends, on changes in share capital - within eight days from the date of the session, and
- additional reports and information at the MSE's request, which the MSE finds important to protect investors and ensure efficient and transparent trading.

On the other hand, the issuer whose financial instruments are admitted to Free Market should deliver to the MSE the following:

- financial statements (annual, semi-annually and quarterly) - within the deadlines set by the Law for submission to the Commission,
- management report - qualitative opinion and analysis of the results of the issuer in the reporting period, and evaluation of the future movement of its business - with the annual report,
- audit report - within the deadline set by the Law for submission to the Commission,
- notification of the allocation and payment of dividends - within three days from the date of the decision,
- notification of changes in rights from issued shares within three days from the date of the decision,
- notification of the transactions of the managers - in accordance with the provisions of the Law, within three working days from the date of conclusion of the transaction,
- price sensitive and insider information, in accordance with the provisions of the Law, without delay,
- notification of the convening of the shareholders assembly, as well as for the minutes from the session of shareholders

assembly - within eight days from the day of the session, and

- additional reports and information at the MSE's request, which the MSE finds important to protect investors and ensure efficient and transparent trading.

9.2. Ad hoc disclosures

The Law provides for several ad hoc disclosure which needs to be made, while the most significant are:

- Reporting on change in voting rights. At the end of each calendar month, during which occurred the change in number of voting shares to which the share capital of the issuer is divided or the change in number of voting rights attached to these shares, the issuer shall be required to publish on its website information of any new changes and the new total number of voting shares.
- Reporting on treasury shares. The issuer of shares, when acquires or disposes of the treasury shares, either itself or through a person acting in his own name but on the issuer's behalf, shall make public the proportion of the treasury shares, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5 % or 10 % of the voting rights.

Similar as to the periodic reporting obligations, these ad hoc disclosures would not be applicable towards the units issued by collective investment undertakings other than the closed-end type, or to units acquired or disposed of in collective investment undertakings of the closed-end type.

The information in this document does not constitute legal advice on any particular matter and is provided for general informational purposes only.

The Author:
Dorde Kuzmanovic
Associate (independent attorney in association with Karanovic & Partners)
djordje.kuzmanovic@karanovicpartners.com
+382 67 231 173

NORTH MACEDONIA

By Gjorgji Georgievski, Partner, and Marija Serafimovska, Associate, ODI Law

1. Market Overview

The Macedonian Stock Exchange (MSE) is the only regulated stock exchange in North Macedonia which acts as a central marketplace for the admission and trading of equity, debt and other securities. The MSE was established in 1995 and commenced trading in 1996. The MSE is a member of the Federation of Euro-Asian Stock Exchanges (FEAS) and affiliated member of Federation of European Stock Exchange (FESE).

The MSE, similar to other stock exchanges in South-East Europe (SEE), is relatively small and has not attracted investments from large institutional investors as tend to view the whole SEE region as one marketplace. In 2014, to facilitate integration with other SEE markets, the MSE, together with the Bulgarian Stock Exchange (BSE) and the Croatian Stock Exchange (ZSE) established SEE Link. SEE Link is a special purpose business vehicle which operates an electronic system for order-routing between the stock exchanges in the SEE. The principal objective of SEE Link was to integrate regional equities markets without merger or corporate integration, using only technology that will enable participating stock exchanges to remain independent yet complement and to allow investors a more accessible and more efficient approach to these markets through a local broker.

Today, SEE Link has combined equity market capitalisation of over USD 50 billion allowing order routing of almost 1200 securities listed on exchanges in Bulgaria (BSE), Bosnia and Herzegovina (BLSE and SASE), Croatia (ZSE), Macedonia (MSE), Serbia (BELEX) and Slovenia (LJSE).

2. Overview of the local stock exchange and listing segments (markets)

There are two principal markets in North Macedonia, each of which is operated by the MSE:

Official Market. The official market for listed securities (the "Official Market") is the MSE's flagship market for larger, more established companies. The Official Market is home to the largest Macedonian companies that are subject to the highest standards of regulation and governance. The Official Market has four main segments:

- Super Listing segment.
- Exchange Listing.
- Mandatory Listing.
- Listing of Small Joint-Stock Companies.

Regular Market. The Regular Market is a market of unlisted securities which has two main segments:

- Market of Companies with Special Disclosure Obligations which includes companies (i) that have made an initial public offering (IPO); or (ii) companies that have a share capital of at least EUR1 million and at least 50 shareholders.
- Free Market, where all securities, other than those in the Official Market and the Market of companies with special Disclosure Obligations are traded

3. Key Listing Requirements

3.1. Equity Capital Markets

3.1.1. Listing of shares on the Super Listing sub-segment

The listing of shares on the Super listing sub-segment requires an issuer to meet the following conditions:

(i) to prepare audited financial statements for the last three years, of which with unqualified opinion for the previous year;

(ii) to be profitable in the previous 3 years;

(iii) to have a share capital of at least EUR 10 million;

(iv) to have a free float ratio of at least 20%;

(v) to have at least 200 shareholders; and


Gjorgji Georgievski


Marija Serafimovska

ODI . Law

(vi) to operate a web site in Macedonian and English.

3.1.2. Listing of shares on the Exchange listing sub-segment

The listing of shares on the Exchange listing sub-segment requires an issuer to meet the following conditions:

(i) to prepare audited financial statements for the last two years;

(ii) to have a share capital of at least EUR 5 million;

(iii) to have a free float ratio of at least 10%;

(iv) to have at least 100 shareholders; and

(v) to operate a web site.

Shares issued by a company which has not prepared audited financial statements for the previous two years can be listed on the Exchange listing sub-segment if the issuer has issued securities through an IPO in the previous year.

3.1.3. Listing of shares on the Mandatory Listing sub-segment

Companies which meet the below conditions must be listed on this market sub-segment:

(i) to prepare audited financial statements for the last two years;

(ii) to have a share capital of at least EUR 1 million;

(iii) to have a free float ratio of at least 1%; and

(iv) to have at least 50 shareholders.

3.1.4. Listing of shares on the Market of small joint-stock companies' sub-segment

The listing of shares on the Market of Small Joint-Stock Companies' sub-segment requires a company to prepare audited financial statements for the previous year and to have a share capital of at least EUR 250,000. The issuer listed on Market of small joint-stock companies' sub-segment is obliged to publish all announcements stipulated in Special reporting obligations prescribed in Macedonian Listing Rules through a listing Sponsor for a minimum period of 1 year.

3.2. Debt Capital Markets

The listing of long-term debt securities on the Exchange Listing sub-segment requires a company to prepare audited financial statements for the last two years and to have a share capital of at least EUR 200,000. If the company has not operated for at least 2 years, it must have audited financial reports at least for the last year.

Long-term debt securities issued by North Macedonia, state institution, a state-owned public company, municipality or the National Bank and long-term debt securities guaranteed by North Macedonia are listed on the official market after a submitted application from the issuer. The long-term debt securities issued by issuers whose shares or long-term debt securities are already listed on the Official Market of the MSE are listed on the Official Market after the submission of the data prescribed in the Macedonian Listing Rules. The same conditions also apply to the listing of short-term debt securities.

4. Prospectus Disclosure

Unless there is an applicable exemption, a prospectus is required for the issue of equity securities in North Macedonia where:

- There is an offer of securities to the public.
- There is an application for admission of securities to trading on the Official Market.

The Securities Exchange Commission (SEC) in its capacity as the competent authority for oversight of the securities market in North Macedonia, must approve the prospectus of any Macedonian company that wishes to list its securities on the Official Market or to offer them to the Macedonian public.

In an IPO of a class of securities that is admitted to trading on a regulated market for the first time, the prospectus must be made available to the public at least fourteen calendar days before the end of the offer. The prospectus, whether a single document or consisting of separate documents, will be deemed to be available to the public when published electronically on the website of any of the (i) MSE; (ii) the issuer's registered office; (iii) the registered office of the listing sponsor; (iv) on the issuer's website.

If a potential investor makes a specific demand for a paper copy, the company, the offeror or the person asking for admission to trading on a regulated market is required to deliver

a printed version of the prospectus. A prospectus should contain the information necessary to enable investors to make an informed assessment of the:

- Assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor.
- Rights attaching to the securities and the reasons for the issuance and its impact on the issuer.

The above information may vary depending on the nature of the issuer, type of securities offered and the circumstances of the issuer. The issuer and its Board have primary legal responsibility for the prospectus. They are obliged to confirm that to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import. Any person that has authorised any part of the contents of the prospectus will incur liability for that part of the prospectus (this includes the reporting accountants for their reports included in the prospectus).

4.1. Offers exempt from a prospectus

An issuer whose securities are already listed on the Official Market of the MSE is not required to produce a prospectus in case of issuance of new securities in the following circumstances:

(i) Securities representing less than 20% of the number of shares of the same class already admitted to trading if the new offer will increase the yield by less than 20%

(ii) Shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, where the issuing of such shares does not involve any increase in the issued capital.

(iii) Shares created by conversion of convertible securities.

4.2. Information on acceptance of a listing

The prospectus of a company which wishes to be listed on the Official Market must set out the following information, as a minimum:

(i) front page (which will include the title "prospectus"; the company logo; the name of the company and the address of the company; listing the shares of the company and data on the date of the quotation; and the sponsor of the listing);

(ii) statement of the issuer's Board confirming the truthfulness of the information set out in the prospectus;

(iii) particulars of the company (name and registered office, court registration, a brief history of the company from its establishment until the day of submission of the request);

(iv) a brief description of the principal activity of the company and organisation of operations;

(v) a brief description of employees and a chart of the company's qualification structure;

(vi) number of shares, by type, as well as the rights to the shares arising from the Statute of the company;

(vii) shareholder structure, number of more significant shareholders holding more than 10% and their share in the total number of shares, as well as the percentage of shares held by the Board;

(viii) a brief description of the development perspectives in the business operation, and especially in the production, sales, inventories, costs and sales prices, conquering new markets;

(ix) a brief description of the company's stock trading, including a chart of the movement of the company's stock price;

(x) a brief description of dividend and dividend policy, including a chart of the dividend paid per share for the last three years) and

(xi) financial statements (revised financial statements for the last three years - income statement, balance sheet, cash flow statement and statement of equity and equity change, with the auditor's opinion). If the issuer owns majority shareholdings in other companies, it must provide consolidated annual financial statements and a report on the management and operation of the group of companies.

The prospectus must be published in the Macedonian language. Additionally, the prospectus may be published in another language.

5. Prospectus Approval Process

The MSE is the 'competent authority' in North Macedonia for reviewing and approving prospectuses for listing, and the company will need to follow the formal admission requirements set out in Securities Law (including the relevant by-laws) and Listing Rules.

6. Listing Process

The Board of Directors of the MSE is authorised to review the application for listing and decide within 30 days from the day of receipt of the application. If necessary, the Board of Directors may request the issuer to provide additional information. The review period in such cases is extended for the time required to submit the necessary information. The MSE will not (except in exceptional circumstances) accept securities on listing until all documents relevant for consideration are available to the MSE. Failure to fully comply with this rule may

result in a delay in consideration of the application for a listing.

For the purpose of listing of securities, the issuer, through its sponsor, submits to the MSE a listing application, containing all relevant documentation in written form (one original copy of the documentation is sufficient) and on CD no later than 16:00 to MSE. If the listing application refers to shares, it must indicate whether the application relates to a listing of shares on Super Listing, Exchange listing, Mandatory Listing or the Market for Small Joint-Stock Companies.

The listing application, along with the relevant documentation, is evaluated by the MSE Listing Commission, formed by MSE Boards of Directors. The Listing Commission, based on the submitted application and documentation, prepares an opinion and a proposal to the Board of Directors. The MSE Board of Directors makes an assessment of a listing application and the opinion of the MSE Listing Commission.

7. Corporate Governance

The MSE adopted a Corporate Governance Code applicable to companies listed on the MSE (the "Code") back in 2006. It includes a set of 15 principles to be applied on a voluntary basis (only companies listed on the "Super Listing" segment (currently one bank) are required to implement the Code on a "comply or explain" basis). The Code is based on the OECD Principles of Corporate Governance from 2004 and has not been revised since its adoption. In addition to MSE, the SEC has responsibilities for supervising issuers listed on MSE, including on some corporate governance-related matters (e.g. acquisition of qualifying holdings within listed companies). The Code does not include any provisions on ESG matters.

8. Documentation and Other Process Matters

Stabilisation is the practice by which the lead manager or bookrunner supports the price on a new issue of shares for a limited period after the admission of the shares to the market, intending to maintain a stable price during this period. Price stabilisation is undertaken for certain large issues of securities, such as on an IPO because it (amongst other matters) helps promote the orderly operation of the market and counteract short selling.

In principle, the nature of price stabilisation potentially constitutes the offences of market abuse, creating a misleading impression and/or insider dealing, which is prohibited in North Macedonia. Although there is very limited practice, the prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation should not apply in the following circumstances:

- Stabilisation is carried out for a limited period.
- Prescribed information is disclosed and notified to the competent authority of the trading venue.
- Adequate limits with regard to price are complied with.
- Trading complies with the standards set out in the trading rules of the MSE.

9. Ongoing Reporting Obligations (Life as a Public Company)

The quantity and quality of publicly available information regarding public companies vary depending on whether a company is listed or is a company with special disclosure obligations. Listed companies must publish details on their operations under the disclosure requirements of the Listing Rules which require more detailed disclosure than the regulator's disclosure rules which apply to companies with special disclosure obligations. Further, the Listing Rules provide for different disclosure requirements for listed companies depending on which market segment of the MSE their shares are traded.

Generally, all listed companies on the Official Market must disclose:

- Quarterly, semi-annual and annual financial reports, the management reports and the interim reports.
- Underwriting of new shares, changes of rights deriving from existing shares, purchase of treasury shares and free-floated shares.
- The identity of any shareholders or board members who have acquired 5% of the voting shares of the company.
- Information about related-party transactions entered into by the board members and affiliated entities of the company.
- Price-sensitive information on an ad hoc basis.
- Material changes in the liquidity of the company.
- Dividend calendar.
- Corporate governance reports (only banks)

The Authors:

Gjorgji Georgievski
Partner
gjorgji.georgievski@odilaw.com

Marija Serafimovska
Associate
marija.serafimovska@odilaw.com

POLAND

By Pawel Rymarz, Managing Partner, Ewa Bober, Partner, and Jacek Zawadzki, Partner, Rymarz Zdort

1. Market Overview

The Warsaw Stock Exchange (the "WSE") is the biggest exchange in Central and Eastern Europe and organises trade on one of the fastest-growing capital markets in Europe.

The WSE was Europe's third-biggest market by the number of IPOs in 2017 (on a par with the Spanish exchange BME). The total value of initial public offerings ("IPO") on the WSE was over EUR 1.8 billion in 2017, the highest since 2011. The IPO of Play Communications SA on the WSE was the eighth-biggest European IPO in 2017. In 2018 and 2019, a significant decline was observed in terms of IPO deal count and deal volume. The WSE recorded 20 and 16 IPOs in 2018 and 2019 respectively. The total value of offers on the WSE (in total on the regulated market and NewConnect) amounted to PLN 65.9 million (EUR 15.4 million) in 2019. It means a decrease of approximately 80 percent compared to 2018, which was the weakest year in terms of total value offers since 2003, according to the report "IPO Watch Europe 2019" prepared by the consulting company PwC.

According to WSE data, corporate bonds issued by 116 issuers were listed on Catalyst in 2019 with PLN 68.7 billion in debt capital raised. A significant portion of the bonds issued by Polish financial institutions and blue chip companies, especially those issued in EUR and other foreign currencies, are listed on foreign stock exchanges, in particular the Luxembourg stock exchange.

2. Overview of the local stock exchange and listing segments (markets)

The WSE, being the only Polish stock exchange, organises the trade of financial instruments on both a regulated market and a non-regulated market. In addition to that, there is also a part of a debt financial instruments market that is organised by BondSpot S.A. ("BondSpot"), a member of the WSE's capital group.

With respect to the regulated market operated by the WSE, such market has two segments: the Main Market and the Parallel Market. The Main Market, which is regarded as the "official exchange market" in Poland within the meaning of the Financial Instruments Trading Act of 29 July 2005, is designed for companies that meet specific requirements, particularly with regard to their capitalisation, sufficient dispersion of stock ownership (i.e. a minimum number of free-float shares) and disclosure of certain financial information. Conversely, the listing requirements applicable on the Parallel Market are less stringent; the Parallel Market is open to trading of financial instruments of companies with lower capitalisation, if compared to the Main Market companies, and lesser free-float requirements. As of 7 April 2020, there were 342 companies listed on the Main Market and 105 companies listed on the Parallel Market.

Outside the regulated market, the WSE organises the trade of financial instruments on the "NewConnect" market ("NewConnect"), operating as a "multilateral trading facility" (MTF) within the meaning of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("MIFID II"). NewConnect has been designed as a platform in which companies with lower capitalisation, usually from the IT sector, may raise capital in the initial stages of their operation. NewConnect companies usually contemplate entering the Main Market or the Parallel Market upon achieving the required capitalisation and meeting other requirements.

In addition, the Polish capital market comprises a debt financial instruments market, broadly referred to as "Catalyst"


Pawel Rymarz


Ewa Bober


Jacek Zawadzki

("Catalyst"). Within Catalyst, there are in total four segments: two of them being "regulated markets" within the meaning of MIFID and two of them operating as MTFs. The WSE operates two segments designed for retail investors (one in the form of the regulated market and one as an MTF) and BondSpot operates the remaining two segments, which are designed for wholesale investors.

3. Key Listing Requirements

3.1. WSE Main Market and the Parallel Market

The provisions of EU and Polish law provide for a number of specific requirements that must be met in order for a company's shares to be eligible for listing on the WSE. These requirements vary, to a certain extent, depending on whether the shares are to be listed on the Main Market or on the Parallel Market, with the requirements for listing on the Parallel Market being less stringent than those for the Main Market. In general, and in line with the practice of other European jurisdictions, the listing requirements relate to the company's organisational form, capitalisation and shareholding structure, as well as require the adoption of specific resolutions by the company's general meeting, the dematerialisation of its shares, the preparation, approval by a competent authority (if required) and publication of a prospectus or other offering/listing document, and formal resolutions of the WSE's management board on the admission of the shares to trading on the WSE and the introduction thereof to listing on the WSE.

RYMARZ ZDORT

As regards the requirements for listings on the Main Market and the Parallel Market, these include, among other things, the following:

(i) organisational form: the company to be listed must operate in the form of a joint-stock company or in the equivalent form for non-Polish issuers, which means that the company must first undergo a transformation process if it has been incorporated in another legal form;

(ii) minimum capitalisation: the value of all of the shares in the company and the forecasted market price must equal at least EUR 15 million;

(iii) minimum free-float: the shareholders of the company that each hold shares representing less than 5% of the votes exercisable at the general meeting of the shareholders should in total hold (a) at least 15% of the shares referred to in the application for admission to WSE listing, and (b) at least 100,000 of the shares referred to in the application for admission to WSE listing, and the value thereof should amount to at least EUR 1 million (calculated based on their most recent sale/issue price);

(iv) no bankruptcy or liquidation proceedings may be underway with respect to the company; and

(v) the transferability of the shares may not be restricted.

In respect of a listing on the Main Market, in addition to the requirements set forth above, the following requirements also apply:

(i) the application for the admission to trading on the Main Market must apply to all of the shares of the same type (e.g. ordinary shares);

(ii) minimum free-float: the shareholders of the company that each hold shares representing less than 5% of the votes exercisable at the general meeting of the shareholders should in total hold (a) at least 25% of the shares referred to in the application for admission to WSE listing, and (b) at least 500,000 of the shares referred to in the application for admission to WSE listing, and the value thereof should amount to at least EUR 17 million (calculated based on their most recent sale/issue price); and

(iii) the company must have published its audited financial statements for a period of at least three consecutive years prior to the date of the application for admission to trading on the WSE.

In general, apart from the above, the listing of a company on the WSE (on both the Main Market and Parallel Market) also requires the drafting and approval of a prospectus (which is discussed in detail below) by the Polish regulator, i.e. Polish Financial Supervision Authority (the "PFSA"), as well as the adoption of specific resolutions by the company's general meeting, including a resolution on the application for admission to the trading on the WSE.

The shares in the company must be dematerialised, which also requires: (i) the adoption of a resolution relating thereto by the company's general meeting; and (ii) the execution of an agreement between the company's management board and the National Depositary of Securities (the "NDS") pursuant to which the shares to be offered by way of a public offering and/or listed will be registered in the depository for securities maintained by the NDS. The listing process is finalised by way of the management board of the WSE adopting resolutions on the admission and introduction of the company's shares to trading on the WSE.

3.2. NewConnect

The requirements for listing on NewConnect are less stringent than those for the WSE Main Market and Parallel Market listings.

There are important differences between listing on NewConnect listing and the WSE Main Market and Pararell Market, in particular with respect to the minimum free-float requirement. Accordingly, at least 15% of the shares referred to in the application for admission to listing on NewConnect must be held by no fewer than ten shareholders, and each of such shareholders may hold no more than 5% of the total number of the votes exercisable at the company's general meeting. The company applying for admission to listing on NewConnect is required to publish the audited financial statements for the year prior to the date of the application for admission.

3.3. Catalyst

The introduction of bonds to listing on the debt financial instruments market, i.e. Catalyst, requires the satisfaction of similar requirements as with respect to shares. Such requirements include the following: (i) bonds may only be issued by specific entities (including limited liability companies, joint-stock companies, limited joint-stock partnerships and municipalities) and must be in dematerialised form; (ii) the publication of an information document (a prospectus or an information memorandum), which, subject to certain exceptions, must be approved by the Polish regulator; (iii) the transferability of the bonds may not be restricted; and (iv) no bankruptcy or liquidation proceedings may be underway with respect to the bond issuer.

4. Prospectus Disclosure

The legal framework pertaining to disclosure rules on the capital and debt securities offerings in Poland are regulated mainly on the European Union level with the cornerstone legal act being Regulation (EU) 2017/1129 ("Prospectus Regulation") and delegated acts (Commission Delegated Regulations 2019/980 and 2019/979) connected therewith, which are applicable directly throughout the European Union and lay down, among other things, the requirements to be complied with when drawing up prospectuses or other offering documents, as well as the requirements related to their approval by the relevant authorities and their dissemination to the public. Certain additional requirements within the scope not regulated by the Prospectus Regulation and the Commission Delegated Regulations under the Prospectus Regulation and where permissible thereunder are also included in national regulations, in particular the Polish Act on Public Offerings, Conditions Governing the Admission of Financial Instruments to Organised Trading and Public Companies of 29 July 2005 as amended (the "Public Offering Act"). In addition, the guidelines of the European Securities and Markets Authority (the "ESMA") relating to the prospectus (such as Q&A on the Prospectus Regulation or risk factors) and certain guidelines issued by the Polish regulator as well as established market practice have an impact on the prospectus disclosure.

The Prospectus Regulation is applicable to the offer of securities to the public, which is understood as a communication to persons (not applicable to offers addressed to one person/entity) in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities, whereby such offer might be performed also through placement of securities through financial intermediaries.

In principal, the above-mentioned offers, as well as admissions of securities to trading on the regulated market, trigger the

obligation to publish a prospectus; however, the Prospectus Regulation provides for certain exemptions pursuant to which:

(i) it is not applicable to certain securities, including inter alia: units issued by collective investment undertakings other than the closed-end type or certain state-issued or guaranteed securities;

(ii) it is not applicable to offers, the total consideration for which in the EU does not exceed EUR 1 million calculated over a period of 12 months (additionally, the Prospectus Regulation allows member states to exempt from the prospectus obligation offers the value of which is between EUR 1 million and 8 million; in the case of Polish regulations, the exemption relates to offers under EUR 2.5 million);

(iii) the prospectus obligation is not applicable to certain offers, including: (i) offers addressed solely to qualified investors; offers addressed to fewer than 150 addresses per member state other than qualified investors; offers of securities, the nominal value of which amounts to at least EUR 100,000 per security; offers of securities whereby each investor will acquire securities for a total consideration of at least EUR 100,000; and (ii) provided that a special information document is published, securities offered in connection with a takeover by means of an exchange offer; securities offered, allotted or to be allotted in connection with a merger or division; offers of dividend shares to the existing shareholders; and offers addressed to the management or employees;

(iv) the prospectus obligation is not applicable to certain admissions of securities to trading on the regulated market, including: (i) securities fungible to securities already admitted to trading (below 20% of the securities admitted to trading over the period of 12 months); shares resulting from the conversion/exchange of other securities of from the exercise of the rights conferred thereunder; and (ii) provided that a special information document will be published, securities offered in connection with a takeover by means of an exchange offer; securities offered, allotted or to be allotted in connection with a merger or division; offers of dividend shares to the existing shareholders or shares to be offered thereto free of charge; and offers addressed to the management or employees,

whereby in principal, the above exemptions might be applied jointly.

With respect to additional disclosure requirements under Polish securities regulations, the Public Offering Act imposes, inter alia, the following obligations:

(i) with respect to offers of securities in the territory of EU, the total value of which ranges between EUR 100,000 and 999,999 (over a period of 12 months) - the obligation to publish an information document which will include a responsibility statement from the issuer, information on material risks factors, and basic information on the issuer, including financial information, and the intended use of the proceeds from the issue of securities;

(ii) with respect to offers of securities in the territory of EU, the total value of which ranges between EUR 1,000,000 and 2,499,999 (over a period of 12 months) – the obligation to publish an offering memorandum in the form of a single document;

(iii) with respect to offers of securities addressed to less than 150 persons per member state other than qualified investors, where the number of addresses, together with the number of addresses to whom analogous (less than 150 addresses) offers of the same type of securities were addressed over the period of the last 12 months, exceeds 149 – the obligation to publish an offering memorandum being subject to approval by the PSFA.

In addition to standard offering documents such as a prospectus (in the form of a single document or a set of documents comprising a registration document, an offer document and a summary) or an offering memorandum, the Prospectus Regulation introduced a so-called "EU growth prospectus" applicable mainly to small and mid-sized enterprises allowing for a simplified disclosure obligations regime, and thus reducing the cost of the offering.

Additionally, in case of larger offers addressed to international institutional investors, including offers structured in compliance with Regulation S and Rule144A, the issuers usually prepare an International Offering Circular (the "IOC"), which is an offering document prepared in English for the purpose of advertising activities and offering securities to international investors outside Poland. In general, the IOC contains the same information as a prospectus prepared in Polish without detailed information on terms of Polish retail offering, and which may include additional information resulting from the requirements of foreign disclosure regimes or market practice for international offerings (like information required by Industry Guides issued by the US Securities and Exchange Commission). The IOC is not subject to the approval of the PFSA or of any other registration or notification obligations.

The format of the prospectus and the scope of the disclosure

included therein is set forth in the Prospectus Regulation, the Commission Delegated Regulations 2019/980 and 2019/979 connected therewith as well as recommendations and guidelines issued by the ESMA. Also, certain guidelines issued by the Polish regulator as well as established market practice have an impact on the prospectus disclosure. A prospectus subject to the approval of the PFSA should, in principal, be drafted in Polish, but in the event that a public offer or admission to trading on a regulated market is to take place exclusively in a member state other than Poland, the prospectus may be drawn up either in Polish or English. Additionally, with respect to a public offer or admission to trading on a regulated market in Poland as the host state, a prospectus disseminated to the public must be drawn up in Polish or English or translated into one of such languages, whereas in case of a prospectus prepared in English, a Polish translation of the summary must be published.

5. Prospectus Approval Process

In principle a prospectus or other offering document of a Polish issuer subject to approval based on EU or national regulations must be submitted to the PFSA through the intermediation of an investment firm.

Unlike in certain other European jurisdictions, a prospectus submitted to the PFSA must be signed and fully complete, i.e. must include all of the relevant information, schedules, financial statements auditor's report and representations required under applicable laws. Thus, the issuer and/or the offerors are liable for the content thereof as of the first filing of the prospectus. The PFSA does not review and comment on advanced drafts of the prospectus prior to its approval; nonetheless, it is possible to organise a courtesy meeting with the regulator in order to discuss the structure of the offering, the envisaged timeline of the process or the way of supplementing the prospectus by more recent financial information during the approval process.

The whole prospectus approval process takes approximately two to three months, depending on the type of offering (initial public offering or secondary public offering) or the industry of issuer. Prior to the approval of the prospectus, the PFSA may provide comments or demand modifications to the prospectus or additional disclosure, often several times (in practice, three to four rounds of comments). After all of the PFSA's comments have been addressed and the prospectus has been amended/supplemented accordingly, the PSFA issues an administrative decision on the approval of the prospectus.

Notwithstanding the fact that the Prospectus Regulation and delegated acts (Commission Delegated Regulations 2019/980 and 2019/979) connected therewith as well as the ESMA's recommendations and guidelines intended to unify the disclosure regimes throughout all of the EU member states, it must be noted that with respect to offering documents being subject to the approval of the PFSA, there are some minor differences and additional requirements resulting from the market practice peculiarities established by the PFSA. For instance, with respect to information on material agreements to be disclosed in the prospectus, despite the fact that the EU regulations require only information on the material agreements concluded by the issuer otherwise than in the ordinary course of business, the PFSA may require disclosure relating to the material agreements concluded in the ordinary course of business or detailed disclosure of related-party transactions.

The PSFA also exhibits a greater degree of scrutiny in terms of the details of the prospectus disclosure. There are certain matters that are especially scrutinized by the PFSA, which may result in detailed questions being raised or even changes to the substance of such matters being requested, including, for example: related party transactions, liquidity, high financial leverage, the functioning and actual oversight of a supervisory board or the rules of remuneration of the members of the governing bodies of the issuer, and post offering preferential rights of shareholders.

In general, the prospectus can be published and the offer of securities in Poland can be commenced only following the approval of the prospectus by the PFSA or its notification to the PFSA by the competent regulatory authority approving the prospectus in a different jurisdiction (under the EU passporting procedure). The prospectus may be made available to the public in different ways, including, but not limited to, the most common option - publication on the issuer's website.

The Public Offering Act regulates liability for the information contained in a prospectus and the supplement thereto being true and accurate and for the prospectus and the supplement thereto not omitting anything that could affect their import, in particular with respect to the authenticity, accuracy and completeness of the information contained in the foregoing documents. The above-mentioned liability rests on, among others:

(i) the issuer – for all information;

(ii) the offeror – for information about the offeror and the sale of securities conducted thereby, and if an offeror is a parent

entity of the issuer or exerts a significant influence thereon (shareholding of 20% and more) – for all information; and

(iii) the entity or person preparing or participating in the preparation of information – for the information it has prepared or in the preparation of which it participated (in line with market practice, the legal counsel is responsible for the parts relating to a description of the legal environment, and the offering agent or manager, for the terms and conditions of the public offering in Poland),

whereby in any case the civil liability depends on: (i) the fault of the above entities; and (ii) on the investor proving loss and the link between such loss and the omission or inaccuracy of information.

A prospectus needs to indicate the responsible entities together with the declarations thereof that, to the best of their knowledge, the information contained in the prospectus is consistent with the state of facts and the prospectus does not omit anything that could affect its import and, in particular, that the information included therein is true, accurate and complete. In practice, such declarations indicate the specific information for which a given entity is liable (all information or information included in specified chapters of the prospectus). Additionally, in order to limit the potential liability of certain entities (i.e. underwriters and managers), especially in the case of larger and international offerings, due diligence processes are conducted with respect to the issuer and its operations and additional documents are issued by auditors (comfort letters) or legal counsel (legal opinions and disclosure letters).

6. Listing Process

In general, the listing of securities on the regulated market in Poland requires their dematerialisation and the admission to trading by the relevant market operator.

Securities that are subject to a public offering within the territory of Poland or those subject to admission to trading on the regulated market in Poland cease to exist in certificate form upon their registration in the securities deposit pursuant to an agreement with the NDS, the Polish depositary and settlement institution (the securities cease to exist in certificate form and, thus, exist only in book-entry form), except for securities offered to the public that will not be subject to admission to trading on the regulated market or introduced exclusively to an alternative trading system (i.e. NewConnect) that may keep their certificate form, if the issuer so decides.

In order to conclude a registration agreement with the NDS, the issuer has to deposit with an investment firm operating in Poland the certificates representing the securities being the subject of the dematerialisation and submit an application that includes the respective authorisation to register the securities with the NDS in the form of a relevant corporate consent granted by the competent governing body of the issuer (for Polish issuers - general meeting of shareholders). The registration agreement is concluded based on the above-mentioned application and pursuant to a resolution of the management board of the NDS.

Following the satisfaction of the listing requirements described in the section "Key Listing Requirements" above, the issuer may apply for the admission and introduction to trading of securities on the relevant markets. With respect to shares to be admitted to trading on the regulated market operated by the WSE (both the Main and Parallel Market), following the formal application of the issuer, the WSE issues its decision by way of the adoption of resolutions first on the admission and then on the introduction of shares to trading and sets the first listing date within approximately 7 days of the submission of the application by the issuer (within approximately 10 days after pricing of the offering). Unlike certain other markets, the settlement of equity offerings in Poland is not based on a delivery-versus payment principle. Investors (both retail and institutional investors) pay for the shares prior to the final share allocation and the shares allocated to such investors are registered on their securities accounts around one week upon payment, but always prior to the first listing day on the WSE. The detailed timing for admission and introduction of shares to trading is usually pre-agreed with the WSE.

The applications for admission to trading and introduction to listing on the WSE are standard documents that are usually submitted directly following the final allocation of the shares to investors. The issuers have to attach to such application a number of documents, including the opinion of the WSE participant (e.g. an investment firm being a WSE member), a prospectus or other offering document and a resolution of the NDS on the registration of the shares with the depository operated by the NDS. Unlike in the case of certain other foreign markets, the conditional trading of shares on the WSE prior to the first listing day is not permitted. In respect of newly issued shares it is possible to list on the WSE rights to shares, being securities representing rights to newly issued shares, before their registration by the registry court.

7. Corporate Governance

When preparing for an initial public offering of securities, the issuer should bear in mind the necessity to adjust its corporate governance rules in order to comply with the applicable laws (corporate governance rules applicable following the admission of securities to trading on the regulated market), the corporate governance rules developed by the WSE applicable to companies listed thereon and the investors' expectations.

Below please information on the corporate governance principles applicable to issuers, the shares in which are to be listed on the regulated market operated by the WSE. Additionally, the PFSA has adopted special corporate governance rules for entities being subject to its supervision, such as banks, investment funds, general pension funds, brokerage houses and insurance companies.

7.1. Articles of association

In principle, the articles of association (the "AoA") of companies, the shares in which are to be listed on the regulated market in Poland should constitute a legal framework that will allow for transparent rules of decision making and, to a certain extent, for the lack of discriminatory preferences that are not based solely on the proportionality of the shareholding of a given investor. In particular, the AoA:

(i) should not provide for any special rights of shareholders; however, it is permitted to introduce limited personal rights to appoint supervisory board members;

(ii) should not contain restrictions on voting rights; and

(iii) can contain provisions on shares preferred in terms of voting rights; however, such shares cannot be publicly offered, or admitted and introduced to trading on the regulated market.

7.2. Supervisory Board

The supervisory board of a public company (i.e. including issuers of bonds listed on the regulated market) should comprise at least five members, at least two of whom should meet the independence criteria set forth in the Act of 11 May 2017 on statutory auditors, auditing firms and on public supervision (the "Act on Statutory Auditors") and the WSE Best Practices that refer to the criteria set forth in Annex No. II to the Commission Recommendation of 15 February 2005, on the role of non-executive or supervisory directors of listed companies and on the committees of (supervisory) the boards thereof, whereby usually, it is recommended that independent members of the supervisory board meet all of the above criteria.

In practice, prior to the appointment, a candidate for an independent member of the supervisory board submits to the issuer a written statement on the fulfilment of the criteria of independence.

The structure of the supervisory board of companies being the issuers whose securities are admitted to trading on the regulated market should include at least an audit committee, whereby a remuneration and nominations committees are optional. Pursuant to the Act on Statutory Auditors, the audit committee should comprise at least three members, of which more than half (including the chairman) will need to meet the independence criteria set forth in the Act on Statutory Auditors. Moreover, at least one member will need to have knowledge and skills in the field of accounting and at least on member will need to have knowledge and skills in the sector in which the issuer conducts its business. The requirements regarding the functioning and composition of an audit committee apply also to companies that intend to apply for the WSE listing (which is understood as the moment of the adoption of a resolution by the general meeting of the shareholders regarding the listing).

7.3. Approval of related party transactions

In the case of issuers the shares in which are admitted to trading to the regulated market operated by the WSE (with the exception of foreign issuers), pursuant to the Public Offering Act, the execution of a transaction between such issuer and its related party (within the meaning of IAS 24 "Related Party Disclosure") the value of which exceeds 5% of the total assets of the issuer will require the obtainment of the consent of its supervisory board, with the exception of: (i) transactions executed on an arm's length basis in the ordinary course of business; (ii) transactions executed by the issuer with its subsidiaries, provided that the issuer is the sole shareholder of the subsidiary with which it has executed a transaction; and (iii) transactions regarding the payment of remuneration to members of the governing bodies in accordance with the remuneration policy within the meaning of the Public Offering Act (please see "Say on Pay" below). Additionally, the AoA may provide that the consent to conclude an agreement with a related party may also be granted by the general meeting of the shareholders. In the above scope, the provisions of the Public Offering Act implement EU Directive 2017/828.

For disclosure obligations relating to the related party transactions see section "Ongoing Reporting Obligations (Life as a

Public Company)".

7.4. Say on Pay

In the case of issuers the shares in which are admitted to trading to the regulated market operated by the WSE (with the exception of foreign issuers and certain financial institutions), the remuneration of members of the governing bodies of the issuer should be paid exclusively in accordance with the remuneration policy adopted by the general meeting of the shareholders, which should include, among others: (i) a description of the fixed and variable components of remuneration, as well as bonuses and other cash and non-cash benefits; (ii) a description of the terms of contracts; (iii) an explanation of how the pay and employment conditions of employees of the issuer other than members of the governing bodies were taken into account when establishing the remuneration policy; and (iv) an explanation of how the remuneration policy contributes to the implementation of the issuers' business strategy, long-term interests and stability. In the above scope, the provisions of the Public Offering Act implement EU Directive 2017/828.

For disclosure obligations relating to the remuneration policy see section "Ongoing Reporting Obligations (Life as a Public Company)".

7.5. WSE Best Practices

In accordance with the internal regulations of the WSE, in order to ensure the transparency of operations and to build investor confidence, issuers listed on the Main Market of the WSE should observe the principles of corporate governance set out in the Best Practices for GPW Listed Companies 2016 (the "WSE Best Practices") that have been developed in accordance with the European Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting (2014/208/EU). The WSE Best Practices are to be followed on a "comply or explain" basis, and thus issuers do not have to comply with all of the rules set out therein; however, the intention of the scope to the extent of which the WSE Best Practices will be complied with must be included in the prospectus. Apart from this, WSE-listed issuers are required to provide a statement on the compliance with the WSE Best Practices in their annual report and to notify to the market, by way of a current report, of any decision taken with regard to any permanent or incidental incompliance with the WSE Best Practices.

The WSE Best Practices recommendations and detailed principles pertain to: (i) Disclosure Policy and Investor Communications; (ii) Management Board and Supervisory Board; (iii) Internal Systems and Functions; (iv) General Meeting and Shareholder Relations; (v) Conflict of Interest and Related Party Transactions; and (vi) Remuneration.

Additionally, a simplified and analogous version of the WSE Best Practices is applicable to issuers the shares in which are listed on NewConnect, an alternative trading system outside the regulated market operated by the WSE.

8. Documentation and Other Process Matters

8.1. Stabilisation

In connection with an offering in Poland it is possible to take stabilisation actions under which one or more of managers acting as the stabilisation manager(s) will be able to acquire shares or other securities on the regulated market operated by the WSE or on another market in order to stabilise their price at a level higher than the level that would have been established in different circumstances. Stabilisation aims to address potential price fluctuations in the first days following the first listing day (for initial offerings) or the pricing of the offering (for secondary offering), and support the market price but only if such price drops below the final offer price. Therefore, stabilisation may not be used to increase the price in excess of the final offer price.

Stabilisation is not a common element of public offerings in Poland. Historically, stabilisation was envisaged and carried out in relation to the largest offerings in Poland that also combined the private placements of shares to international institutional investors.

The principles of stabilisation transactions are set out in the MAR and in Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buyback programs and stabilisation measures (the "Stabilisation Regulation"). In addition, the detailed terms of stabilisation are set out in the underwriting agreement/placement agreement and/or a separate stabilisation agreement entered into by a selling shareholder or an issuer and a stabilisation manager. The prospectus disclosure relating to stabilisation is defined in the Prospectus Regulation and the Commission Delegated Regulations thereto.

Under the MAR and the Stabilisation Regulation, stabilisation is exempted from the prohibition on insider dealing, market

manipulation and unlawful disclosure of inside information so long as:

(i) the undertaking of the stabilisation is for a limited period (in respect of shares, the time period is no longer than 30 calendar days, whilst in respect of bonds it is no longer than 60 days);

(ii) the relevant information prior to and post stabilisation is disclosed to the competent authority and to the market;

(iii) the required disclosure is made in the prospectus or other offering documents; and

(iv) the stabilisation is carried out in compliance with adequate limits with regard to price.

For example, within stabilisation transactions relating to shares, shares may be acquired by a stabilising manager within no more than 30 calendar days from the date of commencement of their listing or pricing date or final allotment date (depending on the type of offering) at a price no higher than the final offer price. A stabilisation manager, however, is not required to take any stabilisation actions, and any such actions may be stopped at any time.

Typically, the size of the stabilisation does not exceed 15% of the offering size (typically around 10% of the final offering size).

8.2. Stabilisation option (Greenshoe vs Brownshoe structure)

The greenshoe, brownshoe and overallotment options are not common elements of public offerings in Poland. Historically, as a mechanism enabling the settlement of, and accompanying, the stabilisation, they were used solely in relation to the largest offerings in Poland that also combined the private placements of shares to international institutional investors.

For certain regulatory reasons and tax risks, in those limited number of offerings that envisaged stabilisation, the structures were based either on a brownshoe ("reverse green shoe") option or a Polish specific – conditional share purchase agreement, instead of a green shoe option, stock lending and overallotment.

A brownshoe or "reverse green shoe" option is a form of put option that gives the owner of the shares the right to sell the shares to a given party by a predetermined date and at a specified price. In other words, within the stabilisation period the stabilising manager acquires shares on the market at a price not higher than the final offer price, and then upon the lapse of the stabilisation period sells such shares back to a selling shareholder or an issuer under the put option.

A conditional share purchase agreement is an agreement between a selling shareholder and a stabilising manager pursuant to which after pricing, the selling shareholder sells to a stabilising manager shares in the pre-determined number usually corresponding to the number of shares finally allotted to foreign investors, however, not exceeding 10% or 15% of the offering size, subject to a condition subsequent that the shares are acquired by the stabilising manager in the course of the stabilisation transactions. The acquisition of the shares by a stabilising manager in the course of the stabilisation transactions, constituting the fulfilment of the above-mentioned condition subsequent, results in the transfer of the ownership title to such shares back to the selling shareholder in one or more transactions during or after the end of the stabilisation period.

The brownshoe or a conditional share purchase agreement has the same effect on share price as the regular greenshoe option but, instead of buying shares from the selling shareholder, the stabilising manager has the right to sell the shares back to the selling shareholder or issuer, but only if the share price falls below the offering price and the stabilising managers purchases the shares on the market.

The share transfers in the exercise of the stabilisation options are subject to tender offer-relating obligations that may impact their usage in transactions that may result in crossing the relevant thresholds. In principle, under Polish law crossing 33% or 66% of the total voting rights in a public company requires a launch of a mandatory tender offer for up to 66% or up to 100%, respectively, of the shares in such company.

8.3. Over-allotment and stock lending

An over-allotment is an option available to the managers that allows the sale of additional shares from what a selling shareholder plans to sell in an initial public offering or secondary/follow-on offering. The over-allotment option gives the managers the right, but not the obligation, to purchase from the issuer or the selling shareholder a specified number of additional shares beyond the number offered in the original offering at the offering price.

Due to the reasons mentioned above, a standard over-allotment structure based on the greenshoe option with stock lending is rather uncommon as regards Polish offerings.

9. Ongoing Reporting Obligations (Life as a Public Company)

Once the securities of a company have been admitted to trading on the WSE, the company becomes a public company within the meaning of the applicable laws, and thus, the subject to the disclosure obligations provided for in the provisions of both Polish and EU laws, including the provisions of the MAR. As of the date of the first listing of its shares, the company will, in particular, be required to disclose current and periodic information, inside information and certain information pertaining to its general meetings, corporate governance (i.e. its remuneration policy) and transactions with related parties, as well as to maintain a list of persons with access to inside information. In addition, the shareholders of such company who hold substantial blocks of its shares will be required to notify the company and the PFSA in the event of changes in their stock ownership.

As regards current information, under the Regulation of the Minister of Finance of 29 March 2018 on current and periodic information published by issuers of securities and conditions under which such information may be recognised as being equivalent to information required by the legal regulations of a state which is not an EU Member State (the "Reporting Regulation"), a public company listed on the WSE is required to publish a current report upon the occurrence of specific events such as, among other things, a change in the rights attached to the company's securities, the appointment or removal of a managing or supervisory person, or the registration of an amendment to the company's articles of association.

In addition, the Reporting Regulation also requires a public company listed on the WSE to publish quarterly, semi-annual and annual reports that will present the company's financial information for a given accounting period, including, in particular, the financial statements for such period (with the requirement that the half-yearly financial statements are reviewed by independent auditors and annual financial statements are audited by independent auditors). In this respect, the disclosure obligations of WSE-listed companies are more complex than in other European jurisdictions. If a public company is a controlling company of a capital group, it will additionally be required to publish, within the periods specified above, consolidated quarterly, semi-annual and annual reports for the capital group.

With respect to "inside information", as of the date of the application for the admission of the company's securities to trading, the company will be required to comply with the directly applicable provisions of the MAR and publish any information having a significant impact on the price of the company's securities. As required by the MAR, the company also needs to maintain a list of persons having access to inside information. Additionally, the company must disclose information regarding the transactions of the persons discharging managerial responsibilities and the persons closely associated with them.

WSE-listed companies incorporated in Poland are subject to additional disclosure obligations with respect to the convocation and organisation of their general meetings. The convocation of the general meeting of a Polish public company needs to be announced within the specified time period, include drafts of the resolutions to be adopted, and meet other specific requirements as to its contents and form of publication.

Apart from that, recently adopted Polish laws provide for additional disclosure obligations applicable to public companies and pertaining to the adoption and publication of a remuneration policy, as well as the publication of information about material related-party transactions. See section "Corporate Governance - Approval of related party transactions - Say on pay".

The remuneration policy is to be published by a public company on its website. In addition, each year, the supervisory board of a public company is to prepare an annual remuneration report containing a comprehensive review of the total remuneration, including all benefits (regardless of their form), received by each member of the management or supervisory board in the last financial year pursuant to the adopted remuneration policy. Such report is to be subject to the advisory opinion issued by the company's general meeting and published on the company's website.

As regards the disclosure of material related-party transactions, public companies are required to publish on their websites information about certain transactions entered into with their related parties. This obligation pertains to transactions deemed to be "material", i.e. to those exceeding 5% of the total assets of a company (with certain exceptions). The relevant disclosure needs to identify the related party, the value of the transaction made therewith and allow for an assessment as to whether the transaction was fair and reasonable from the perspective of the company and its shareholders who do not qualify as related parties.

Polish law also provides for disclosure requirements with respect to the shareholders of public companies listed on the

WSE. In general, any shareholder who has reached or exceeded a specific threshold (or its ownership has decreased below such threshold) is required to notify the company and the Polish regulator about the occurrence of such event within a specific time period.

Disclosure obligations applicable to companies with securities listed on NewConnect and Catalyst are less stringent that those applicable to WSE-listed companies. In this regard, NewConnect-listed companies are required to publish current information upon the occurrence of specific events (with such reported events being similar to those that need to be reported by WSE-listed companies under the Reporting Regulation, including information regarding the convocation and organisation of general meetings). They are also under the obligation to publish periodic information in the form of quarterly and annual reports. These reports must include financial statements that, only in the case of annual reports, need to be audited by independent auditors.

Issuers of bonds listed on Catalyst are required to publish current reports upon, among other things, the issuance or redemption of their bonds, failure to pay off the bonds on the payment date, or regarding the convocation of the bondholders' meeting. In addition, issuers publish periodic information in the form of semi-annual and annual reports (with the latter also being required to be audited by independent auditors).

The Authors:

■ Pawel Rymarz
Managing Partner
pawelrymarz@rymarz-zdort.com
+48 22 520 4214

■ Jacek Zawadzki
Partner
jacek.zawadzki@rymarz-zdort.com
+48 22 520 4396

■ Ewa Bober
Partner
ewa.bober@rymarz-zdort.com
+48 22 520 4397

ROMANIA

By Alexandru Birsan, Partner, Olga Nita, Counsel, and Roxana Diaconu, Associate, Filip and Company

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

The Bucharest Stock Exchange (BSE) has, starting with 2017, registered 3 dynamic years in both ECM and DCM transactions, which led to Romania's promotion, in September 2019, from Frontier Market to Emerging Market status, three years after the country was added to the Watch List.

In terms of ECM transactions, the biggest transaction on the Romanian capital market over the past 3 years remains the IPO of Digi Communications N.V. (the parent company of the Digi Group, one of the leading telecommunications companies in Central and Eastern Europe), which took place in May 2017, which was also the largest initial public offer of a private company ever on the BSE. The DIGI offering included a total of 23.9 million shares, representing 25.6% of the total shares issued by the company, with a total value of over RON 944 million (i.e., approximately EUR 207 million). Other large recent IPO transactions include:

- Sphera Franchise Group (which operates KFC, Pizza Hut and Taco Bell franchises, with its operations predominantly located in Romania, but also in Republic of Moldova and Italy) IPO, which took place in November 2019 and included 9.8 million shares, representing 25% of the total number of shares issued by the company, with a total value of over RON 285 million (EUR 62 million); and

- Purcari Wineries (a leading player in the wine and brandy segments in the Central and Eastern Europe) IPO, which took place in 2018 and included 9.8 million shares, representing 49% of the total number of shares issued by the company, with a total value of over RON 186.2 million (EUR 40 million).

As regards DCM transactions, some of the most important recent listings on the BSE include:

- NE Property Cooperatief U.A. (part of the NEPI Rockcastle group, which owns and develops real estate properties) bonds issued on the Main Market of the BSE, through two offerings carried out in November 2017 and May 2019, attracting a total of EUR 1.1 billion, as follows: (i) one offering amounting EUR 500 million in 2017, at a fixed interest of 1.75% p.a., payable on an annual basis (7-year maturity) and (ii) one offering amounting EUR 500 million in 2019, at a fixed interest of 2.625% p.a., payable on an annual basis (4-year maturity);

- Globalworth Real Estate Investment Limited (part of the Global group, which owns and develops real estate properties) corporate bonds listed on the Main Market of the BSE, through two offerings, attracting a total of EUR 1.1 billion, as follows: (i) one offering amounting EUR 550 million in 2017 at a fixed interest of 2.875% p.a., payable on an annual basis (5 year maturity) and (ii) one offering amounting to EUR 550 million in 2018 at a fixed interest of 3% p.a., payable on an annual basis (7 year maturity);

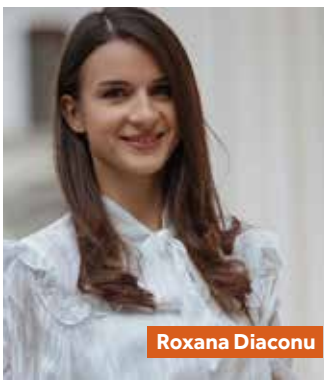
- Banca Comerciala Romana's bonds issuance amounting to RON 600 million, which took place in December 2019. The bonds have a fixed interest of 5.35% p.a. payable annually (7-year maturity). This was the largest RON-denominated bonds issuance on the local market;

- Banca Transilvania's private placement of bonds carried out in June 2018, which attracted EUR 285 million, with a variable rate of EURIBOR 6M + 3.75% p.a., payable on an annual basis. (10-year maturity); and

- Alpha Bank's issuance of covered bonds (the first issuance of covered bonds by a Romanian bank) carried out in May 2019, which attracted EUR 200 million, with a variable rate of


Alexandru Birsan


Olga Nita


Roxana Diaconu

FILIP & COMPANY
business law

EURIBOR6M + 1.5% p.a., payable on a half-year basis (5-year maturity).

In recent years, Romanian issuers have also been active on the international debt capital markets. The most recent issuance is that by RCS & RDS (the Romanian subsidiary of the Digi Communications' group's issuance of two series of senior secured bonds with a total value of EUR 850 million, which took place in February 2020 and which were listed in late March 2020 on the regulated market operated by Irish Stock Exchange plc (traded as Euronext Dublin) - this was one of the largest bond issues of a Romanian issuer. Prior to the RCS & RDS issuance, its parent company, Digi Communications, also issued bonds during previous years on the international debt capital markets, such as the issuance of senior secured bonds with a total value of EUR 350 million in late 2016, supplemented by a tap issuance in the amount of EUR 200 million in January 2019.

In addition to the corporate issuances, over the last 9 years the Romanian State has been an active issuer of debt instruments on the international capital markets, under its EUR 31 billion medium term notes.

2. Overview of the local stock exchange and listing segments (markets)

The BSE is the sole stock exchange in Romania, after the merger that took place in 2017 with the Sibex Stock Exchange, the other market operator that was absorbed by the BSE.

The BSE operates two markets: the Main Market, which is the regulated market of the BSE, and the AeRo Market (or Alternative exchange in Romania), which is the shares market segment of the BSE's alternative trading system.

2.1. Regulated market

The Regulated Market is intended for companies that meet certain listing criteria regarding the size, history and free float (please refer to the key listing requirements provided at point 3 below) and is therefore a viable option for large companies (blue chip companies). Stringent rules and enhanced investor protection are applicable on the regulated market.

The BSE regulated market dedicated to shares is structured into 2 categories, as follows: Premium category and Standard category. For the admission to trading in the Premium Category, companies must, inter alia, have the market value of the free float of at least EUR 40 million. For the Standard category, the free float must be at least 25% of the shares.

2.2. Non-regulated market

The BSE's non-regulated market is the AeRO market, which is BSE's market for Small and Medium sized Enterprises that do not yet fulfill the size or the length-of-operation criteria for listing on the Main Market. AeRO market has less regulatory restrictions and more freedom for issuers and other market participants.

3. Key Listing Requirements

3.1. ECM

3.1.1. Key Listing Requirements on the regulated market operated by the BSE (i.e., the Main Market)

3.1.1.1. Requirements regarding the issuer

- the issuer is a joint stock company (or a similar form of company, according to the laws of its home jurisdiction), duly incorporated and functioning in accordance with the laws of its home jurisdiction;

- the issuer's early capitalisation has to be at least the RON equivalent of EUR 1 million or, if its capitalisation cannot be estimated at the date of the listing application, the Issuer has the capital and reserves, including the profit or loss from the last financial year of at least the RON equivalent of EUR 1 million;

- the issuer has been in operation for at least 3 years prior to

the listing application and has prepared and communicated the financial statements for the same period; and

The issuer may be exempted by the FSA from the capitalisations and minimum duration since incorporation requirement, provided that the following two cumulative criteria are met: (i) there will be an adequate market for the issuer's shares; and b) the issuer is capable of meeting the requirements for periodic and ongoing information disclosure which will apply to it as listed company, and investors have sufficient information to make an informed decision in connection to the issuer and its shares.

3.1.1.2. Requirements regarding the shares to be listed

- shares must be transferable, fully paid for, in book entry form and registered in a securities account;
- shares must be registered with the FSA prior to their admission to trading (the FSA issuing a certificate attesting such registration); and
- the free float for shares belonging to the same class has to be at least 25% of the shares (for standard tier listing) or at least EUR 40 million (for premium tier listing)

3.1.2. Key Listing Requirements on the AeRO market operated by the BSE

3.1.2.1. Requirements regarding the issuer

- the anticipated capitalisation of the issuer should be at least the RON equivalent of EUR 250,000; this estimation will be based on either a private placement or previous initial public offering or a trading history on another market or, in the absence thereof, an evaluation carried out by an authorised advisor together with the Issuer and considered acceptable by the BSE;
- the issuer must have a contract with an authorised advisor and maintain it for at least 12 months after the admission to trading (BSE may shorten or extend this period as it deems appropriate); and
- the issuer is not subject to bankruptcy proceedings, nor to judicial reorganisation proceedings

3.1.2.2. Requirements regarding the shares to be listed

- shares must be transferable, fully paid for, in book entry form and registered in a securities account;
- the shares must be registered with the FSA; and
- the free float for shares belonging to the same class has to be at least 10% of the issued shares or the number of shareholders holding shares of the same class must be at least 30

3.2. DCM

The list of requirements for listing bonds on both the Main Market and the AeRO market operated by the BSE is relatively limited:

- the issuer has to be organised as a joint stock company (or a similar form of company, according to the laws of its home jurisdiction), duly incorporated and functioning in accordance with the laws of its home jurisdiction; and
- for the Main Market, the aggregate value of the bonds issued has to be at least EUR 200,000. However, lower values are also allowed, but they require the ASF's special approval.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

The prospectus is the key disclosure document used to offer and/or list financial instruments.

As Romania is part of the European Union, the legal framework regulating prospectus disclosure consists mainly of the following EU regulations:

- Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the "Prospectus Regulation");
- Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (the "Prospectus Delegated Regulation"); and
- Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the

summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301 (the "Prospectus RTS Regulation").

According to the Prospectus Regulation, information contained in the prospectus should be sufficient and objective and should be written and presented in an easily analysable, concise, and comprehensible form. The information in a prospectus should be adapted to the type of prospectus, the nature and circumstances of the issuer, the type of securities, and whether the investors targeted by the offer are solely qualified investors. A prospectus should not contain information which is not material or specific to the issuer and the securities concerned, as that could obscure the information relevant to the investment decision and thus undermine investor protection.

The issuer, offeror, or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document (which is the market practice in Romania) or as separate documents.

The Prospectus Delegated Regulation imposes specific minimum information requirements for a prospectus as set out in its Annexes. The relevant Annexes that will apply in each particular case will depend on, among others, the type of securities being issued, the type of issue (in certain cases), the nature of the issuer, whether the issuer has a complex financial history or has made a significant financial commitment.

4.2. Local market practice

The majority of transactions on the Romanian capital markets are done in reliance on Regulation S under the U.S. Securities Act of 1933, which means that upon the preparation of the prospectus due diligence is limited (usually consisting of one or two due diligence meetings and/or questionnaires addressed to the issuer's management and excludes an extensive assessment of commercial agreements or other type of documents pertaining to the issuer) and the level of disclosure does not usually include management's discussion and analysis on the issuer's performance over the period corresponding to the financial statements included in the prospectus.

In addition, managers do not usually require comfort letters from the issuer's auditors in connection with the financial information included in the prospectus (mainly because the managers do not engage in underwriting the offerings). However, auditors usually issue consent letters to express their approval for the issuer to use the financial reports and financial information in the prospectus.

4.3. Language of the prospectus for local and international offerings

The language regime is the one set out in article 27 of the Prospectus Regulation (similar provisions being included in the Romanian Regulation 5/2018 on issuers of financial instruments and market operations), i.e.:

- where an offer of securities to the public is made or admission to trading on a regulated market is sought only in Romania and Romania is the home Member State for the purposes of the Prospectus Regulation, the prospectus shall be drawn up in Romanian;

- where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States, excluding Romania and where Romania is the home Member State for the purposes of the Prospectus Regulation, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance (together with a summary of the prospectus in the official language of the relevant Member States, or at least one of their official languages, or in another language accepted by the competent authorities of those Member State), at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market; for the purposes of the approval and scrutiny by the FSA of the prospectus, it shall be drawn up in Romanian or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market; and

- where an offer of securities to the public is made or an admission to trading on a regulated market is sought in more than one Member State, including Romania as the home Member State for the purposes of the Prospectus Regulation, the prospectus shall be drawn up in Romanian, and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance (together with a summary of the prospectus in the official language of the relevant Member States, or at least one of their official languages, or in another language accepted by the competent authorities of those Member States), at the choice of the issuer, the offeror, or the person asking for admission to trading

on a regulated market.

5. Prospectus Approval Process

5.1. Competent Regulator

The competent authority at national level for reviewing and approving the prospectuses is the Romanian Financial Supervisory Authority (FSA).

5.2. Timeline, number of draft submissions, review and approval process

The FSA practice in terms of prospectus approval is to have two informal submission rounds of the prospectus before the formal and final submission. Thus, the FSA usually has maximum two rounds of comments on the document, for each round of comments a minimum period of one week being budgeted. Once the FSA has no more comments, the prospectus is formally submitted for approval.

Following the formal submission, the FSA decides on the approval of the prospectus within 10 working days from the date of the registration of the formal application. This term may be extended to 20 working days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public.

If the FSA does not issue a decision on the prospectus within the deadlines set out above, this is not considered as a tacit approval of the prospectus.

6. Listing Process

6.1. Timeline, process with the stock exchange

6.1.1.1. Listing process on the regulated market operated by the BSE

The most common steps for listing on the Regulated Market are:

- Passing a corporate resolution to decide on the offering and/or the listing of financial instruments on the regulated market.

- Retaining advisors for the transaction, as well as the intermediary/intermediaries (authorised by the FSA or passported). The intermediary involved in the listing process should be a participant to the BSE trading system.

- Selecting the type of offering and preparation of such offering, i.e.,:

  - exempted offering ("Private Placement") – made in reliance on the exemptions set out under article 1 para. (4) of the Prospectus Regulation, such as an offering addressed to a limited number of investors, to qualified investors, investors subscribing a minimum value etc.; preparation and approval of a prospectus is not required for the offering itself, however the issuer will have to prepare a listing prospectus, which will have to be approved by the FSA; or

  - non-exempted offering to the general public ("Public Offer") – requires preparation of a prospectus for both the offering and the listing, FSA's approval.

- Prospectus drafting;

- Application for the approval in principle of the listing of financial instruments with the BSE (the issuer will have to submit an application for admission to trading attaching (i) the prospectus (in draft form); (ii) service agreement concluded between the issuer and the Central Depository; and (iii) the decision of the statutory body of the issuer regarding the listing;

- Conducting the Private Placement/Public Offer through an intermediary;

- Registration of the financial instruments with the FSA;

- Registration of the financial instruments with the Central Depository, in order to ensure the clearing and settlement for exchange transactions and to keep the issuer's shareholders registry, as the case may be;

- Final approval of the admission to trading by the BSE; and

- First trading day.

In case of ECM transactions, to the extent the offering made by a Romanian issuer has a primary element, the steps described above will include the registration of new shares (after the offering is closed) with the Trade Registry. Until the registration of newly issued shares with the Central Depository, allocation rights representing such shares may be traded (but only if the issuer has decided to have such allocation right).

6.1.1.2. Listing process on the AeRo market operated by the BSE

In practical terms, the same steps as the one described for the listing on the regulated market of the BSE will apply (albeit, if there is Private Listing, instead of a listing prospectus a sim-

plified information "memorandum" will have to be prepared instead).

6.1.1.3. Timeline of the listing process

The actual listing procedure in front of the BSE usually takes up to 10 days. However, both ECM transactions (in particular IPOs, as the most complex transactions) and DCM transactions imply a timeline aimed to accommodate negotiations between the parties involved, drafting the prospectus and ancillary documents, as well as approval formalities in front of the FSA or other competent regulatory authorities (other than the BSE). Therefore, in case of IPOs, the process (including preparatory formalities and execution of all required steps) may take between 6 months and 1 year. In case of DCM transactions, these usually take from 3 to 6 months.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

Companies listed on the regulated market of the BSE need to comply with the BSE Corporate Governance Code, in effect starting from January 4, 2016.

The BSE Corporate Governance Code requires that all companies listed on the BSE include a statement in their annual report on their compliance with the BSE Corporate Governance Code. Any failure to comply with the provisions of the BSE Corporate Governance Code must be disclosed through a current report filed with the BSE, the principle applied being that of "comply or explain."

The BSE Corporate Governance Code contains a number of principles and provisions which must be observed by the companies listed on the BSE, inter alia with respect to the composition, role, functioning and compensation of the management bodies, risk management and internal control, financial reporting and disclosure, including the following main principles:

- the Board of Directors or the Supervisory Board should have at least five members;
- the majority of the members of the Board of Directors should be non-executive and at least one member of the Board of Directors or Supervisory Board should be independent, in the case of Standard Tier companies; not less than two non-executive members of the Board of Directors or Supervisory Board should be independent, in the case of Premium Tier Companies;
- each member of the Board of Directors or Supervisory Board, as the case may be, should submit a declaration that he/she is independent at the moment of his/her nomination for election or re-election as well as when any change in his/her status arises;
- the Board of Premium Tier companies should set up a nomination committee formed of non-executives, which will lead the process for Board appointments and make recommendations to the Board. The majority of the members of the nomination committee should be independent;
- the Board of Directors or Supervisory Board, as the case may be, should set up an independent audit committee capable of ensuring the integrity of financial reporting and of the internal control system, including the internal and external audit processes;
- the Board should set up an audit committee, and at least one member should be an independent non-executive; among its responsibilities, the audit committee should, inter alia, undertake an annual assessment of the system of internal control, should review conflicts of interests in transactions of the company and its subsidiaries with related parties and should monitor the application of statutory and generally accepted standards of internal auditing;
- the issuer should have a remuneration policy and rules defining that policy; it should determine the form, structure and level of remuneration of members of the Board, the CEO and when applicable, members of the Management Board.

7.2. Any other ESG considerations

Public companies are required to include in their annual report a non-financial statement regarding environmental, social and personnel issues, as well as considerations on human rights protection, anti-corruption and anti-bribery. In addition, companies with at least 500 employees may also be required to publish a separate report touching on the matters mentioned above.

From a market practice perspective, in recent time Romanian issuers have come under greater pressure to demonstrate the existence and robustness of their oversight of environmental, social and governance factors and make appropriate disclosures to their investors and stakeholders. In particular, due to the active and extensive investing of supranational entities on the Romanian market, issuers are made subject to specific ESG policies imposed by such supranational investors.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

Greenshoe options are usually granted to the stabilising manager (see letter c below for considerations on stabilisation) to cover the short position created by any over-allocations made in connection with the offer and any short positions arising from stabilising action.

Brownshoe options (or reverse greenshoe, where the underwriters sell back the shares to the issuer or the offeror following the offering) are even less common, due to the fact that local-only transactions are usually done without underwriting and any repurchase by the issuer itself triggers additional requirements (as for a Romanian company this would be equal to having a share buyback).

8.2. Stock lending agreement – whether it is used and whether there are any issues

The stabilising manager (see letter c below for considerations on stabilisation) may utilise a stock loan to borrow shares to settle any over-allocations, creating a short position which has to be closed by the end of the stabilisation period (the stabilising manager will either exercise the greenshoe option – if it has one, or use shares acquired in the market in connection with stabilising activities (or a combination of the two).

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Stabilisation is subject to the regime laid down by Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("MAR") and the Commission Delegated Regulation (EU) 2016/1052 with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.

The main requirements for stabilisation are the following:

- it is carried out for a limited period of time (up to 30 calendar days);
- relevant information must be disclosed and notified to the competent authority, in a manner which enables fast access and complete, correct and timely assessment of the information by the public; and
- adequate price limits must be complied with, i.e. for equity securities stabilisation cannot be executed above the offer price and for securities which are debt convertible or exchangeable into equity securities, stabilisation of these debt instruments cannot be executed above their market price at the time of the public disclosure of the final terms of the new offer.

Romania has not implemented any "gold plating" procedures in addition to the ones laid down by the EU regulations.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

As long as a company's shares are listed on the BSE, such company is required to disclose any regulated information which shall be disclosed pursuant the Law no. 24/2017 on issuers of financial instruments and market operations and Regulation no. 5/2018 on issuers of financial instruments and market operations (both implementing the provisions of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, commonly known as the "Transparency Directive").

Thus, a public company must publish its annual accounts within four months after the end of each financial year and its half-yearly figures within two months after the end of the first six months of each financial year. Within five calendar days after adoption of its annual accounts, the Company must file its adopted annual accounts with the FSA.

Also, a public company must publish its annual report, including the company's annual accounts together with the report and a statement of the board of directors, as well as the independent auditor's report, within four months after the end of each financial year. The same documents must be filed with the FSA and the BSE within the same deadline.

9.2. Ad hoc disclosures

Public companies are required to make public privileged information in connection with the company, as well as information in connection with important new events in the company's activity which may have an effect on the price of its shares, pursuant to the regime laid down by MAR.

Local regulations provide a list of situations (non-exhaustive) when a company is required to make such ad-hoc disclosures,

including:

- convening of the general meeting of shareholders;
- resolutions passed by the general meeting of shareholders or, as the case may be, information in connection with failure to fulfill quorum and majority requirements for passing resolutions;
- change of control, including indirect change of control;
- changes in the management;
- replacement of the company's auditor and causes for this change;
- termination or decrease of contractual arrangements which have generated at least 10% of the company's income during the previous financial year;
- changes in the specific features and/or in the relating to all classes of financial instruments issued by the company, including changes in the rights attaching to derivative financial instruments issued by the company itself and attaching rights in connection to shares issued by the company;
- litigation proceedings involving the company;
- start of the process for cease of activity or for resuming the activity by the company, start and completion of insolvency/bankruptcy proceedings, judicial reorganization, dissolution proceedings;
- off balance sheet operations with significant effects over the financial results of the company;
- changes in company's obligations, with significant effect on its activity and financial situation;
- material acquisitions or disposal of assets (the acquisition or disposal is deemed material if the assets represent at least 10% of the total asset value of the company, either before or after the transaction);
- execution of any agreements which exceed in value 10% of the net turnover of the company during the last financial year or agreements concluded outside the ordinary business of the company; and
- new products or services launched by the company or a new development process, which affects the company's resources.

The relevant notices will have to be published without delay, but in any case no later than 24 hours after the occurrence of the relevant event or after the company being aware of the relevant information.

The Authors:

- Alexandru Birsan
Partner
Alexandru.Birsan@filipand-company.com
- Roxana Diaconu
Associate
Roxana.Diaconu@filipand-company.com
- Olga Nita
Counsel
Olga.Nita@filipandcompany.com

RUSSIA

By Anton Dzhuplin, Partner, Capital Markets, Corporate / M&A, Banking & Finance, and Dina Kravchenko and Elina Khoshaeva, Associates, Alrud

1. Market Overview

The Russian securities market has been rapidly developing since the early 1990's and has seen many phases, from boom to crisis. Despite its volatility, it can be characterized as an efficient, emerging stock market with a well-developed infrastructure that notably attracts significant numbers of foreign investors. The Bank of Russia (CBR) is the integrated regulator of the Russian financial sector. The CBR consolidated the regulatory powers over capital markets following the dissolution of Federal Financial Markets Service, on 1st September 2013.

1.1. Biggest Equity Capital Markets (ECM) and Debt Capital Markets (DCM) transactions over the past 2-3 years

As regards the ECM transactions, the Russian market has experienced a significant decline in the number of IPOs in the past 3 years. Only three companies held IPOs in Russia in 2017, the most notable being that of Detsky Mir, or Children's World, the largest children's goods retailer in the CIS region. (This IPO raised USD 355 million.) In 2018 and 2019, there were no IPOs in the Russian market. However, Headhunter, a Russian largest online job-search platform went public on NASDAQ in 2019 and raised USD 220 million, which was the first Russian IPO in the US following the Ukrainian crisis.

The Russian Secondary Public Offering market has been more active over the past 3 years. The largest transactions, during this period, include domestic, public secondary offerings in 2019 by Norilsk Nikel, a Russian nickel, palladium mining and smelting company (raised USD 550 million), Polyus Gold, a Russian gold mining company (raised USD 390 million), and, in 2017, by Magnit, one of the largest Russian retail chains (raised USD 735 million).

Russian companies also held a number of SPOs on foreign exchanges, including the London Stock Exchange (LSE). These include LSE offerings by Evraz, a steel-making and mining group, En + Group, a Russian energy and metals company, and the above-mentioned Polyus Gold.

The debt market remains the key source of financing for many Russian corporates, its size having doubled since 2014. The issuers with the highest volumes of bond issuance include oil-mining corporations such as Rosneft and Transneft, DOM.RF, a state mortgage agency which issues mortgage-backed bonds, and leading Russian banks, including Sberbank, VTB and Gazprombank.

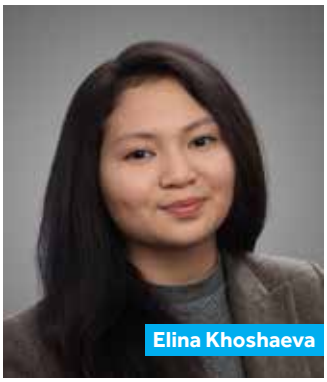
2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

Moscow Stock Exchange (MOEX) is the main securities exchange, hosting trading in equities, bonds, derivatives, currencies, money market instruments and commodities. It was created as a result of a merger of two largest state-controlled stock exchanges, Moscow Interbank Currency Exchange (MICEX) and the Russian Trading System (RTS). The National Settlement Depository having the status of Russia's central securities depository and the National Clearing Centre, which acts as the central counterparty, also form part of MOEX Group.

MOEX is one of the top 20 stock exchanges in the world by total capitalisation of traded shares, and one of the 10 largest exchanges for bonds and derivatives. More than 700 issuers have their securities listed on MOEX.

Another Russian stock exchange is the Saint-Petersburg Exchange (SPBEX). Originally known as a platform for trading in commodities, SPBEX was rebranded in 2014 and launched trading in Russian shares, as well as admitting to trading for-



ALRUD

eign shares from the S&P 500 Index (such as Apple, Twitter, Netflix). This allows Russian retail investors access to a wide range of stocks of top global issuers.

2.2. Non-regulated market

Transactions with unlisted securities and OTC derivatives are made in a non-regulated market. Such transactions are sometimes entered into using an exchange infrastructure. For instance, MOEX provides services for non-organized trading in bonds through a special platform: this enables users to find counterparties for private transactions. As for the OTC derivatives market, the CBR intends to place certain restrictions on these trades, in particular, introduce mandatory centralized clearing and margin requirements, with respect to selected types of over-the-counter derivatives.

2.3. Listing segments

Pursuant to the Federal Law No. 39-FZ "On Securities Market" dated 22nd April 1996, as amended (the "Securities Law"), listing means inclusion of securities in the list of securities, admitted to organised trading for entering into sale and purchase agreements, including in the quotation lists, by a Russian stock exchange.

The list of securities admitted to organized trading includes quotation and non-quotation sections. The list established by MOEX consists of three levels. The first and second levels are quotation lists, and the third level forms a non-quotation part of it. Inclusion to each level is subject to compliance of the securities, and their issuer, with general listing requirements and a particular set of requirements.

The advantages of admission of securities to quotation lists include enhancing the liquidity of the securities and the issuer's status, as well as increasing the number of potential buyers. In turn, requirements for admission to the first and second levels are stricter, as they constitute a certain comfort for the investors. The non-quotation part enables both long-existing companies and start-ups, that want to avoid more burdensome requirements, to gain access to financial market.

3. Key Listing Requirements

Securities can be admitted to the list in the course of their placement, which is the transfer of the securities, by an issuer, to the first owners. This is achieved by entering into transactions (i.e. primary offering), and circulation, which is entering into transactions that entail a transfer of title to the securities.

Requirements for the admission of securities to the stock exchange list can be divided into general, or applicable to all listing levels, and additional, which shall be complied with respect to admission to the quotation levels of the list.

General requirements include the following:

- the securities shall comply with the requirements of the laws of the Russian Federation, including regulations of the CBR;
- A prospectus is registered in respect of the securities;
- The issuer undertakes obligations to disclose information, in accordance with the requirements of the securities laws of the Russian Federation.

Securities can be admitted in a non-quotation third level of the list based on compliance with the general requirements.

To be listed in the first and second levels, the issuer must ensure the observance of the additional requirements, which are different for shares and bonds.

3.1. ECM

Additional requirements for shares can be divided into four main categories:

- The number of free-float shares and their total market value

For instance, in respect of the first level of the list, the free float must be at least 10% of shares, if a market capitalization

of shares exceeds RUB 60 billion, and the total market value of shares must be not less than RUB 3 billion for ordinary shares, and RUB 1 billion, for preferred shares.

■ Minimum period of existence of the issuer

To be eligible for the first level, the issuer must have been in business for at least 3 years, while the minimum length of existence for the second level is 1 year.

■ Drafting and disclosure of financial (accounting) statements, in accordance with the International Financial Reporting Standards (IFRS), or other internationally-recognized reporting standards

The applicable reporting periods differ for the first and second level of the list, being 3 completed years and 1 completed year, preceding the date of admission of the shares into the list, respectively.

■ Corporate governance requirements

The structure and functions of the issuer's management bodies must conform to the requirements established by MOEX listing rules. For inclusion in both the first and second levels of the list, the issuer must have a board of directors and an audit committee, a corporate secretary and an internal department responsible for internal audit, as well as adopt bylaws on internal audit and a dividend policy.

Apart from the requirements common for both quotation parts, the conditions for admission to the first level include a higher number of independent directors on the board of directors and an audit committee in comparison with the second list, formation of a remuneration committee and a nominations committee, and adoption of bylaws establishing the position of corporate secretary.

3.2. DCM

Additional requirements for bonds partially coincide with those for shares, in particular, drafting and disclosure of financial (accounting) statements in accordance with the IFRS, or other internationally-recognized reporting standards. However, other additional requirements, for admission of bonds into the quotation lists, are distinct from the conditions for shares and can be classified as follows:

■ The minimum amount of the total volume of bonds and the maximum nominal value of a single bond:

The minimum amount of the total volume of bonds must be at least RUB 2 billion for admission to the first level, and at least RUB 500 million, to the second level. The maximum nominal value of a single bond must not exceed RUB 50,000 or, if the value is denominated in a foreign currency, 1,000 monetary units in such currency, for both levels.

■ The minimum period of existence of the issuer, or a person providing security, in respect of bonds:

In respect of the first level, the issuer must exist at least 3 years. The second level listing may be performed, if the issuer has existed at least 1 year or, if security is provided with respect to bonds, not less than 3 months, provided that the guarantor, or surety, exists at least 1 year.

■ Absence of previous default on obligations on behalf of the issuer:

There should be no previous defaults, or at least 3 or 2 years should have passed since the termination of the relevant obligations, with respect to the first and second level respectively.

■ Level of credit rating of the issuer, or a person providing security, in respect of bonds:

The levels of credit rating must be not less than those set forth by the MOEX.

■ Nomination of representative (trustee) for bondholders:

The requirement is applicable to unsecured bonds to be listed in the second level.

■ Corporate governance requirements

The list of corporate governance requirements for bonds is less than those for shares. However, these include formation of a board of directors, internal audit department and adoption of a policy on internal audit.

The additional requirements for specific types of bonds, for instance, exchange-registered bonds, state-issued bonds, as well as securities of foreign issuers, can further differ.

4. Prospectus Disclosure

4.1.. Regulatory regimes (Prospectus Regulation, or similar) – equity and debt and local market practice

The prospectus is the key document of the issuer, when listing its securities on a stock exchange, and is the main source of

information about the company, for both the regulators and potential investors. For this reason, the prospectus must be comprehensive and structured, to be understood by both professional and less-sophisticated investors.

The prospectus includes both information, which is compulsory to be disclosed under the disclosure requirements of regulatory bodies, and information which the company wants to disclose voluntarily, in order to attract investors.

The prospectus regime in Russia is primarily governed by the Securities Law.

The detailed requirements for the prospectus disclosure are set out in the secondary legislation, including:

- Regulation of the CBR No. 454-P dated 30th December 2014 "On information disclosure by the issuers of issue-grade securities" (contains detailed requirements for the form and content of the prospectus, its drafting and filing with the relevant authority);

- Regulation of the CBR No. 428-P dated 11th August 2014 "On standards for the issuance of securities, the procedure for state registration of the issuance (additional issuance) of issue-grade securities, state registration of reports on the results of the issuance (additional issuance) of issue-grade securities and registration of prospectuses of securities" (covers procedural matters on registration of the prospectus);

- Order of the Federal Financial Markets Service of Russia No. 12-10/pz-n dated 6th March 2012 "On approval of the procedure for registration of prospectuses of securities of foreign issuers and admission of securities of foreign issuers to placement and (or) public circulation in the Russian Federation by decision of the federal executive body for the securities market";

- Regulation of the CBR No. 703-P dated 2nd December 2019 "On the procedure of maintaining the register of issue-grade securities and providing the information contained therein" (states that the content of the register of issue-grade securities, issued by CBR, includes information on the prospectus).

The prospectus regime is different, with regard to equity and debt securities, mostly in procedural questions. In addition, the statutory forms of prospectus, established by the CBR, vary depending, in particular, on the type and class of securities, the number of issues of securities during the calendar year, the type of the issuer's main activities.

In order to register the issuance of the issue-grade securities, placed by subscription, the securities prospectus shall be drafted and filed with the CBR (or the Russian exchange with respect to exchange-registered bonds).

The prospectus, as the Russian legislators specify, shall contain and reflect all the circumstances that could have a significant impact on the decision-making process of potential investors. The content of prospectus remains the same for equity and debt securities, with some exceptions set out below.

The prospectus must contain:

- The introduction (summary of the prospectus of securities)

The issuer shall ensure that introduction (or summary) to the prospectus is easily understood by non-qualified investors. The introduction summarizes information that allows members of the public general to gain a general idea of the issuer's activity and its securities, the main risks associated with the issuer and the acquisition of its securities, and, in case of placement of shares and securities convertible into shares, also the general conditions for the placement of equity securities, if needed.

- the information about the issuer and its financial and business activities

This can include information about the history of the formation and activities of the issuer, information on its registration, managerial bodies and bank accounts, business industry and its main business results, its share capital, market capitalization and other financial indicators, etc.

- the issuer's financial statements and other financial information specified in the Securities Law (including the audited, annual financial statements for the last three years, with the audit report; the audited interim financial statements with the audit report, if prepared; the audited annual consolidated financial statements for the last three years with the audit report; the audited interim consolidated financial statements with the audit report or review document.

The consolidated financial statements are prepared as per the IFRS. Russia adopted IFRS in 2011, and Russian companies have provided consolidated financial statements since 2012.

- key information about the person providing security for the issuer's bonds, as well as the conditions for such security (if any);

- the conditions for the placement of shares and securities

convertible into shares (if any)

- other information provided for by any of the federal laws of the Russian Federation, including the Securities Law

This list is not exhaustive and the Securities Law and other federal law provide for more information to be specified in additional part of the prospectus.

The Securities Law allows registering a prospectus as a single document, or a two-part document. The first part (called the 'main part' of a prospectus) must include the introduction, information about the issuer and its financial and business activities and the issuer's financial statements and other financial information specified in the Securities Law. In this case, the introduction might not contain information about the placed securities and the main conditions of their placement. The second part of the prospectus (called the 'additional part') may be filed with the relevant authority, separately from the main part and must contain other information that should be disclosed in the prospectus.

4.2. Language of the prospectus for local and international offerings

As a general rule, the prospectus shall be in the Russian language: the official state language of the Russian Federation. If a foreign issuer decides to list its securities on the Russian Stock Exchange, the foreign language version of prospectus will be provided, with its certified translation into Russian.

5. Prospectus Approval Process

5.1. Competent Regulator

The regulator responsible for prospectus registration, in the Russian Federation, is the CBR. The competence of the CBR over the registration of prospectus is established by the Federal Law No. 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)" dated 10th July 2002, as amended.

In respect of exchange-registered bonds, the prospectus is registered with a stock exchange.

5.2. Timeline, number of draft submissions, review and approval process

The prospectus of a limited liability company, or a joint-stock company, must be approved by the board of directors (supervisory board), or a managerial body performing functions of the board of directors (supervisory board) of such company, in accordance with the Russian federal laws. The prospectus of legal entities, established in other forms, must be approved by a person performing functions of the sole executive body of the issuer, unless otherwise provided by the Russian federal laws.

The prospectus must be signed by a person acting as, or performing functions of, the sole executive body of the issuer, or an official of the issuer, authorized by such person. The issuer can decide that the prospectus should additionally be signed by its financial advisor, who cannot be affiliated to the issuer. The prospectus with respect to secured bonds must also be signed by the security provider. The persons signing the prospectus confirm the reliability and completeness of all information contained in the prospectus.

Where the prospectus is registered together with the issuance of the securities, the CBR takes the decision on registration of the issuance within 20 business days, from the receipt of documents. If the prospectus is registered independently from the registration of the issuance of the securities, the approximate timetable for the prospectus registration varies, depending on the form of the prospectus. For instance, 20 business days are required for the CBR to register the prospectus prepared as a single document, or only the main part of the prospectus. The additional part will be registered within 15 business days.

There is an option of preliminary review of documents that are necessary for registration of the issuance of securities. In such case, the issuer submits its prospectus (in 2 copies) with other relevant documents, in hard copy, as well as in electronic form, and on the CD to the CBR. The CBR considers the submitted documents and makes the decision on their conformity within 20 business days. After preliminary review, the term for registration, of the issuance of the securities, is reduced to 10 business days.

6. Listing Process

6.1. Timeline, process with the stock exchange

A typical, minimum timeframe for listing (without the time for registration of prospectus and preparatory stages) shares and bonds may be around 1 month. This period includes the process of filing the statement with the stock exchange, securing the decision on securities listing by the authorized body of the stock exchange and giving a notice of the decision to the issuer.

The issuer shall enter into a services contract with MOEX to

be able to submit an application for listing of its securities. After entering into a contract, the issuer must apply for listing and provide the necessary documents, as required by the listing rules. Based on the results of the consideration, MOEX decides whether to accept, or reject, the application and list the securities within 20 business days with respect to admission to the first and second levels of the list, and 13 business days, with regard to the third listing level.

The issuer can also apply for a pre-listing, being the process of checking by MOEX whether a company complies with the stock exchange and governmental requirements for listing. This procedure takes 15 business days from the receipt of the documents. The issuer must remove any inconsistences within 3 months from receipt of the pre-listing evaluation results, and can apply for verification of their removal, not later than 15 working days prior to the expiration of this 3-month period. After provision of pre-listing service, if all mistakes are corrected, MOEX makes a decision on securities listing, within 5 business days from the provision of all necessary documents.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

In 2014, the CBR approved the Code of Corporate Governance. This document is not mandatory for Russian companies. However, in accordance with the official position of the CBR expressed in its Letter No. 06-52/2463 dated 10th April 2014, it is recommended for joint-stock companies, if they have securities admitted to organized trading of those securities.

Separate provisions of the Code of Corporate Governance are reflected in the requirements for corporate governance, applicable to inclusion of securities to the first and second listing levels.

In particular, the Code of Corporate Governance contains guidelines on forming a balanced board of directors, its role in the company, electing independent directors and forming board committees, board members' remuneration rules.

7.2. Other ESG considerations

MOEX publishes two ESG indices: the MOEX-RSPP Responsibility and Transparency Index and the MOEX-RSPP Sustainability Vector Index. The indices include shares of Russia's largest companies listed on MOEX, selected based on the analysis of disclosure of information about their activities, in the sphere of corporate social responsibility and sustainable growth. Among the companies regularly included in the indices are commodity, steel, energy, infrastructure companies, almost half of which are state-owned.

In 2019, MOEX launched a separate Sustainability Sector. The sector comprises three independent sectors, being a green bond sector, a social bonds sector and a sector for national projects. The requirements for listing of foreign and locally-issued bonds in the Sustainability Sector were incorporated in the new version of MOEX listing rules. The main condition for sustainable listing is conforming to the requirements set out in the Green Bond Principles of the International Capital Market Association (ICMA), or the standards of the Climate Bonds Initiative (CBI). Compliance with these requirements must be confirmed by an external review provider.

8. Documentation and Other Process Matters

8.1. Stabilisation – whether allowed and on what terms (MAR, local regimes)

While stabilisation has been long actively used in the international securities offerings of Russian issuers, in the Russian markets it was first included in the issuance documentation relatively recently, in particular, in the 2012 IPO of Megafon, one of the largest mobile and telecom operators in Russia. The particular stabilization mechanism used in the Megafon offering was a greenshoe over-allotment option, allowing bookrunners to buy additional shares.

Since then, the greenshoe structure was stipulated, among others, in several other major MOEX IPOs, including 2017 IPOs of Detsky Mir and Obuv Rossii, one of the top two Russian footwear retailers.

The issuers entering into price stabilization, with market-makers, shall disclose this information in the form of a material fact statement on their website.

9. Ongoing Reporting Obligations (Life as a Public Company)

Companies that publicly issue their securities must carry out ongoing disclosure of information. The information is disclosed by issuers in the following forms:

- annual and semi-annual consolidated financial statement;
- quarterly report; and

- material facts statements.

9.1. Annual and interim financials

The issuer shall disclose its interim consolidated financials by publishing it on the Internet in within 3 days of its preparation and approval by authorized management body of the issuer, but, in any case, within 60 days of the end of the second quarter, and its annual consolidated financials, within three days of the signing of the auditor's report, but, in any case, within 120 days of the end of the reporting year.

Both interim and annual consolidated financial statements are also included in the issuer's quarterly reports.

The issuer's quarterly report is prepared in accordance with the form established by the CBR for each completed quarter. The quarterly report shall be published by the issuer within 45 days from the end of the reporting quarter. The quarterly report should be available on the issuer's website for not less than 5 years from the deadline for its publication, and if it had not been published by the deadline, from the date of its publication.

9.2. Ad hoc disclosures

Material facts are those which, being disclosed, can substantially affect the value or quotations of securities.

The following information, among others, can be considered material facts:

- the issuer's general meetings and their decisions;
- recommendations as to, and procedure for dividend payments;
- reorganisation, or liquidation, of the issuer;
- approval of the issuer's constituent documents;
- changes in the composition of the issuer's managerial bodies, etc.

The material fact statements should be published within the following timeframes, after occurrence of the material fact: in a newswire service – not later than 1 day later; and on the issuer's website – not more than 2 days later. The text of the material fact statement should be available on the company's website for not less than 12 months from the deadline for its publication, and if it had not been published by the deadline, from the date of its publication.

The Authors:

- Anton Dzhuplin
Partner, Capital Markets, Corporate / M&A, Banking & Finance
adzhuplin@alrud.com
+7 495 956 37 18
- Dina Kravchenko
Associate
- Elina Khoshaeva
Associate

SERBIA

By Marko Culafic, Associate, and Ivan Nonkovic, Partner (independent attorneys in association with Karanovic & Partners)

1. Market Overview (biggest ECM and DCM transactions over the past 2-3 years)

The capital market in Serbia is still under development. Serbia's capital market took a pause from the Second World War until the last decade of the twentieth century during which period Serbia did not have a market-based economy, and its economy was governed by socialist principles. At the end of the twentieth century Serbia reaffirmed a market economy and started redeveloping its capital market. While number of measures have been taken in that direction (for example, almost all joint stock companies had to be listed, as a result of which even today there is a proportionally significant number of listed companies in Serbia), there is still a long way to go.

The Belgrade Stock Exchange (BELEX) is the only stock exchange in Serbia. It recorded a total turnover of approximately EUR 534 million in 2018 (information for 2019 is not yet available). Securities traded on BELEX include shares, bonds of the Republic of Serbia, and bonds of the European Bank for Reconstruction and Development. Therefore, the debt market in particular has a room for improvement.

In 2018, the first initial public offering (IPO) of shares in almost 80 years was successfully completed in Serbia. Shares of Fintel Energy a.d. Belgrade were included on the Prime Listing and after the successfully-completed IPO the company's stock trading started on 20 November 2018.

2. Overview of the local Stock Exchange and listing segments (Regulated and Non-regulated markets)

The capital market in Serbia is primarily regulated by the Law on Capital Market and related by-laws (the "Law") and the main regulator is Securities Exchange Commission of Serbia (SEC).

In accordance with the Law, the Serbian capital market is structured in the following manner:

- regulated market, comprising of:
  - listed segment, and
  - non-listed segment,
- multilateral trading facility (MTF), and
- over-the counter (OTC) market.

In terms of the Law, a public company is an issuer which meets at least one of the following conditions:

- It has successfully completed a public offering of securities in accordance with the prospectus approved by the SEC, or
- its securities are admitted to trading on a regulated market or MTF in Serbia.

Generally, a public company needs to file an application to admit its securities to trading on a regulated market. However, if:

- securities do not meet the listing standards of the regulated market, they may be admitted to trading on non-listed segment of the regulated market.
- securities do not meet the requirements for admission to non-listed segment of the regulated market either, they may be admitted to trading on the MTF.

It should be noted that only investment companies having a license from the SEC may trade on a regulated market or MTF - other persons may trade on these markets only through such investment companies.

karanovic/partners

Also, only investment firms licensed by the SEC are entitled to intermediate transactions in an OTC market. The SEC exercises supervision over the OTC market by supervision of investment companies engaged on transactions regarding the financial instruments on the OTC market.

3. Key Listing Requirements (ECM and DCM)

Currently, the only existing regulated market and MTF in Serbia are organized by BELEX. More specifically, trading on BELEX is structured in the following manner:

- regulated market, consisting of:
  - listed segment, consisting of:
    - Prime Listing;
    - Standard Listing;
    - SMart Listing.
  - non-listed segment – Open Market,
- multilateral trading facility

The criteria for the listed segment are given as follows:

- Prime listing
  - minimum 3 years of business operations;
  - published or adopted annual financial report for three business years preceding the listing application;
  - unqualified auditor opinion (at the moment of admission to the Prime Listing)
  - achieved net profit in the business year preceding the submission of listing application (there are certain exceptions to this requirements);
  - EUR 3 million minimal capital;
  - issuer's webpage with both the Serbian and English version;
  - 25% of total shares issued in the free float or alternatively:
    - floated minimal capital of EUR 1 million (owned by at least 250 shareholders),
    - floated shares owned by at least 500 shareholders;
  - dividends per preference shares have been paid, if issued;
  - the minimal level of issuer's shares market liquidity (alternatively):
    - the average daily turnover: minimum RSD 500,000 (approx. EUR 4,250):
    - average daily number of transactions: minimum five;
    - signed agreement on market making;
    - more than 1,000 shareholders;
    - shares of minimal value of EUR 2 million in "free float";
  - in relation to the debt securities (additionally):
    - emission value: at least EUR 3 million;
    - the issuer's account has not been blocked in the last 180 days.
- Standard Listing
  - minimum 3 years of business operations (or less under certain specific circumstances prescribed by the Law);
  - published or adopted annual financial report for three business years preceding the listing application;
  - unqualified or qualified auditor's opinion;
  - EUR 2 million minimal capital;
  - issuer's webpage with both the Serbian and English version;
  - 25% of total shares issued in the free float or alternatively:

- minimal capital of EUR 1 million (owned by at least 150 shareholders);
- shares owned by at least 300 shareholders;

- in relation to the debt securities (additionally):
  - emission value: at least EUR 1 million;
  - the issuer's account has not been blocked in the last 60 days.

- SMart Listing
  - minimum 3 years of business operations (or less under certain specific circumstances prescribed by the Law);
  - published or adopted annual financial report for three business years preceding the listing application;
  - unqualified or qualified auditor's opinion;
  - EUR 1 million minimal capital (in certain cases, EUR 500,000);
  - issuer's webpage with both the Serbian and English version;
  - 25% of total shares issued in the free float (in certain cases, free float representing shares with minimal value of EUR 150,000);
  - only shares and depository receipts on shares can be listed.

Also, BELEX prescribes the following criteria for the Open Market:

- there is no initiated bankruptcy or liquidation process over the issuer,
- minimum capital in the amount EUR 300,000,
- free float – 15% shares,
- in relation to debt securities, minimum value of the emission – EUR 200,000.

(under certain circumstances, these criteria do not need to be fulfilled in the exactly prescribed manner)

Securities which do not fulfil criteria for the Open Market will be admitted to the MTP organized by BELEX.

4. Prospectus Disclosure (Regulatory regimes (Prospectus Regulation or similar) – equity and debt, Local market practice, Language of the prospectus for local and international offerings)

Any public offering of securities in Serbia must be made with prior publication of a prospectus (the Law provides, though, certain exemptions). In the similar manner, prior publishing of the valid prospectus is required before admission of securities to trading on a regulated market or MTF (with also certain exceptions provided under the Law).

What sometimes makes a confusion is a rather wide definition of a public offering given by the Law, under which public offer is any notice given in any form, giving sufficient information on offer and securities, so that recipient can decide whether to buy securities. Due to such definition, even offering to one person might be regarded in certain situations as a public offer.

Publishing of a prospectus in case of public offer is not required in case of:

1) an offer addressed to qualified investors exclusively;

2) an offer addressed to not more than 100 natural or legal persons in Serbia, other than qualified investors;

3) an offer addressed to investors who will acquire securities for a total consideration of at least EUR 50,000, per investor, for each separate offer;

4) an offer of securities where nominal value of each security amounts to at least EUR 50,000;

5) an offer of securities where total consideration is less than EUR 100,000; this amount is to be calculated over a period of twelve months;

6) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase company's share capital;

7) securities offered in connection with a takeover bid by means of an exchange offer;

8) securities offered, allotted or to be allotted in connection with a merger of the companies;

9) shares offered, allotted or to be allotted free of charge to existing shareholders, or as dividends paid out in the form of shares of the same class;

10) securities offered, or to be offered by an issuer whose securities are admitted to a regulated market or MTF or by its affiliated company, to existing or former members of management or employees.

Apart from the above exemptions, the Law prescribes certain other exemptions when it comes to admission of securities to a regulated market or MTF, such as admission of shares representing less than 10% of the total number of shares of the same class already admitted to trading and similar.

4.1. Prospectus

The prospectus needs to contain all information which (bearing in mind the particular nature of the issuer and securities publicly offered or admitted to trading on a regulated market or MTF), are necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and guarantor (if any), as well as of the rights attaching to such securities.

Information contained in the prospectus needs to be (i) true, (ii) complete, (ii) consistently, transparently and comprehensively presented, and (iv) in the form so that it could be easily analysed.

Prospectus should in general contain the following:

- a summary prospectus, which, in a brief and simple manner, contains information about the essential characteristics and risks associated with the issuer, the guarantor (if any), and the securities. A summary prospectus is not required if the prospectus relates to the admission to trading of debt securities having an individual nominal value of at least EUR 50,000;
- issuer's responsible persons;
- persons responsible for audits of financial information;
- selected financial information;
- risk factors;
- information about the issuer;
- business overview;
- organizational structure;
- property and assets;
- operating and financial review;
- capital resources;
- research and development, patents and licences;
- trend information;
- profit forecasts or estimates;
- management;
- remuneration and benefits;
- board practices;
- employees;
- major shareholders;
- related party transactions;
- financial information concerning the issuer's assets and liabilities, financial position and profits and losses (along with relevant financial statements/auditor's reports);
- material contracts;
- third party information and statement by experts;
- documents available for insight;
- information on subsidiaries;
- information on securities which will be offered/admitted to trading;
- offer details;
- listing details;
- selling shareholders;
- offer costs;
- dilution details;
- certain additional information.

The issuers can omit information from a prospectus in certain circumstances where the SEC may authorise that disclosure of such information would be:

- contrary to the public interest;
- seriously detrimental to the issuer (provided that the omission would not be likely to mislead the public); or

- the information is of minor importance in the specific situation and would not influence the assessment of the financial position and prospects of the issuer.

Information may be incorporated in the prospectus by reference to one or more previously or simultaneously published documents (provided that this information is the latest available to the issuer). In such case, a prospectus shall contain a list of all used cross references.

The summary prospectus cannot incorporate information by a reference.

5. Prospectus Approval Process

5.1. Competent Regulator

The SEC is a competent authority in Serbia for reviewing and approving prospectuses.

5.2. Timeline, number of draft submissions, review and approval process

An issuer/offeror may submit the application for approval of the (i) publication of the prospectus for a public offering of securities (ii) prospectus for admission of securities to a regulated market or MTF. Along with this application, the following should be submitted:

- decision on issuance of securities and/or admission to trading, including any additional information required to be filed with the respective regulated market or MTF;
- copies of the prospectus;
- articles of association and memorandum of association;
- where applicable, approval from a competent body, if the applicable law prescribes that the issuance of securities shall be allowed only with the previous approval of that body;
- document containing evidence that the conditions for admission to trading have been met, following the approval of the prospectus for admission of securities to trading on a regulated market or MTF;
- other documentation required by the SEC.

The SEC will issue a decision on approval of the publication of a prospectus within 10 working days following the satisfactory receipt of the application. This deadline becomes 20 working days if the public offering involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market or MTF.

In case of irregularities/incompleteness of the prospectus, the SEC will notify the issuer requesting that the documents are corrected/supplemented, within ten working days as of the submission of the application.

5.3. Publication of the prospectus

An issuer/offeror needs to publish its prospectus within 15 days of receipt of the SEC's approval (and at the latest at the beginning of the public offer or the admission to trading on the regulated market or MTF) and to submit it to the SEC.

The prospectus can be published in one of the following ways:

- by publishing it in one or more general or financial information newspapers having national scope;
- by making it available, free of charge, to the public at the offices of the regulated market or MTF, at the office of the issuer and at the offices of the investment firms placing or selling the securities;
- in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries providing the services and performing activities in connection with the placing or selling of the securities;
- in an electronic form on the website of the regulated market or MTF.

The issuer must publish a notice stating how the prospectus has been made available and where it can be obtained in at least one daily newspaper on the day following the prospectus's publication (copy should be provided to the SEC).

Also, the Law prescribes certain obligations in relation to the advertisement activities (e.g., the advertisement must be clearly recognisable as such, the information contained in an advertisement cannot be inaccurate or misleading, the information contained in an advertisement needs to be consistent with the information contained in the prospectus, etc).

The deadline for the start of the subscription and payment for securities should commence no later than within 15 days of the receipt of approval on prospectus' publication and the deadline for subscription and payment of securities cannot exceed three months following the day indicated in the prospectus (the SEC may extend this deadline by 45 days).

5.4. Supplements to the prospectus

The issuer/offeror needs to (promptly) create a supplement to the prospectus and submit it to the SEC for approval, if a significant new factor, material mistake or inaccuracy has arisen relating to the information included in the prospectus which can affect the assessment of securities, in case that such factor or mistake/inaccuracy arises/is noted between the (i) prospectus' approval and (ii) final closing of the public offer or the moment of admission to the securities market.

Such a supplement needs to be approved in the same way as the initial prospectus within maximum of seven working days as of the application receipt and published on the day following the approval (i.e. on same manner as the initial prospectus). The summary prospectus needs also to be supplemented (if necessary, bearing in mind the new information).

Investors who have already agreed to purchase or subscribe for the securities before the supplement is published will have the right, exercisable within the time period designated in the supplement (which cannot be shorter than two working days after the supplement's publication), to withdraw their acceptances.

5.5. Validity

The prospectus will be valid for 12 months after its publication, provided that the prospectus is supplemented in accordance with the above stated requirements for supplementation (it should be noted that there are some additional rules provided for specific circumstances, such as prospectus related to the certain debt securities, etc).

5.6. Foreign issuers

While the Law allows for foreign issuers to list foreign securities in Serbia, rules are rather technical and complicated and, adding the fact that the Serbian capital market is still under development, we still did not see listing of any foreign securities in Serbia.

The issuer headquartered outside of Serbia needs to file with the SEC an application for the approval of a public offer prospectus or admission to trading of its securities on a regulated market or MTF in Serbia.

In addition, it needs to provide the SEC with a confirmation of the competent authority of the home country stating that the securities are of the same class as the securities publicly offered or admitted to trading in the issuer's home country.

The application for SEC approval needs to be submitted through an authorized investment firm, together with the prospectus approved by the competent authority of the issuer's home country and relevant documentation (with certified translation).

The SEC will approve publication of a prospectus that has been drawn up in accordance with the regulations of the issuer's home country, provided that the disclosure requirements also comply with the requirements under the Law and SEC regulations.

Please note that any matter involving foreign issuers should be observed also from the perspective of Serbia's Forex regulation.

5.7. Domestic issuers on foreign market

Equity securities of issuers from Serbia might be publicly offered on foreign markets provided that the issuer has been granted an approval for a public offer or admission to trading on a regulated market or MTF in Serbia, in which case a timely notification thereof needs to be submitted to the SEC. Also, an issuer may admit equity securities outside of Serbia, even though they do not meet the statutory requirements for approval of prospectus in Serbia, with the prior approval of the SEC.

Without the approval of the SEC, outside Serbia, an issuer is allowed to:

- offer or admit to secondary trading its debt securities or depositary receipts for such debt securities (which was mostly the case in practice in the past);
- offer securities with or without an approval for publication of a prospectus or admit them to secondary trading.

6. Timeline, process with the stock exchange

6.1. Listed segment

Under the BELEX rules, the issuer, in general, needs to submit the request to the BELEX with the following information/information:

- information on issuer;
- prospectus approved by the SEC (or with relevant statements in case of exceptions to the requirement for publication of the prospectus);

- corporate documentation (such as memorandum of association, articles of association, excerpt, decisions of the issuer's competent bodies, etc);
- relevant financial statements;
- information on paid dividends;
- relevant CDS document on confirmation on subscription of securities;
- report on public offer (if there was prior public offer);
- relevant agreements (e.g. with underwriter, investment company, etc.);
- documents related to the code of corporate management;
- other documents/statements required by BELEX.

If the issuer has failed to submit all required documents, BELEX may issue additional deadline during which listing request needs to be completed (which cannot be longer than 30 days).

BELEX will adopt the listing request within 15 day as of the receipt of the complete request. Also, the issuer will need to enter into the agreement with BELEX.

6.2. Non-listed segment – Open Market

In case of admission to the Open Market, request should contain similar (and a smaller number of) documents comparing to admission to the BELEX listed segment.

In the event that the issuer has failed to submit all required documents, BELEX may issue additional deadline during which request needs to be completed which cannot be longer than 15 days (in specific circumstances, deadline may be extended up to 30 days).

BELEX will adopt the request within 30 days as of the receipt of the complete request. Also, the issuer will need to enter into the agreement with BELEX.

6.3. MTF

In case that securities do not fulfil criteria for admission to the segments of the regulated market, such securities will be admitted to the MTF

7. Corporate Governance (Corporate governance code / rules (INED, board and supervisory composition, committees) and any other ESG considerations)

7.1. Public companies may be organized as either one-tier or two-tier governance systems.

7.2. One-tier system

Besides the shareholders' assembly, public companies need to have the board of directors which consists of at least three directors. On the other hand, private companies may have one or two directors. In line with the Companies Law, the directors may not be persons who are either:

(a) performing the function of a director or a supervisory board member in more than five companies;

(b) sentenced for a crime against economy, within five years, as of the day of such ruling becoming final, not including the time spent serving a prison sentence; or

(c) imposed a prohibition of conduct of business which constitutes the prevailing business activity of the company, for the duration of such prohibition.

The directors can be:

- Executive directors who are deemed as statutory representatives of the company and oversee day-to-day business activities and management of the company. One of the executive directors may be appointed as a general director (CEO) who coordinates the work of executive directors and organizes the company's business;

and

- Non-executive directors who supervise work of the executive directors and propose and supervise the implementation of business strategy of the company. Non-executive directors cannot be employed by the company. Number of non-executive directors of public companies needs to exceed the number of its executive directors, whereas at least one of the non-executive directors needs to be the independent non-executive director (INED).

The INED needs to fulfil the following criteria in each moment within their mandate, i.e., the INED may be a person who is not affiliated the directors and which, during the previous two years:

(a) has not been an executive director, or employed in the com-

pany, or in some other company affiliated to the company;

(b) has not owned more than 20% of the share capital, and has not been employed or otherwise hired by some other company which has generated more than 20% of its annual revenues over that period;

(c) has not received payments from the company or its affiliates nor has claimed from them the amounts whose total value exceeds 20% of its annual revenues over that period;

(d) has not owned more than 20% of the share capital of a company affiliate; or

(e) has not been engaged in the conduct of an audit of the company's financial statements.

By default, in case of public companies the board of directors is required to convene and hold at least four regular meetings annually.

Also, public companies are required to have the audit commission in charge of auditing policies, standards, and matters within the company (including in case of two-tier system).

7.3. Two-tier system

The two-tier system takes division of functions and authorities between the executive and the non-executive directors to the further extent, by introducing a supervisory board as a separate body (along with shareholders assembly). The operational governance is divided into two bodies as follows:

- The executive board of a public company consists of at least three executive directors, appointed by the supervisory board. The functions of the executive board parallel the ones within the one-tier system, i.e. they are deemed as statutory representatives of the company and oversee day-to-day business activities and management of the company. The requirements for executive board members appointment are the same ones applicable to the appointment of executive directors within the one-tier system. One of the executive directors may also be appointed on the position of the general director (CEO);

and

- The supervisory board consists of three or more uneven number of members appointed by the shareholders' assembly, who also may not be employed within the company.

The supervisory board would be authorized to supervise the work of executive board, propose the business strategy, and monitor its execution. Supervisory board members need to fulfil conditions for appointment of directors within the one-tier system (stated in 7.2.1). Symmetrically to the INED within the one-tier system, public companies need to have an independent supervisory board member who would need to fall under the scope of the same requirements applicable for the INED.

7.4. Code Corporate Management

Public companies conducting trade at BELEX need to either (i) adopt a Code of Corporate Management (CCM), or (ii) to issue a statement on application of other company's CCM.

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

The Law contains limited provisions on underwriting - it recognises the underwriter as an investment company which provides underwriting services in relation to the offer and sale of the financial instruments with purchase obligation, while the relevant by-law determines the main elements which should contain the agreement to be entered into with the underwriter. Also, information on underwriting needs to be contained in the prospectus.

While over-allotment is not clearly regulated under Serbian laws, it is possible and available. Specifically, one of the requirements of the prospectus is to show information on over-allotment and greenshoe, ifexisting. However, there is not further elaboration on tis in the Serbian laws, such as limits in number of shares that can be subject to over-allotment and similar.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

Stock lending is not prohibited under the Serbian law. However, fulfilment of the borrower's obligation needs to be secured.

Stock lending is not widely spread in practice – however, there is a certain number of transactions involving the stock lending.

Under certain circumstances, lending (in terms of underwriting) may be exempted from the mandatory takeover bid.

Tax implications should be observed in each particular case.

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Similar as the above for the underwriting, the Law contains limited number of provisions regarding the stabilization – it defines the stabilization as purchase or offer to purchase securities, or a transaction of equivalent associated instruments, which is undertaken by a credit institution or an investment company in the context of a significant distribution of such securities exclusively for supporting the market price of those securities for a predetermined period of time, due to a selling pressure on such securities. Also, the Law prescribes that the Law's provisions regulating prohibition of market abuse will not apply to trading of treasury shares in buy-back programs, or to trading aimed at the stabilization of a financial instrument provided such trading is carried out in accordance with the SEC regulations and decisions governing trading of treasury shares in buy-back programs and the trading aimed at the stabilization of a financial instrument. Also, relevant information on stabilization needs to be provided in the prospectus.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

The issuer has the following obligations in relation to the annual and interim financials:

9.1.1. Annual reports

A public company needs to (i) prepare and make its annual report publicly available, and (ii) file it to the SEC and the regulated market or MTF, if its securities are admitted to trading. This needs to be done at the latest four months after the end of each business year (and needs to ensure that the annual financial report remains publicly available for at least five years after the publishing date).

Annual report contains:

- annual financial statements with auditor's report;
- annual report of operations of the company;
- responsibility statements made by persons responsible for the making of the annual report.

Public company needs also to publish the complete decision on adoption of the annual report, along with the decision on distribution of profit or coverage of loss, if these decisions are not an integral part of the annual report.

Also, in case of acquisitions of treasury shares, annual report should contain the information on such acquisitions.

9.1.2. Semi-annual report

Public company whose securities are traded on the regulated market needs to prepare semi-annual reports, as soon as possible and at latest within two months following the completion of the first six-month period of the business year, make it publicly available and file it to the SEC and regulated market (and needs to ensure that this report remains publicly available for at least five years after the publishing date).

Semi-annual report should contain:

- condensed balance sheet;
- condensed profit and loss statement;
- condensed statement on changes in the capital;
- condensed cash flow report;
- notes containing, among the other, the information required to understand the material changes impacting on the balance sheet and profit and loss statement;
- information on significant events that have occurred during the first six months of the business year and their impact and information on material related party transactions;
- statement made by the persons responsible for preparation of semi-annual report;
- auditor's report (if any).

9.1.3. Quarterly reports

Public company whose securities are listed on the regulated market is required to prepare quarterly reports, make them publicly available and file them to the SEC and regulated market, within 45 days following the end of each of the first three quarters of the current business year (and needs to ensure that this report remains publicly available for at least five years after the publishing date). These reports should contain information necessary for the semi-annual reports.

9.1.4. Annual information on published information

Issuer whose securities are admitted to trading on a regulated market or MTF needs to annually provide a document that contains or refers to all information that issuer has published or made available to the public over the preceding 12 months. This document needs to be filed to the SEC within 20 working

days after the publication of the issuer's annual audited financial statements and made available to the public.

9.1.5. Exceptions

Obligations regarding the annual, semi-annual, quarterly reports and annual information on published information, do not apply to a public company that is exclusively an issuer of debt securities admitted to trading on a regulated market or MTF, which individual value is at least EUR 50,000.

9.2. Ad hoc disclosures

The law provides for several ad hoc disclosure which needs to be made:

- Additional information. The public company needs to inform the SEC and regulated market or MTF on any change regarding its securities, changes in relevant derivatives/changes which may indirectly influence the rights from securities (depending on type of securities). Also, BELEX may require additional information to be provided;

- Reporting on significant changes in shareholding. The public company needs to make publicly available information on shareholding change within three working days as of the receipt of the relevant notice. The public company needs to, in case there is change of number of voting shares, at the end of each calendar month, for the purpose of calculating the relevant thresholds, disclose to the public the information about the changes and the new total number of voting rights and the value of the share capital.

- Treasury shares. If a public company acquires or disposes of its own voting shares, it must make public the proportion of its own shares, as soon as possible, but not later than four trading days following such acquisition or disposal of the voting rights.

- Other information. The public company needs to ensure that information necessary to enable shareholders to exercise their rights are available.

- Inside information. The public company needs to inform the public as soon as possible of inside information which directly concerns the issuer.

- Foreign issuers. To the certain extent, the foreign issuer is required to comply with disclosure requirements provided by the Law. Also, a foreign issuer needs to file with the SEC and make publicly available any additional information that it is required to disclose under the laws of its home country.

The information in this document does not constitute legal advice on any particular matter and is provided for general informational purposes only.

The Authors:

- Marko Culafic
Associate (independent attorney in association with Karanovic & Partners)
marko.culafic@karanovicpartners.com
+381638620058

- Ivan Nonkovic
Partner (independent attorney in association with Karanovic & Partners)
ivan.nonkovic@karanovicpartners.com
+381638620788

SLOVAKIA

By Katarína Mihalikova, Partner, Majernik & Mihalikova

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

Over the last several years, the Slovak regulated market has been at the lowest levels within the EU from the viewpoint of liquidity, depth, volumes and market capitalisation, and has ranked among extremely illiquid markets.

From a perspective of achieved financial volume, the year 2019's most prominent share issues on the market of listed securities were Tatry Mountain Resorts (EUR 3.115 million; 653 transactions), Všeobecná úverová banka (EUR 2.219 million; 509 transactions) and Slovnaft (EUR 1.607 million; 336 transactions).

Among the issues of debt securities of the private sector, the most noticeable were issues JTEF IX 2026 (EUR 30.63 million; 153 transactions), Dlh. JTEF VII 2025 (EUR 21.464 million; 96 transactions) and EMG 5,25/2022 (EUR 16.47 million; 185 transactions).

2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

At present, the Bratislava Stock Exchange, a.s. is the sole operator of a regulated market of securities in the Slovak Republic.

2.2. Non-regulated market

The Bratislava Stock Exchange also operates a multilateral trading facility (MTF) under its rules of the multilateral trading facility for the purpose of joining or enabling to join business interests of several third parties to buy and sell securities within the system and in compliance with fixed rules; this results in conclusion of securities transaction on the MTF.

3. Key Listing Requirements

3.1. ECM

Shares can be admitted to the listed market of the Bratislava Stock Exchange only if the shares and their issuer meet the requirements according to the Stock Exchange Act, separate regulations (e.g., Prospectus Regulation), and the Stock Exchange Rules for Shares Admission to the Listed Market.

The non-exhaustive list of key listing requirements includes the following requirements:

The shares can be listed on the stock exchange only if they are financial instruments pursuant to Slovak Act on Securities, are substitutable, their transferability is not limited, are book-entry securities (under certain circumstances can be also physical securities) issued in conformity with the law of the country of their issue and their issuer meets the requirements under the laws of country of its registration for the issuance, the issue price of shares has been paid in full, the subscription of shares based on a public offering has been successfully completed, the issuer has been assigned a valid LEI code and the Prospectus has been approved and published. The shares can be admitted to the stock exchange main market only if the issuer has compiled and published the annual financial statements at least for three years immediately preceding the year in which the application is submitted; the shares representing at least 25% of the total nominal value of the shares, for which the application for admission is submitted, are distributed among the public; the minimum market capitalization of the issue is met (i.e., the minimum market capitalisation of the issue for the main market is EUR 15,000,000 and for the parallel market EUR 3,000,000) and in the last three years prior to the year in which the application for admission of share is submitted, the

MAJERNÍK & MIHÁLIKOVÁ
ADVOKÁTSKA KANCELÁRIA | LAW FIRM

issuer has not entered into liquidation, its property has not been subject to bankruptcy proceeding or, respectively, restructuring has not been approved, or a bankruptcy petition has not been rejected due to insufficient property of the issuer.

3.2. DCM

The listing requirements for bonds are very similar to listing requirements for shares save for minor differences such as the total nominal value of the bond issue, which should be at least EUR 5,000,000 for the main market or EUR 1,000,000 for the parallel market.

Convertible bonds can be admitted to the listed market only if the issuer's shares, for which the convertible bonds are to be exchanged, have already been admitted to the stock exchange's listed market or if these shares will be admitted together with the convertible bonds.

Securities can be included into the MTF list only if they meet the listing requirements as shares and bonds above except for obligation to have the Prospectus approved and published.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

In accordance with the Prospectus Regulation (EU) 2017/1129 (Prospectus Regulation), which lists requirements for drawing up, approval and distribution of the prospectus, an approved prospectus is required to be published when securities are offered to the public or admitted to trading on a regulated market in Slovakia save for applicable prospectus exemptions set up in the Prospectus Regulation. Further requirements as regards the format, content, scrutiny and approval of the prospectus are governed by the Regulation (EU) 2019/980, which supplements the Prospectus Regulation.

The leading pieces of Slovak legislation governing the securities offerings, including the regulation of the prospectus are the Act No. 566/2001 Coll. on securities and investment services and on amendments and supplements of certain laws as amended (the "Securities Act") and the Act No. 429/2002 Coll. on the Stock Exchange as amended (the "Stock Exchange Act").

The National Bank of Slovakia is the only competent authority for administration and execution of authorizations in relation to the prospectus.

4.2. Local market practice

Please see our answer above.

4.3. Language of the prospectus for local and international offerings

If the offer of securities to the public is made or admission to trading is sought only in Slovakia, the prospectus should be issued in Slovak language. Otherwise the prospectus should be issued either in a language accepted by the competent authorities of those Member States, where the offer of securities to the public or admission to trading is sought or in a language customary in the international finance environment.

5. Prospectus Approval Process

5.1. Competent Regulator

The National Bank of Slovakia (NBS) is the only competent authority for regulation and oversight over issuance of prospectus.

5.2. Timeline, number of draft submissions, review and approval process

The NBS approves the prospectuses of securities within the time limits specified in the Prospectus Regulation as follows:

(a) the prospectus, documents forming the prospectus (including Registration document or Universal registration document) within 10 working days of the submission of the draft prospectus for its approval; in case of a frequent issuer, the time limit for the prospectus consisting of separate documents is reduced to 5 working days;

(b) a supplement to the prospectus within 5 working days of the submission of the application for approval;

(c) a prospectus where the public offer involves securities issued by an issuer who has no securities admitted to trading on a regulated market and who has not yet publicly offered securities (first draft only) within 20 working days of the request for approval;

Due to the short deadlines for the prospectus approval and the large scope of the documents which should be approved by the NBS, the NBS prefers unofficial consultations over the preparation and content of the prospectus in the form of an unofficial prospectus assessment through email communication.

All drafts of a prospectus shall be submitted to the NBS in searchable electronic format via electronic means.

Approved prospectus shall be made available to the public by the issuer, the offeror or the person asking for admission to trade on a regulated market reasonably in advance, and at the latest at the beginning of, the offer to the public or the admission for trading of the securities involved.

6. Listing Process

6.1. Timeline, process with the stock exchange

Securities can be admitted to the listed market or the MTF based on a written application for admission with Bratislava Stock Exchange. The proceedings shall start on the day of the application delivery to the Bratislava Stock Exchange. An issuer of shares, or a Stock Exchange member authorised by the issuer can apply for admission of securities. The application for admission shall be, amongst other things, accompanied in particular by a valid prospectus, the regulatory authority's decision approving the prospectus, a document proving that the approved prospectus has been made publicly accessible, the articles of association, the deed of association and the foundation agreement or the foundation charter of the issuer in valid and current wording, the issuer's extract from the business register if the applicant is not the issuer and a decision of the competent body of the issuer on the issue of shares.

The application and certain enclosures such as the supervisory authority's decision approving the prospectus, article of association, the issuer's extract from the business register and the power of attorney should be submitted to the Bratislava Stock Exchange as originals or officially authenticated copies. Other enclosures can be submitted as simple copies that are to be verified by the Bratislava Stock Exchange upon seeing the original documents.

If the conditions for admission of securities are met, the Bratislava Stock Exchange shall decide on an application within 60 days from its submission or supplementation. The Bratislava Stock Exchange may prolong the decision-making period to six months from the submission or supplementation of the application, if the applicant has applied for admission of securities also on other listed markets in the EU Member States.

The application may be submitted in Slovak, Czech, or English. The enclosures are usually submitted in Slovak, Czech, or English. If an enclosure is made in a different language, the Bratislava Stock Exchange may decide that an officially authenticated translation into the Slovak, Czech, or English is submitted along with the particular enclosure.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

As of 1 January 2012 the Bratislava Stock Exchange decided to leave out from the Stock Exchange Rules the issuers' obligation to accede solely to the Corporate Governance Code created by the Central European Corporate Governance Association and enable issuers to accede and abide to, any accepted Corporate Governance Code in compliance with the legislation in effect. Those issuers who acceded to the Corporate Governance Code for Slovakia can continue to follow it and new issuers are also allowed to sign up. The issuers, who decide to adhere to the Corporate Governance Code for Slovakia (the "Code") are only obliged to prepare a statement according to the Code and for this purpose they can use the template called "Statement of Compliance with the Principles of the Corporate Governance Code for Slovakia".

7.2. Any other ESG considerations

N/A

8. Documentation and Other Process Matters

8.1. Over-allotment (green-shoe or brown-shoe structure)

Issuers with financial instruments listed on a regulated market must comply with the rules set out in the EU-Market Abuse Regulation (MAR) and Delegated Regulation (EU) No. 2016/1052, which grant, under certain conditions, exemptions from the prohibitions of insider dealing and market manipulation for buy-back programmes and stabilisation measures. The MAR, in Art. 5, provides the conditions under which buy-back programmes and stabilisation may be carried out, without conflicting with the rules on prohibition of market manipulation. Part of these conditions are obligations to disclose the full details of the programme prior to the start of trading and

to report transactions to the competent authorities. Regulation (EU) 2019/980 sets out the detailed information of any stabilisation, which issuers must disclose in prospectus. In case of both, buy-back programmes and stabilisation measures, each transaction shall be reported to the NBS no later than by the end of the seventh daily market session following the date of such transaction.

8.2. Stock lending agreement – whether it is used and whether there are any issues (tax, takeover directive)

The Securities Act recognizes the contract on the loan of securities, where the lender undertakes to transfer to the borrower a certain number of substitutable securities, and the borrower agrees to transfer to the creditor the same number of substitutable securities after the completion of an agreed period. The borrower also undertakes to pay a fee, if agreed. Instead of a monetary fee, it can be agreed that the number of substitutable securities returned will be greater than the number which the creditor loaned to the borrower. A contract on the loan of securities must be made in writing. The pre-requisites of valid contract on loan of securities are specification of the class, number and the ISIN number of the securities transferred (if assigned).

8.3. Stabilisation – whether allowed and on what terms (MAR, local regimes)

Please see the answer under letter (a) above.

9. Ongoing Reporting Obligations (Life as a Public Company)

The issuers are obligated to meet a number of information duties. The fundamental and most important obligations for issuers after admission of their securities to the regulated market ensue primarily from the MAR and Directive 2013/50/EU (Transparency Directive), which has been transposed into the Slovak Republic's legislation, primarily into the Securities Act and the Stock Exchange Act.

Pursuant to the Stock Exchange Act, an issuer of shares or debt shall publish its annual financial report at the latest four months after the end of each financial year and a semi-annual financial report covering the first six months of the financial year no later than three months after the end of the respective period for which the semi-annual financial report is prepared; the issuer shall also ensure that these reports remain publicly available for at least ten years.

9.1. Ad hoc disclosures

MAR obliges all issuers of financial instruments to notify the market of inside information so that other market participants are not put at a disadvantage against company insiders. The ad hoc disclosure requirement applies to all issuers who have requested or received admission of their financial instruments to trading on a regulated market or a multilateral trading facility (MTF) in Slovakia.

The issuers shall notify all market participants rapidly and comprehensively of any inside information so that investors can make well-founded decisions. For this reason, the issuers have a legal obligation to disclose to the public immediately any facts about their company that have the potential to influence the price of the financial instrument and directly concern the issuer (Article 17(1) of the MAR).

Amongst other reporting obligations, the issuer is, inter alia, obliged to disclose the information about changes in the issuer's financial situation or other facts which can cause a substantial change in the price of shares or restrict the issuer's ability to fulfil the obligations resulting from the share issue, or significantly affect the issuer's business activity, the information about convening ordinary and extraordinary general meetings, including their agenda, the information about personnel changes of the members of a statutory body, members of supervisory bodies and key managers of the issuer, the information about admission of the issuer's securities to trading on another regulated market and the information about any modification of rights attached to the various types of shares.

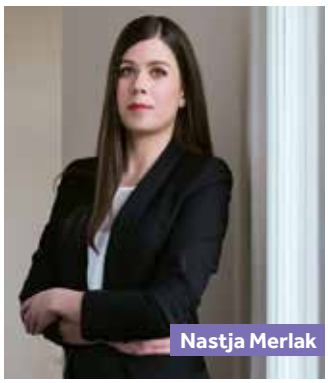
The Author:

Katarína Mihalikova
Partner
Mihalikova@mmlaw.sk
+421 2 209 105 50

SLOVENIA

By Ozbej Merc Partner, Nastja Merlak, Senior Associate, Aljaz Cankar and Ziga Urankar, Associates, and Sara Makovec, Junior Associate, Jadek & Pensa


Ozbej Merc


Nastja Merlak

1. Market Overview

Equity capital markets and debt capital markets are somewhat underdeveloped in Slovenia compared to its Western EU counterparts. The Ljubljana Stock Exchange, which celebrated 30 years of existence in 2019, is the main market for admission of equity, debt and other instruments. However, the liquidity of the market is on the weaker side, even though a new liquidity provider was added in 2019. In Slovenia SME's typically resort to classic debt financing through banks and very rarely turn to capital markets to seek funding. Therefore, companies that participate in the Ljubljana Stock Exchange through admission of equity, debt or other instruments are predominantly older, larger companies.

In the last three years there has been only one major IPO on the Ljubljana stock exchange – the listing of the stock of Nova Ljubljanska Banka in 2018 in a total amount of EUR 1.03 billion and GDRs on the London Stock Exchange. In 2018 one of the mayor Slovenian companies, Gorenje, went private and delisted from the Ljubljana stock exchange after an acquisition of majority share by Hisense and subsequent squeeze-out of remaining shareholders. This follows the continuous pattern of delisting of companies from Ljubljana Stock Exchange in recent years.

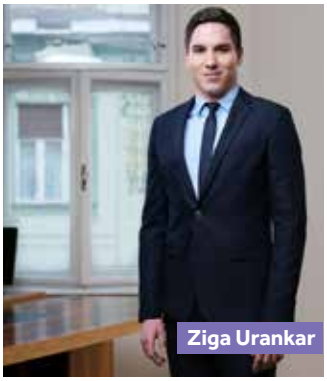
The majority of transactions on the Ljubljana stock exchange in recent years involved shares (transactions with shares amounted to slightly more than EUR 300 million in 2019) followed by transactions with bonds (transactions with bonds amounted to slightly more than EUR 25 million). Some more notable transactions with shares in the last three years were M&A driven, such as the acquisition of large Slovenian logistics and freights provider Intereuropa or the privatisation of the second largest Slovenian bank Abanka, however the highest volume of transactions was performed with the shares of Slovenian pharmaceutical company Krka. Several bonds and commercial paper issues were made in 2019. Namely, in 2019 two bond issues with a total value of EUR 1.5 billion and 2 commercial paper issues with a total value of EUR 53.100 billion were made. The data was comparable in volume to the previous year (two new bond issues with a total issuing value of EUR 1.52 billion and 3 commercial papers in the total value of EUR 66.53 billion). In 2019 the total volume of the transactions remained at a similar level to that of 2018 (combined total of transactions amounted to approximately EUR 329 million), but the market cap of the index SBI TOP grew more than 15%.

2. Overview of the local stock exchange and listing segments (markets)

2.1. Regulated market

The Ljubljana Stock Exchange is the only stock exchange in the Republic of Slovenia. The equity market is divided into the Prime market and the Standard market. The Prime market is the elite part of the equity market, intended for companies that stand out for their liquidity, size, and transparency of opera-


Aljaz Cankar


Ziga Urankar


Sara Makovec

JADEK & PENSA

tions. It is designed to increase the reputation of the best Slovenian companies in front of international investors. Companies that are listed on the Prime market have to fulfil additional reporting standards and their stocks usually have higher liquidity than those on other segments of the market. Both markets are regarded as "regulated markets" under the EU Directive on Markets in Financial Instruments (No. 2014/65/EC) (MiFID II) and the Slovenian Market in Financial Instruments Act (ZTFI-1).

Stocks that are listed on the Standard market fulfil the basic conditions for listing on the stock exchange, but are not yet mature enough for a more advanced trading segment. Companies whose stocks are listed on the Standard market meet the disclosure standards pursuant to Slovene legislation.

The Bonds market of the Ljubljana Stock Exchange is structured into Bonds and Money Market Instruments. Money Market Instruments are further subdivided into treasury bills and commercial papers. An additional market is the Structured Products Market, which is subdivided into Closed-end fund shares, Fund market, Certificates, Warrants, Rights and Other products. For listings on the Bonds market similar criteria as for the stock exchanges is applicable. Nevertheless, for open-end and close-end funds additional criteria applies regulating asset management companies.

2.2. Non-regulated market

The Ljubljana Stock Exchange also operates SI ENTER, a multilateral trading facility (MTF). The purpose of SI ENTER is to enable trading in securities that are not listed on the regulated market with the purpose of enhancing transparency and achieving a better price formation that at the OTC market. SI ENTER also serves the purpose of listing securities of start-ups and SMEs, who do not meet the requirements or lack sufficient funding to be listed on the regulated market (described above under point 2.a). SI ENTER market provides for less transparency compared to the regulated market (described above under point 2.a). The transparency requirements for the SI ENTER as MTF are regulated with the applicable legislation, i.e., EU Markets in Financial Instruments Regulation (No. 600/2014) (MiFIR) as well as the SI ENTER rules.

SI ENTER is subdivided into three segments: (i) the ADVANCE Segment, (ii) the BASIC Segment and (iii) the PROGRESS Segment. The main difference between the ADVANCE and PROGRESS Segments on one side and the BASIC Segment on the other side is that shares listed in the BASIC Segment are not listed upon the request of the issuer but as a consequence of the interest of traders. Accordingly, there are no additional reporting and disclosure obligations imposed on the issuers in the BASIC Segment, therefore transparency level is low and investing in BASIC Segment is associated with higher risk. The main difference between ADVANCE and PROGRESS Segments is that PROGRESS Segment requires additional reporting and disclosures and is associated with higher costs, therefore it is more appropriate for more mature issuers that are preparing to be listed at one of the "regulated markets" (described above under point 2.a). The three SI ENTER Segments are subdivided as follows:

- ADVANCE Segment, which includes:
  - ADVANCE SHARES – greater transparency of operations compared to BASIC Segment, meant for shares, share-equivalent securities representing a share in membership rights of legal persons and GDRs related to shares or share equivalent securities, listed on the basis of the issuer application
  - ADVANCE BONDS – meant for bonds, other types of securities containing monetary obligation of the issuer and GDRs related to these securities, listed on the basis of the issuer application
  - ADVANCE COMMERCIAL PAPERS – meant for commercial papers, listed on the basis of the issuer application

■ BASIC Segments. The purpose of the BASIC Segment is to allow traders to trade with shares for which trading interest among traders exist, to avoid OTC trading with such shares. As the shares are not listed on the basis of an application of the issuer, the issuer does not have any additional obligations or costs associated with the listing on the BASIC segment. The only sub-segment of the BASIC Segment is:

■ SHARES SLOVENIA – lower transparency of operations, only issuers with registered office in Republic of Slovenia, listed on the basis of an invitation of the exchange.

■ PROGRESS Segment, which is a segment shared between Ljubljana Stock Exchange and Zagreb Stock Exchange. In comparison to the ADVANCE Segment, which is a segment of Ljubljana Stock Exchange only, the PROGRESS segment requires additional reporting of companies and is associated with higher costs for the issuer (among other requirements, at the time of listing as well as for an additional two year period the issuer has to have a contract concluded with one of the advisors officially registered with the Progress MTF). In this sense the PROGRESS Segment is closer to the "regulated markets" (described above under point 2.a). PROGRESS Segment is therefore advisable to issuers who are preparing to be listed with the "regulated markets". Currently there are no Slovenian companies listed with the PROGRESS Segment. The PROGRESS Segments is sub-divided to:

■ PROGRESS SHARES – additional reporting and discloser requirements compared to ADVANCE Segment, meant for shares, share-equivalent securities representing a share in membership rights of legal persons and GDRs related to shares or share equivalent securities, listed on the basis of the issuer application

■ PROGRESS BONDS – additional reporting and discloser requirements compared to ADVANCE Segment, meant for bonds, other types of securities containing monetary obligation of the issuer and GDRs related to these securities, listed on the basis of the issuer application

■ PROGRESS COMMERCIAL PAPERS – additional reporting and discloser requirements compared to ADVANCE Segment, meant for commercial papers, listed on the basis of the issuer application

3. Key Listing Requirements

The listing process and listing requirements for listing equity and debt securities on Ljubljana Stock Exchange are regulated in the Stock Exchange Rules (in Slovene: "Pravila borze", published on: http://www.ljse.si/cgi-bin/jve.cgi?doc=678, the "LJSE Rules").

3.1. ECM

As mentioned above, stocks can be listed and traded on Ljubljana Stock Exchange on two market sub-segments:

■ Standard Market

■ Prime Market

Listing requirements for Standard Market

For a company's shares to be listed on the Standard Market the following requirements shall be fulfilled (Article 8 and 9 of the LJSE Rules):

■ regarding the legal standing of the issuer:

■ established and operating under the law of the country of its establishment;

■ obtainment of LEI code;

■ regarding publication of the prospectus and other information pursuant to the ZTFI-1:

■ if publication of the prospectus is required; obtaining Securities Market Agency (ATVP) decision on the approval of the prospectus; the prospectus needs to be submitted to the Ljubljana Stock Exchange before listing;

■ if publication of the prospectus is not required due to the application of the exceptions: notification to ATVP; such notification needs to be submitted to the Stock Exchange before listing;

■ regarding transferability:

■ the shares listed need to be freely transferable;

■ regarding share issuance and trade settlement mechanism:

■ the shares need to be validly issued and the requirements for reliable settlement of trades need to be fulfilled (this condition is fulfilled if the shares of the issuer established in Slovenia are issued as book-entry securities and entered in the

central register).

The companies whose stocks are listed on the Ljubljana Stock Exchange need to fulfil the above stated requirements throughout the trading of their shares on the Ljubljana Stock Exchange. Furthermore, companies shall also comply with the LJSE Rules and other applicable regulation as well as decision adopted by the Ljubljana Stock Exchange and its management.

3.1.1. Listing requirements for Prime Market

For the stocks to be listed on the Prime Market all the listing requirements for listing on the Standard Market stated above need to be fulfilled as well as the following additional requirements (Article 11 of the Rules):

- share class:
  - shares need to be issued as ordinary shares which give their holders one vote;
- quality criteria:
  - operation of the company for at least three years before listing;
  - audited annual reports for the past three years;
  - minimum value of the capital shall be EUR 10 million or amount in other currency, which is equal;
  - percentage of the shares held by the public: at least 25% (or less than 25%, provided that the Stock Exchange decides that the requirement is fulfilled if it assesses that due to the large number of shares of the same class and the volume of its sale to the public, the market will still function properly);
- disclosure requirements and publication of statements, whit which the issuer undertakes:
  - to disclose information and report also in accordance with International Financial Reporting Standards (IFRS);
  - to publish summaries of the public announcements both in Slovenian and English language;
  - to publish interim business information (quarterly reports or interim statements), the financial calendar and the declarations of compliance with the Corporate Governance Code;
  - to strive to the best of the abilities to meet the best practices of disclosure, as stipulated by the Guidelines, published by the management of the Stock Exchange-

3.2. DCM

Debt securities trading on the Ljubljana Stock Exchange are bonds and money market instruments, such as treasury bills, commercial papers and certificates of deposit in connection with the bonds (Article 6(3) of the LJSE Rules).

3.2.1. Bonds

According to Article 40 of the LJSE Rules, for listing the bonds on Ljubljana Stock Exchange, the same requirements needs to be fulfilled as for listing stock on the Standard Market. Furthermore, the issuer or the person requesting listing of the bonds on the Stock Exchange needs to comply with the obligation on the publication of the prospectus in accordance with ZTFI-1.

3.2.2. Money market instrument

Money market instrument (treasury bills and commercial papers) shall be listed on Ljubljana Stock Exchange provided that (Article 45 of the LJSE Rules):

- they are freely transferable;
- they are validly issued and the conditions for reliable settlement od trades are fulfilled;
- basic information regarding the money marker instrument is published; and
- administrative fee is paid.

3.3.3. Other

According to the Rules, special provisions and listing requirements may apply for listing the securities of the issuers having their seat in other EU Member States and third countries.

4. Prospectus Disclosure

4.1. Regulatory regimes

The prospectus is a key document that needs to be published when the securities are offered to the public or when the admission of securities on a regulated market situated or operating within a Member State is sought.

In Slovenia, matters concerning the preparation and content of the prospectus are primarily governed by the directly applicable Regulation (EU) 2017/1129 of 14 June 2017 (the

"Prospectus Regulation"), the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 concerning the format, content, scrutiny and approval of the prospectus and the Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 concerning regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal.

Since Prospectus Regulation repealed the previously valid Directive 2003/71 of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, majority of the matters concerning the prospectus are now uniformly regulated on the European level. Only minority of matters are therefore left to the individual Member States to regulate. In Slovenia, certain matters regarding the prospectus are thus still regulated in the ZTFI-1, however, no provisions apply to the content of the prospectus and disclosure requirements.

According to the Prospectus Regulation, prospectus shall be written and presented in an easily analysable, concise and comprehensible form so that enables the investors to make informed investment decisions. The information presented shall be sufficiently and objectively presented in a single document or separate documents. As a general rule, the prospectus shall therefore include essential information, which allow the investors to make an informed assessment of financial situation of the issuer or guarantor (the assets and liabilities, profits and losses, financial position, prospects), the rights attaching to the securities, reasons for the issuance as well as its impact on the issuer.

Article 16 of the Prospectus Regulation emphasizes the importance of disclosing the of risk factors to ensure that investors make an informed assessment of such risks and thus take investment decisions in full knowledge of the facts. The risk factors included in the prospectus shall be limited to risks which are specific to the issuer and/or to the securities and which are material for taking an informed investment decision. The prospectus also needs to include assessment of the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact. Risk factors shall be presented in a limited number of categories depending on their nature and shall be adequately described, explaining how they affect the issuer or the securities being offered or to be admitted to trading.

The Prospectus Regulation stipulates that the European Commission shall adopt delegated acts and further regulate the content of the prospectus. The Commission did so and issued Commission Delegated Regulation 2019/980, which in detail provides the information that need to be included in each type of the prospectus.

According to the Commission Delegated Regulation 2019/980, the prospectus shall therefore, inter alia, consist of:

- Information regarding the issuer, its organisational structure, management and supervisory bodies, remunerations and benefits policy, as well as persons responsible for information provided in the prospectus.
- Risk factor as provided in detail above.
- Business overview, including principal activities and markets, strategies and objectives, important events in the development of the issuer's business, investments.
- Operating and financial review, including financial condition of the issuer and issuer's likely future development.
- Trend overview in operational and financial field.
- Information about the employees and related shareholding and stock option plans.
- Major shareholders, including any potential differences in voting rights as well as information whether the issuer is directly or indirectly controlled and by whom.
- Related party transactions that the issuer has entered into during the period covered by the historical financial information and up to the date of the prospectus.
- Financial information about the issuer, including audited historical financial information covering the latest three financial years (or such shorter period as the issuer has been in operation) and the audit report in respect of each year prepared in accordance with the IFRS.
- Information about any (legal) proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the year which may have, or have had in the recent past significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.

Since a prospectus is a complex and extensive document, the prospects shall include a summary aiding the investors when

considering whether to invest in a security or not. It shall be written in a way that is easy to read, using characters of readable size and written in a language and a style that facilitate the understanding of the information, in particular, in language that is clear, non-technical, concise and comprehensible for investors. A summary shall therefore include key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market. In accordance with Article 7 of the Prospectus Regulation, a summary should include the following four sections: (i) introduction, containing the prescribed warnings, (ii) key information on the issuer, (iii) key information on the securities as well as (iv) key information on the offer of securities and/or the admission to trading on a regulated market.

4.2. Local market practice

As evident above, there are fewer offerings of securities in the Slovenian market compared to other European markets. As ATVP stated in its yearly report for the year 2018, the trend in the issuance of new securities and the volumes of financing of businesses on the capital market is not encouraging neither in the equity nor in the debt sector. This is likely due to the fact that businesses in Slovenia usually seek funding sources within the banking sector and not on the capital markets. As the capital markets are not as developed in Slovenia as in certain other EU countries, there is no particular local market practice in relation to drafting and content of the prospectus.

4.3. Language of the prospectus for local and international offerings

According to Article 27 of the Prospectus Regulation, the language of the prospectus depends on the territory where the securities are offered to the public or where the admission on a regulated marker is sought. Provided that the securities are offered to the public or admission to trading on a regulated market is sought:

- only in Slovenia as a home Member State, then the prospectus shall be prepared in Slovenian language only (Article 27(1) of the Prospectus Regulation).

- in home Member State, namely Slovenia, and in other host Member States, then the prospectus shall be prepared in Slovenian language, however, it shall also be available in the language accepted by the competent authorities of the each host Member State or in the language which is customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market (Article 27(3) of the Prospectus Regulation).

- in other Member states (rather than the host Member State), than the prospectus shall be prepared either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.

Nevertheless, according to paragraph 2 of the Article 27(2) of the Prospectus Regulation, the competent authority of each host Member State shall require that the prospectus summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.

In case where non-equity securities are offered to the public or admission to trading of non-equity securities on a regulated market is sought one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market. Such obligations apply only if such non-equity securities are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities or such securities have a denomination per unit of at least EUR 100,000 (Article 27(5) of the Prospectus Regulation).

5. Prospectus Approval Process

5.1. Competent Regulator

In Slovenia, ATVP is competent for all the matters related to the publication of the prospectus and is responsible for monitoring compliance with the provisions on prospectus.

5.2. Timeline, number of draft submissions, review and approval process

The prospectus approval process is regulated in the Prospectus Regulation, Commission Delegated Regulations as well as in ZTFI-1. Furthermore, ATVP has adopted Guidelines on the prospectus review and approval process (Smernice o postopku pregleda in potrditve prospekta, or the "Guidelines") which

further regulate the prospectus review and approval process according to the Commission Delegated Regulation 2019/980.

The request for the approval of the prospectus for the offering of the securities to the public shall be submitted by the issuer or the offeror. In case the approval of the prospectus relates to the admission of securities to trading on a regulated it shall be submitted by the offeror or other person asking for admission to trading on a regulated market.

The request for the approval of the prospectus shall include the draft prospectus, confirmation on the payment of the administrative fee, a list of cross-references as well as all information required under point 2 of the Article 42 of the Commission Delegated Regulation 2019/980. In the event that the request for approval relates to the approval of the prospectus for the first offering of the securities, then such a request shall also include the resolution of the complement authority of the issuer regarding its issuance. The request together with the required attachments shall be submitted to ATVP in electronic form via email to webmaster@atvp.si.

Once the request with the above-mentioned attachments is submitted, ATVP shall inform the issuer, offeror other person asking for admission about the receipt of the documentation no later than the end of the second business day following the receipt of the request.

If during the review process ATVP finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency from the Prospectus Regulation, ZTFI-1 and Commission Delegated Regulation 2019/980 it shall inform the person submitting the request about the deficiencies within 10 days and shall clearly specify the changes or supplementary information that need to be supplemented. ATVP emphasized in its Guidelines that it usually issues one or two such resolutions on remedying the deficiencies during each prospectus review process.

Final version of the prospectus shall be submitted to ATVP electronically and shall be signed by the authorized persons of the offeror or, if necessary, by other responsible persons (i.e. guarantors). The form of the final version of the prospectus is prescribed by the Article 44 of the Commission Delegated Regulation 2019/980.

ATVP shall reject the request if the request was not submitted by eligible person or the prospectus is not compliant with the relevant legislative provisions or if the prospectus was not amended in accordance with ATVP's resolution within a set deadline.

Once the prospectus includes all the requested information and once all the vague and conflicting information in the prospectus have been amended or corrected accordingly, ATVP shall approve the prospectus and issue its decision. ATVP will approve the prospectus provided that the request was submitted by the eligible person (issuer, offeror other person asking for admission to trading on a regulated market as it may be) and if the prospectus is compliant with all the requirements from the Prospectus Regulation, applicable provision of ZTFI-1 and Commission Delegated Regulation 2019/980.

ATVP informs the issuer, the offeror or the person asking for admission about its decision in writing by email as well as by post. ATVP shall issue a decision approving the prospectus:

- within 10 business days from the receipt of the request; however, the deadline shall only be applicable for the initial submission of the draft prospectus and not for subsequent amendments of the draft prospectus;
- within 20 business days in case of an initial public offering, namely where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public;
- within 5 business days from receipt of the request in the case of a prospectus consisting of separate documents produced by frequent issuers.

Provided that the decision is not issued within the prescribed deadline, such a failure shall not be deemed to constitute approval of the prospectus.

6. Listing Process

6.1. Timeline, process with the stock exchange

If issuer fulfils the conditions and criteria for listing on the Standard Market or for listing on the Prime Market, it may request that its shares are listed on the Ljubljana Stock Exchange. The process is governed by the LJSE Rules.

Under LJSE Rules, the application for listing stocks consists of a signed and completed application form and the Listing Agreement. The application and all other documentation should be in Slovenian or English. Alternatively, the documents may be filed in a different language, together with certified translation into Slovenian or English. The deadline for the

decision of the Stock Exchange regarding the listing is set to 30 days after the Stock Exchange received the application to be listed. However, the Stock Exchange may request additional information within 8 days after the receipt of the application. In such case the deadline for the decision of the Stock Exchange shall be prolonged.

In case all the conditions and criteria are fulfilled, the Stock Exchange signs the Listing Agreement and issues the decision on listing of the stocks. Before the trading with the listed stocks may be initiated the applicant has to publish any potential supplement to the prospectus and pay the requested listing fee. If such obligations are fulfilled before Ljubljana Stock Exchange issues the decision on the listing, the date the trading is initiated is stated in the decision on the listing. However, if the applicant fails to timely fulfil its obligations and trading is not initiated within three months after the listing of the stocks, Ljubljana Stock Exchange may remove the stocks from trading. In such case, both the Listing Agreement and the Stock Exchange's decision on listing cease to be valid.

In case of bonds, the same procedure as described for the procedure of listing of stocks applies, insofar as the conditions and criteria for listing is fulfilled, the applicant fulfils its obligations relating to publishing of the prospectus and other information and completes all requirements prior to initiation of the trading.

7. Corporate Governance

7.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

The primary source of (binding) corporate governance rules in Slovenia is the Companies Act (ZGD-1). ZGD-1 applies to all companies (public and private corporations, LLCs, sole proprietors etc.). In accordance with ZGD-1, corporations may opt either for a two-tier or one-tier management system.

If a corporation opts for a two-tier management system, it shall be managed by the management board (consisting of one or more managers) and the management board shall be supervised by the supervisory board (consisting of at least three members). The management board shall be appointed by the supervisory board and shall direct the business operations of the company, represent the company, and act on the company's behalf. It shall report to the supervisory board. The supervisory board shall be appointed by the general meeting of the company and shall supervise the conducting of the company's business. The supervisory board may appoint one or more committees (e.g. audit committee, appointment committee, remunerations committee). A committee shall be composed of a chair and at least two members (the chair shall be appointed from among the members of the supervisory board). Committees shall report on their work to the supervisory board.

If a corporation opts for a one-tier system, it shall be managed by a unified board of directors (consisting of at least three members), appointed by the general meeting of the company. The unified board of directors shall manage a company and supervise its operations. In public companies, the unified board of directors shall appoint at least one executive director from among its members; however, no more than one half of the members of the unified board of directors may be appointed executive directors. Executive directors shall represent and act on behalf of the company unless otherwise provided in the articles of association. The unified board of directors may also delegate certain tasks to the executive directors, including the management of current operations and administration of the books of account. The unified board of directors may appoint one or more committees; in public companies, the appointment of an audit committee is mandatory.

Besides ZGD-1, public companies also observe a legally non-binding Management Code for Publicly Traded Companies (Kodeks upravljanja javnih delniskih druzb, or "Management Code"), adopted by the Ljubljana Stock Exchange and Slovenian Directors' Association on 27 October 2016. The Management Code sets forth recommendations for managing of the companies on the basis of the "comply or explain" principle. The Management Code prescribes rules on, inter alia, the adoption of a management policy, corporate governance statement, and statement on the compliance with the Management Code; relationship between the company and its shareholders; supervisory board, management board, and board of directors (including on the independence of their members); audit and internal control system; and transparency of business operations.

7.2. Any other ESG considerations

ZGD-1 prescribes that, when necessary, the companies shall include in their yearly business report markers, indicators and other factors that include information concerning environmental protection and employees. In addition, all public companies are obliged to include in their annual report a description of the diversity policy implemented in relation to representation in the management and supervisory bodies of the company (having regard to gender and other aspects, such as age, educa-

tion and professional experience, and including an indication of the objectives, modalities and results of the diversity policy during the reporting period).

Additionally, the (non-binding) Management Code provides that all public companies shall develop and adopt a diversity policy and disclose a sustainability report, part of which shall be a corporate social responsibility report (touching upon responsibilities of the company to employees, consumers, local community, and environment), and that the remuneration of their management bodies shall promote sustainable development of the company and include non-financial criteria, important to create the long-term value of the company (such as compliance with applicable company rules and ethical standards).

8. Documentation and Other Process Matters

8.1. Over-allotment (greenshoe or brownshoe structure)

In the EU, over-allotment (and greenshoe structure specifically) is regulated in the Commission Delegated Regulation (EU) 2016/1052 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures (the "Delegated Regulation"). Overallotment shall only be used under the conditions set forth in Article 8 of the Delegated Regulation. These conditions are:

1) securities shall be overallotted only during the subscription period and at the offer price;

2) a position resulting from the exercise of an overallotment facility by an investment firm or credit institution which is not covered by the greenshoe option shall not exceed 5 % of the original offer;

3) the greenshoe option shall be exercised by the beneficiaries of such an option only where the securities have been overallotted;

4) the greenshoe option shall not amount to more than 15 % of the original offer;

5) the period during which the greenshoe option may be exercised shall be the same as the stabilisation period;

6) the exercise of the greenshoe option shall be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise of the option and the number and nature of securities involved.

Pursuant to the Delegated Regulation, before the start of the initial or secondary offer of the securities, the entity undertaking the stabilisation (as well as the persons acting on their behalf) shall ensure adequate public disclosure of:

1) the existence of any overallotment facility or greenshoe option and the maximum number of securities covered by that facility or option;

2) the period during which the greenshoe option may be exercised; and

3) any conditions for the use of the overallotment facility or exercise of the greenshoe option.

There are no provisions in Slovenian national legislation supplementing the EU legislation on over-allotment. Therefore, (only) EU legislation shall be observed with regard to this topic.

In the absence of rules on brownshoe ("reverse greenshoe") structure, the general rules on over-allotment and rules applicable to greenshoe structure shall apply mutatis mutandis. Note that brownshoe structure is used far less commonly than greenshoe structure.

8.2. Stock lending agreement

Stock lending agreements, in the context of market stabilisation measures, are agreements allowing underwriters to borrow shares from the issuer and use such shares to settle with investors that are given overallotted shares.

Stock lending agreements may trigger certain obligations under Slovenian Takeovers Act (ZPre-1) and ZTFI-1 to the extent that voting rights are transferred under the lending agreement. Furthermore, tax implications may also arise under stock lending agreements, however this is depending on the structure of the transactions, amount of transferred rights and the status of the borrower and the lender.

8.3. Stabilisation

Pursuant to the definition set forth in the Regulation (EU) No 596/2014 (the "Market Abuse Regulation," or MAR), stabilisation means a purchase or offer to purchase securities, or a transaction in associated instruments equivalent thereto, which is undertaken by a credit institution or an investment firm in

the context of a significant distribution of such securities, exclusively for supporting the market price of those securities for a predetermined period of time (due to a selling pressure in such securities).

Generally, trading in securities or associated instruments for the stabilisation of securities shall be governed by the MAR. However, such trading is exempted from the prohibition of insider dealing and of unlawful disclosure of inside information and prohibition of market manipulation (set forth in Articles 14 and 15 of the MAR) if the following conditions are met:

1) stabilisation is carried out for a limited period;

2) relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue in accordance with the MAR;

3) adequate limits with regard to price are complied with; and

4) such trading complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in the MAR.

As for the Slovenian national legislation, a provision relevant for stabilisation can be found in Article 141(5) of the ZTFI-1, which provides that a shareholder shall be exempt from the obligation to notify of the acquisition or disposal of major holdings when voting rights in shares are acquired to stabilize financial instruments in accordance with the MAR (unless voting rights in those shares are exercised or otherwise used to interfere with the management of a public company).

Other than that, there are no provisions in Slovenian national legislation materially supplementing the EU legislation on stabilisation.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

Pursuant to ZGD-1 and ZTFI-1, public companies shall report on their financials annually and semi-annually.

They shall prepare their annual report (and consolidated annual report, if applicable) within three months of the end of each financial year. The annual report shall consist of financial report (i.e., financial statements and notes to financial statements) and business report. The annual report shall be examined by an auditor (according to the method and under the conditions specified by the legislation governing auditing), who shall audit the financial report and examine the business report to the extent necessary in order to verify whether its content accords with other components of the annual report. The annual report (along with the auditor's report) shall be published within four months after the end of each financial year.

Additionally, public companies shall also prepare an interim (semi-annual) report for the first six months of each financial year and publish it as soon as practicable and no later than three months after the end of such six-month period. The semi-annual report shall consist of a summary of the financial report and an interim business report. If the semi-annual report was audited, the auditor's report shall be published as well. Furthermore, public companies holding listed shares in the Ljubljana Stock Exchange's Prime market shall also prepare and publish quarterly reports.

Public companies shall ensure that both annual and semi-annual reports are publicly available for at least 10 years after their publication.

Finally, the legally non-binding Management Code also prescribes certain rules on reporting, e.g., that public companies shall include in their business report a governance statement and statement on the conformity with the Management Code (also see our answer to question 7.b. above on ESG considerations in reporting).

9.2. Ad hoc disclosures

Public companies are required to disclose information (on an ad hoc basis) that are considered controlled information pursuant to ZTFI-1 and the MAR.

In addition to the annual and semi-annual reports, controlled information is especially information on (i) any changes to major holdings notified to the public company by the shareholder or other entity; (ii) change in the share of the own (treasury) shares held by the public company; (iii) change in the total number of voting shares; (iv) change in the content of the rights arising from securities; and (v) inside information (as defined in the MAR). Public companies shall also publish the information on its general meetings and certain other information.

The controlled information should be disclosed by the issuer as soon as possible and at the latest within the time limits prescribed for each type of controlled information by ZTFI-1 and theMAR, in a manner that ensures rapid access to that

information on a non-discriminatory basis. The disclosure of controlled information must contain all information that enables investors to assess the position of the public company and to assess the impact of the controlled information on the price of the issuing financial instrument. When a public company or other person who has requested the listing of securities on a regulated market without the consent of the public company discloses controlled information, it shall at the same time submit the contents of that disclosure to ATVP. It should be noted that, under certain conditions set forth in the MAR, the issuer may (on its own responsibility) delay disclosure to the public of inside information. The issuer should also inform the competent authority, i.e., ATVP, on the delayed disclosure of inside information in accordance with Article 17 of the MAR.

Finally, ad hoc disclosures are also regulated in applicable legally non-binding documents. The Management Code prescribes that public companies shall ensure timely and accurate public disclosure of all controlled and other relevant business information. Such information includes e.g. information about the company, financial position, business, ownership, management of the company and future expectations, as well as other information that has an impact on the position of investors). Furthermore, Ljubljana Stock Exchange has issued Recommendations on Reporting of Public Companies (Priporocila javnim druzbam za obvescanje, or the "Recommendations"). The purpose of the Recommendations is to define the disclosure standards of public companies holding listed shares in the Ljubljana Stock Exchange's Prime market and they are intended to set forth good practices with regard to disclosure of inside information and other types of controlled information. Note that, despite the general non-binding nature of the Recommendations, some of the provisions of the Recommendations are nevertheless binding for public companies holding listed shares in the Ljubljana Stock Exchange's Prime market (e.g., mandatory quarterly reporting, reporting in English, statement on the compliance with the Management Code).

The Authors:

■ Ozbej Merc
Partner
ozbej.merc@jadek-pensa.si

■ Ziga Urankar
Associate
ziga.urankar@jadek-pensa.si

■ Nastja Merlak
Senior Associate
nastja.merlak@jadek-pensa.si

■ Sara Makovec
Junior Associate
sara.makovec@jadek-pensa.si

■ Aljaz Cankar
Associate
aljaz.cankar@jadek-pensa.si

TURKEY

By Omer Collak, Partner, Okkes Sahan, Counsel, and Pinar Tuzun, Associate, Paksoy

1. Market Overview

There has been a slowdown debt and equity capital markets activities in Turkey since mid-2018. Global uncertainties and geopolitical factors have had an impact on the emerging markets, including Turkey. There was a marked slowdown in growth in the second half of 2018 due to significant volatility in foreign exchange rates and increases in interest rates, particularly in the third quarter. With negative growth of 2.8% in the final quarter of 2018, the Turkish economy only grew by 2.8% in 2018. The first two quarters of 2019 also experienced negative gross domestic product growth, though growth in the second half of the year recovered, resulting in a positive growth in GDP of 0.9% during 2019.

The annual consumer price index (CPI) inflation rate was 20.3% in 2018, while annual domestic producer price inflation during the year was 33.6%, both increasing significantly due principally to the depreciation of the Turkish Lira. However, the rate gradually declined and Turkey ended the year with an annual inflation rate of 11.8%.

1.1. Regulators

1.1.1. The Capital Markets Board

The principal functions of the Capital Markets Board (CMB) are: (i) to foster the development of the securities markets in Turkey and thereby contribute to the efficient allocation of financial resources in the Turkish economy; and (ii) to ensure adequate protection for investors.

The CMB supervises and regulates, among others, public companies and issuers of capital markets instruments, market infrastructure institutions including stock exchanges and central custody and settlement institutions, banks and other financial intermediaries, mutual funds, investment corporations, investment consulting firms, real estate appraisal companies and rating firms that offer their services to institutions operating in the capital markets. The CMB is authorized to request any kind of information and documents to determine the compliance of the entities it oversees with the Capital Markets Law No. 6362 (CML) and with its own regulations, communiqués, and decisions.

As the capital markets regulator, the CMB promulgates regulations relating to Turkish capital markets. The CMB regulations set out a regulatory approval process for all securities to be publicly offered in Turkey, as well as certain private placements. In connection with its supervisory role, the CMB requires companies subject to its jurisdiction to prepare and publish balance sheets, income statements and annual reports, all of which must be prepared in accordance with the accounting principles and standards promulgated by the CMB. Moreover, unaudited quarterly reports must be filed in respect of each financial period ending in March and September, and a semi-annual report, subject to limited review by the independent auditors, must be filed with the CMB in respect of the first six months of each year. Upon the occurrence of any special events (such as a merger or acquisition), the CMB may require that additional information be disclosed by a public company or by directors or major shareholders of a public company. Furthermore, each situation that may have a material effect on the operations and the financial situation of a company participating in the capital markets must be immediately disclosed to the CMB.

The CMB is governed by a decision-making body comprised of seven members, including the chairman, who are all appointed by the government of Turkey. The term of office of the members of the CMB is six years. Members whose terms have expired can be re-appointed.


Omer Collak


Okkes Sahan


Pinar Tuzun

Paksoy

1.1.2. Borsa Istanbul

The establishment of Borsa Istanbul A.S. ("Borsa Istanbul" or BIST) was envisaged in the CML, as the successor to the Istanbul Stock Exchange and other securities exchanges in Turkey, for the purposes of creating a single platform. Upon registration of its articles of association with the Istanbul Trade Registry on 3 April 2013, Borsa Istanbul automatically assumed all of the assets, rights and obligations of the Istanbul Stock Exchange and the Istanbul Gold Exchange. Pursuant to the CML, shareholders of Turkish Derivatives Exchange were granted an option right to subscribe for Borsa Istanbul's share capital in return for Turkdex's takeover by Borsa Istanbul. This option right was exercised by Turkdex shareholders.

1.2. Biggest ECM and DCM transactions over the past 2-3 years

ECM: Turkey had a good start in 2018. The most important initial public offerings on Borsa Istanbul were (i) Enerjisa Enerji, Turkey's energy conglomerate and controlled by Turkish Sabancı Holding and German E.ON.; (ii) MLP Saglık (Medical Park Hospitals), one of the leading hospital chains in Turkey; and (iii) Sok Marketler, one of the leading FMCG retail store chains in Turkey. Additionally, Aselsan, a company of the Turkish Armed Forces Foundation, and Yapı Kredi Bank, one of the largest private banks in Turkey, increased its capital in June 2019. Total funds raised from these deals were TRY 2.9 billion and TRY 4.11 billion, respectively.

Showing a trend similar to global equity markets, the Turkish IPO market was slow in 2019. Volume of IPOs decreased by 95% in 2019 compared to 2018. The most important initial public offerings were (i) Naturel Enerji, renewables and energy company; and (ii) Yukselen Çelik, a company active in steel business, in 2019. Additionally, Odas, Sasa Polyester, Gunes Sigorta, Ihlas Gayrimenkul and Karsan Oto increased its capital.

DCM: Similar to previous years, banks were the most active players in the debt market, while non-bank financial institutions come second in 2018 and 2019. At the end of 2018, the bonds issued by Turkish issuers amounted to TRY 90.7 billion. In 2019, debt issuances rose by 18% compared to the previous year and the total amount issued by Turkish issuers was TRY 210 billion.

2. Overview of the local stock exchange and listing segments (markets)

Borsa Istanbul is the sole exchange entity in Turkey in the form of a joint-stock company, bringing together all the exchanges operating in Turkey (i.e., the former Istanbul Stock Exchange, the Istanbul Gold Exchange, and the Derivatives Exchange of Turkey). Borsa Istanbul mainly consists of four markets: the Equity Market, the Debt Securities Market, the Derivatives Market, and the Precious Metals and Diamond Market.

Publicly-held companies from various sectors are traded in the Equity Market, and this trading is carried out in the following sub-markets:

a. the BIST Stars market, on which the shares of large-sized companies with a market value of free-float shares of at least 150 million Turkish lira are traded;

b. Structured Products and Fund Market (formerly the Collective and Structured Products Market), on which the shares of securities investment companies, real estate investment companies, venture capital investment companies, warrants issued by intermediary institutions and exchange-traded funds are traded;

c. the BIST Main market, on which the shares of medium-sized companies with a market value of free-float shares under 150 million Turkish lira are quoted;

d. the BIST Emerging Companies Market, on which the shares of emerging companies are traded;

e. the Pre-Market Trading Platform, on which the shares of certain companies determined by the CMB pursuant to its Decision No. 17/519, dated 3 June 2011, have been admitted to trading;

f. the Watchlist Market, on which the shares of companies under special surveillance and investigation owing to extraordinary situations with regard to transactions on Borsa Istanbul, insufficient compliance with disclosure requirements, or other events that may necessitate a temporary or permanent suspension of the trading are traded; and

g. the Equity Market for Qualified Investors, where the shares of companies are;

- issued for direct sale to qualified investors as defined under relevant legislation of the CMB (CMB-qualified investors) without being publicly offered; and
- traded only among qualified investors of the CMB.

In addition to these market segments, an Official Auction Market may be opened when necessary, allowing the trading of stocks by courts, executive offices and other official entities in a separate market.

There is one other market – the Primary Market – on which the shares in companies being publicly offered and listed for the first time on Borsa Istanbul, and any additional shares offered following rights offerings of companies listed on Borsa Istanbul, are traded. In addition to these markets, there are two different transaction structures that are conducted on the Equity Market. Block trades of listed stocks are conducted as specifically regulated wholesale transactions, and pre-emption rights during rights issues (granting the right to subscribe for newly issued shares) are traded separately as pre-emption right transactions.

3. Key Listing Requirements

3.1. ECM

The issuer shall prepare a prospectus used for domestic offering, submit it to the CMB for approval and also apply to Borsa Istanbul to get the offered shares listed. The major requirements for launching an IPO and getting the offered shares listed are as follows:

a. the company's articles of association must be amended to comply with the CMB rules and regulations;

b. there must be nothing that restricts the transfer or trading of the equity securities to be traded on Borsa Istanbul, or prevents shareholders from exercising their rights; and

c. the issuer's share capital must:

- be fully paid in;
- except for the funds specifically permitted by law, have been free from any revaluation funds or similar funds in the two years preceding the application for the public offering; and
- regarding the total amount of non-trade related party receivables, not exceed 20% of the issuer's total receivables or 10% of its total assets.

The issuer must pay to the CMB a fee that is equal to the sum of 0.1% of the difference between the nominal value of the offering shares and their offering price in the IPO, and 0.2% of the nominal value of any shares that are not being publicly offered.

The Listing Directive of Borsa Istanbul (the "Listing Directive") regulates the listing and trading of securities through a public offering, through a private placement without a public offering and to qualified investors. Under the CMB, only joint-stock companies can become public companies and list their shares on Borsa Istanbul. To list and trade securities on Borsa Istanbul, a company must have been incorporated for at least two years in accordance with the relevant CMB regulations.

The company must meet all the conditions of the group of the market to which it belongs, and the groups are generally determined by the value of the shares offered to the public.

3.1.1. Star Market Group 1

- Free-float market value of shares must be at least TRY1 billion.
- The total market cap of shares in free float must be at least TRY750 million.
- Profit must have been earned in the past two years.
- The minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 0.75.

3.1.2. Star Market Group 2

- Free-float market value of shares must be at least TRY150 million.
- The total market cap of shares in free float must be at least TRY75 million.
- Profit must have been earned in the past two years.
- The minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.

3.1.3. Main Market Group 1

- Free-float market value of shares must be at least TRY30 million.
- The total market cap of shares in free float must be at least TRY5 million.
- Profit must have been earned in the past two years.
- The ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be more than 1.25.

Companies that do not meet the minimum market value of TL 30 million criteria are listed in Main Market Group 2.

3.1.4. Other requirements

Under the Listing Directive, the following requirements also apply:

a. two years must have elapsed since the company's establishment (however, this is not applied for holding companies that have been established for less than two years but own a minimum of 51% in shares of a company that has been established for more than two years);

b. the exchange management must have had the corporation's financial structure examined and accepted its ability to continue as a going concern;

c. the company must have obtained confirmation from Borsa Istanbul that its financial structure is sufficient for its operations;

d. the shares must not contain any clauses prohibiting the shareholders to use their rights;

e. the company's articles of association must not include anything restricting the transfer or trading of the securities to be traded on Borsa Istanbul, or preventing shareholders from exercising their rights;

f. there must be no major or material legal disputes that may adversely affect the production, operation or commercial activities of the company;

g. there must be an independent legal report confirming that the establishment and the operation are in compliance with the relevant laws;

h. there must be no material legal dispute that could adversely affect production or other commercial activities;

i. the company must not have:

- suspended its operations for more than three months during the past two years, except for the causes accepted by the exchange management;
- applied for liquidation or concordat (a formal project regarding the liquidation of debts, prepared and presented by the debtor to the court for its approval, under which the debtor is released from his or her debts once the partial payments are completely made); and
- taken part in any other similar activity specified by the Borsa Istanbul board without the board's permission;

j. the company's securities must comply with Borsa Istanbul's criteria on current and potential trading volumes; and

k. the company's legal status in terms of its establishment, activities and shares must comply with the applicable law.

If an application is to be filed for an initial listing of shares, the listing application shall be made for the whole amount of capital of the relevant company.

3.2. DCM

The issuer must submit the following before trading debt instruments on Borsa Istanbul:

- A listing or registration application with Borsa Istanbul; and
- An application for the approval of the prospectus or issue certificate with the CMB.

The issuer can file the applications to Borsa Istanbul and the CMB using either one of the following methods:

- A filing covering all debt securities to be issued within one year; or

- A filing covering a certain amount of debt securities concerning a standalone issuance.

Debt securities which have been listed or registered for issuance and sold within one year under a Borsa Istanbul resolution can be traded on the debt securities market once an announcement through the Public Disclosure Platform of the Central Registry Agency has been made. Debt instruments which are issued solely to qualified investors can be listed by Borsa Istanbul once the CMB's approves the issuance certificate.

The issuer must satisfy the following criteria:

- The "operating term criterion", which states that a minimum of two calendar years must have passed since the company's establishment date.

- The "audit criterion", which states that the company must submit financial statements and independent audit reports to Borsa Istanbul.

- The "profitability criterion", which states that profits before tax must have been earned in at least one of the last two years, as evidenced by its financial statements prior to the application date.

- The "shareholders' equity criterion", which states that the total shareholders' equity in the most recent independently audited financial statement of the company must be more than its paid-in capital.

- The "sound financial structure criterion", which states that Borsa Istanbul management must have examined the company's financial structure and accepted its ability to continue as an ongoing concern.

The company must document its purpose in terms of its establishment and activities, together with the legal status of its debt securities representing indebtedness, in order to verify that they are compliant with the respective legislation.

The company's articles of association must not include any provisions that restrict the transfer and circulation of the securities to be traded on Borsa Istanbul or prevent the shareholders from exercising their rights.

The above application procedure for the listing of stocks also applies to private sector bonds listed on Borsa Istanbul.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or similar) – equity and debt

The CMB, Borsa Istanbul, the Central Registry Agency and Istanbul Clearing, Settlement and Custody Bank (in Turkish: Istanbul Takas ve Saklama Bankası A.S.) ("Takasbank") are the main rule-making and enforcing authorities on IPOs in Turkey. The main legislation applicable to companies considering going public in Turkey are the:

- The CML;

- Communiqué on Shares No. VII-128.1 (the "Share Communiqué");

- Communiqué on Prospectus and Issuance Document No. II-5.1;

- Communiqué on Sales of Capital Market Instruments No. II-5.2;

- Communiqué on Material Events No. II-15.1 (the "Disclosure Communiqué");

- Communiqué on Corporate Governance No. II-17.1 (the "Corporate Governance Communiqué");

- Listing Directive; and

- relevant directives, general letters and announcements of Takasbank and the Central Registry Agency.

Debt securities markets are regulated by the following legislation:

- Turkish Commercial Code (TCC);

- The CML;

- Communiqué No VII-128.8 on Debt Instruments;

- Communiqué No II-5.2 on Sales of Capital Market Instruments;

- Communiqué No II-5.1 on Prospectus and Issuance Certificates; and

- Listing Directive.

4.2. Local market practice

The company whose shares are offered to the public shall complete the offering process with the assistance of an internal working group and external advisers. An internal working group must be set up within the company to carry out the required IPO process. In general, finance and public relations divisions, and other relevant mid-level managers of the company, are included in the internal working group.

In order to complete the full IPO process in a diligent, professional and adequate manner, professional external advisers shall also be appointed. In practice, the main external advisers are as follows:

- an intermediary institution shall be appointed by the company whose shares will be offered to the public and there shall be an agreement with the intermediary institution. There may also be a consortium (for example, in a relatively large IPO) rather than a single intermediary institution to take advantage of the syndicated efforts of several brokerage firms;
- an independent auditor shall prepare the financial statements of the company whose shares are offered to the public in accordance with capital markets regulations. These statements must be audited by an independent audit firm selected from the CMB's authorised list. The company must sign an audit contract with the selected audit firm;
- a financial adviser who generally advises on the timetable, structuring, valuation, price determination and so on shall also be appointed by the company whose shares are offered to the public;
- a research analyst is adequate for publishing research on the company;
- legal advisers shall be appointed to handle the legal aspects of the full IPO process (e.g., preparing the CMB application documents in line with the CMB and Borsa Istanbul regulations, carrying out legal due diligence, and negotiating the agreements between the company and external advisers); and
- public relations advisers are crucial for attracting as many investors as possible. They publish marketing materials and press releases that explain the company's core business activities.

4.3. Language of the prospectus for local and international offerings

The prospectus in ECM and DCM deals must be prepared and submitted in Turkish. In IPOs where both domestic and international investors are targeted, an English version of the prospectus is also prepared. The issuers must reflect all material information in English prospectus to Turkish prospectus to enable all investors to reach same level of information.

5. Prospectus Approval Process

5.1. Competent Regulator

Borsa Istanbul and the CMB are the competent regulators in ECM deals.

CMB is the competent regulator in DCM deals. Additionally, if the issuer is active in a regulated sector such as banking or energy, the consent of the relevant regulatory authority should also be obtained before the application to the CMB.

5.2. Timelime, number of draft submissions, review and approval process

ECM: The issuer must prepare a prospectus used for a domestic offering and submit it to the CMB for approval of the primary listing of its shares. Additionally, the following steps are expected to be initially conducted by the company that is considering going public:

- organisation of an internal working group;
- articles of association amendment;
- due diligence work for the IPO;
- preparation of the prospectus;
- selection of an intermediary institution and execution of a market advisory agreement;
- selection of an independent auditor and preparation of financial statements;
- agreement on comfort packages and legal opinions;
- drafting of the marketing presentations, followed by marketing and book-building;
- pricing and allocation of shares;
- simultaneous application to the CMB and Borsa Istanbul;
- approval of the CMB;
- settlement;

- commencement of trading on the relevant market of Borsa Istanbul upon its approval; and

- exercise of any over-allotment and price stabilisation.

Although each deal is different, an indicative timetable for an IPO is set out below, where 'T' signifies the first day of trading on Borsa Istanbul.

5.2.1. Timeline

T minus 6 months to T minus 3 months:
- Preparation for the IPO:
- The company's articles of association must be amended to comply with the CMB;
- Requirements for public companies must be considered;
- Advisers must be appointed;
- Eligibility for an IPO and listing is discussed; and
- Due diligence is started.
- Prospectus drafting commences.

T minus 3 months:
- First submission of the prospectus to the CMB.

T minus 2 months to T minus 1 month:
- First draft reports circulated
- Announcement of intention to float made.

T minus 5 weeks:
- Connected brokers' research is published and the research blackout period starts.

T minus 4 weeks:
- Borsa Istanbul approval of listing is received and the price range is set. The underwriting agreement is signed and the final valuation report is submitted to the CMB. Updated prospectus with price range (subject to approval by the CMB) is made available on the issuer's and domestic underwriter's websites. There is a management briefing to syndicate sales. The preliminary immediate or cancel (International Offering Circular) order with price range (subject to approval by the CMB) is distributed. The management roadshow starts.

T minus 3 weeks:
- Submission of final documents to the CMB. End of the period for informing investors of the IPO.

T minus 2 weeks:
- Prospectus approved by the CMB. International book-building starts and announcement of sales.

T minus 9 days:
- Domestic book-building starts.

T minus 6 days:
- The pricing decision is made. Domestic and international book-building ends.

T minus 4 days:
- If requested, the distribution list is sent to the CMB. Offer price and allocations announced. New shares are created, and shares can be sold or transferred.

T minus 1 day:
- Settlement and publication of final International Offering Circular.

T:
- First day of trading and start of price stabilisation (if any).

DCM: issuers must initially pass a resolution setting out the terms and conditions of the issue. A general assembly resolution is required for the CMB application to request an issuance limit. However, the issuer may authorise its board of directors to pass the requisite resolution by way of a general assembly resolution (and that authorisation is valid for 15 months), or through a provision under its articles of association where the articles of association permit this (there is no time limit on this type of authorisation). However, the issuer must make the application for CMB approval within one year from the date of the applicable resolution.

Prior to each domestic offering in Turkey without a public offering, the issuer must also apply to the Central Registry Agency after obtaining the CMB approval on the issuance certificate. However, this application requirement was removed for international offerings on 18 February 2017. While debt instruments issued outside Turkey are no longer required to be registered with the Central Registry Agency, information on the amount, issue date, ISIN, interest commencement date, maturity date, interest rate, name of the custodian, currency of the bonds, and the country of issuance must be submitted to the Central Registry Agency within three business days following the issuance. Any changes to that information must be reported to the Central Registry Agency within three business days following the date of the change.

The CMB fee to be paid by the issuer varies between 0.05% and 0.15% of the offering amount, depending on the maturity of the instrument. Only 75% of those rates apply to issuers other than banks, financial institutions and foreign entities. The

approval process of the issuance certificate before the CMB usually takes around three weeks.

In debt securities sales through a private placement, it is sufficient for the issuer to prepare an issuance certificate to be approved by the CMB. However, in a public offering of debt securities sales, the issuer must prepare a prospectus to be approved by the CMB and apply to the stock exchange, Borsa Istanbul to trade the securities.

Debt securities issued for sale to qualified investors can be listed and quoted on Borsa Istanbul only for trading among qualified investors within the framework of the relevant regulations. Debt securities issued for sale through a private placement are generally not listed or traded on Borsa Istanbul. Qualified investors must either register with the Central Registry Agency or sign a statement which contains a clause stating that they are qualified investors.

Except for secondary market transactions of shares, the total number of investors holding the debt securities sold on a private placement basis during a certain period of time cannot exceed 150. This limit does not apply to debt securities sales to qualified investors. Debt instruments sold on a private placement basis can be purchased by both qualified and unqualified investors. In such cases, qualified investors are not taken into consideration when calculating the above cap on investors. Sales to qualified investors can only be affected through a call addressed to those investors or through a process that pre-determines each of those investors.

6. Listing Process

6.1. Timeline, process with the stock exchange

Please refer to sections 3 and 5.

7. Corporate Governance

7.2. Corporate governance code / rules

Certain mandatory and non-mandatory corporate governance rules are set forth in the Corporate Governance Communiqué, the TCC and the CML.

In 2003, the CMB issued a set of recommended principles for public companies, which applied to public companies on a "comply or explain" basis. On December 30, 2011, the CMB published its first piece of legislation, which was subsequently amended from time to time, relating to corporate governance which included certain compulsory and non-mandatory principles applicable to all companies incorporated in Turkey and listed on Borsa Istanbul. The CMB published the Corporate Governance Communiqué in January 2014 which, upon its entry into force, superseded any previous legislation relating to corporate governance.

The Corporate Governance Communiqué contains principles relating to (i) the listed company's shareholders, (ii) public disclosure and transparency; (iii) the stakeholders of the listed company; (iv) the board of directors of the listed company; and (v) related party transactions (collectively, the "Corporate Governance Principles"). The Corporate Governance Communiqué classifies listed companies into three categories according to their market capitalization and the market value of their free-float shares, subject to recalculation on an annual basis, as determined by the CMB.

The CMB also requires the listed companies to form an audit committee and an early risk detection committee. Formation of nomination committee, corporate governance committee and remuneration committee is advised but optional under the relevant regulations. The CMB also requires independent board members in the board of directors and sets forth detailed qualifications.

7.3. Any other ESG considerations

There are no ESG considerations set forth under the capital markets regulations in Turkey.

8. Documentation and Other Process Matters

8.1. Over-allotment

An over-allotment is an option commonly available to underwriters that allows the sale of additional shares that a company plans to issue in an initial public offering or secondary/follow-on offering. Overallotment option is limited with the issue of as many as 20% more shares than originally planned.

Over-allotment option and price stabilization activities are conducted in accordance with the provisions of the CMB's Share Communiqué, Borsa Istanbul regulations and the principles as specified in the Prospectus. Disclosure of CMB required announcements are made on the Public Disclosure Platform in relation to the exercise of the overallotment and price stabilization activities as prescribed under the CMB's Share Communiqué.

Over-allotment is not related to or closely linked with stabilisation. Even if the shares are not over-allotted in a public

offering, a stabilisation activity can still be carried out.

8.2. Stock lending agreement

Stock lending agreement can be executed between the selling shareholders and underwriters as regulated under the CMB's Share Communiqué. However, it is not a common concept in Turkey and the market has not experienced any consequences with this regard.

8.3. Stabilisation

Stabilisation is done by using the monies in the stabilisation account funded by the selling shareholder, the issuer or both. The proceeds from the over-allotment are not necessarily used to buy back the over-allotted shares from the market in order to stabilise the price if that price falls below the IPO price. Therefore, it is available as a legally-permitted and risk-free means for an underwriter to stabilise the price within 30 days following an IPO (though only in cases where the share trade falls below the offering price). The requisite information for stabilisation must be included in the prospectus.

A Turkish lead manager or co-lead manager can engage in price stabilisation activities on its own account or on the account of the company or issuer. The proceeds gained by the company from the offering can be used to finance the price stabilisation, provided that the amount used does not exceed 20% of the gross offering proceeds gained by the company. Further, the nominal value of the shares to be purchased from the market to support the price cannot exceed 20% of the total nominal value of the offered shares, including over-allotted shares.

If there are secondary and primary shares, the proceeds of the secondary and any over-allotted shares will be used to finance the stabilisation activities. The fund which consists of 20% of the proceeds of the primary offering will not be used before the proceeds of the current shareholder's secondary shares are exhausted. The selling shareholder is also entitled to provide unlimited additional funds into the account.

Under the stabilisation agreements, the stabilisation manager has exclusive discretionary authority to undertake stabilisation activities during the stabilisation period. During the stabilisation period, the stabilisation manager can (but will be under no obligation to do so) use the funds in the stabilisation account, to the extent permitted by the applicable laws, regulations and rules of Borsa Istanbul, to purchase shares, if the market price falls below the offer price, with a view to supporting the market price of the shares at a level higher than that which might otherwise prevail in the open market.

In public offerings involving price stabilisation transactions, the prospectus must include the following statements and information:

- Price stabilisation transactions aim to support the market price of the shares.
- No guarantee is given as to the performance of price stabilisation transactions.
- Transactions can be stopped before the end of the specified stabilisation period.
- Name and title of the intermediary institution carrying out price stabilisation transactions.
- Stabilisation period.

Stabilisation is carried out for the limited purpose of preventing or slowing down a decline in the price of the shares. Technically, stabilisation breaches the capital markets rules on market abuse. However, the CMB recognises the need for stabilisation to allow the market to operate more efficiently. Stabilisation must take place under the CMB and Borsa Istanbul rules which state that:

- Only prescribed stabilisation action is permitted.
- Only specified securities can be stabilised on Borsa Istanbul within specified time limits.
- Stabilisation transactions must only take place within specified price limits.
- The stabilisation manager must carry out adequate prior disclosure and maintain records of stabilising activities.

Breaches of the stabilisation rules can result in Borsa Istanbul and the CMB bringing proceedings against the stabilisation manager.

Ordinary course of the market should not be affected by the price stabilization transactions. Purchase orders at a price above the public offering price should not be submitted within the frame of price stabilization transactions. Additionally, the shares purchased within the frame of price stabilisation transactions should not be sold at a price below the public offering price.

9. Ongoing Reporting Obligations (Life as a Public Company)

9.1. Annual and interim financials

Pursuant to the Communiqué No: II-14.1 on the Principles Regarding Financial Reporting in Capital Markets and the Communiqué on Public Disclosure Platform No: VII-128.6, financial statements must be presented on a quarterly basis in accordance with Turkish Financial Reporting Standards (TFRS):

- audited year-end consolidated financial statements and reports prepared in accordance with TFRS must be published on the Public Disclosure Platform within a period of 60 days following the end of the accounting period (if companies are required to submit consolidated financial statements, the period is extended to 70 days following the end of the accounting period);

- interim condensed consolidated six-month financial statements must be published on the Public Disclosure Platform within 40 days following the end of the accounting period (if companies are required to submit consolidated financial statements, the period is extended to 50 days following the end of the accounting period); and

- unaudited first quarter and third quarter financial statements must be published on the Public Disclosure Platform within 30 days following the end of the accounting period (if companies are required to submit consolidated financial statements, the period is extended to 40 days following the end of the accounting period). If the first and third quarter financial statements are independently audited, then such financial statements must be published on the Public Disclosure Platform within 40 days and 50 days, respectively, for companies preparing unconsolidated and consolidated financial statements.

Companies may make public disclosures relating to future forecasts through a decision of the board of directors or the written consent of the persons authorized by the board of directors. Companies may disclose their future forecasts to public at most four times in a calendar year by either making public disclosures on the Public Disclosure Platform or making relevant explanations under activity reports. If there is a material change within the scope of future forecasts, disclosure of the material change is required.

9.2. Ad hoc disclosures

9.2.1. Public Disclosure Platform

The Public Disclosure Platform is an electronic system enabling companies traded on Borsa Istanbul to release any information required to be publicly disclosed such as financial statements or material events via internet and electronic signature technologies.

All listed companies are required to disclose their financial statements, explanatory notes, material events and all other disclosures through the Public Disclosure Platform. The system is operated and managed by the Central Registry Agency.

The system enables all users to access both current and past notifications of a listed company, to obtain current announcements and up-to-date general information about listed companies in an open and timely manner and to make basic comparisons among and analysis of listed companies.

The internet address of the system is www.kap.gov.tr.

9.2.2. Disclosure of Material Events

Disclosure of material events for publicly listed companies is primarily regulated by the CMB's Disclosure Communiqué. Under the Disclosure Communiqué, the CMB makes a distinction between "inside information" and "continuous information". Rather than identifying each material event requiring disclosure in the Disclosure Communiqué, the CMB leaves specific disclosure decisions regarding inside information to the companies' individual discretion on a case-by-case basis; yet disclosure guidelines published on 10 February 2017 clarify the events triggering a disclosure requirement by providing illustrative examples. As per the Disclosure Communiqué, in the event of an existence of any news or rumors relating to the issuer disclosed for the first time through media institutions or by other communication means which is likely to affect the value and/or the price of the issuer's shares, capital markets instruments or investors' investment decisions, issuers are obliged to make disclosures on the accuracy and adequacy of such news or rumors. Interpretations, analysis, assessments and predictions made on the issuer company based on the issuer's public disclosures do not fall within the scope of above principle.

In addition, pursuant to Article 198 of the TCC, persons becoming direct or indirect holders of 5.0%, 10.0%, 20.0%, 25.0%, 33.0%, 50.0%, 67.0% or 100.0% of the issued share

capital of a Turkish company are required to notify such company of such an acquisition and, thereafter, to notify the company of their transactions in the shares of such company when the total number of the shares they hold falls below or exceeds such thresholds within ten days following completion of the relevant transactions. Information notified to the company has to be registered within ten days upon receipt of this notification with the relevant trade registry and publicly announced in the Turkish Trade Registry Gazette.

In principle, publicly listed companies are required to make public disclosures in Turkish. However, the CMB requires certain publicly listed companies to make public disclosure in other languages along with Turkish disclosure. We are planning to make public disclosures in English to more effectively communicate with our foreign investors. Further, a board of directors of a publicly listed company is required to adopt disclosure policies to effectively fulfill public disclosure obligations.

9.2.3. Inside Information

The Disclosure Communiqué defines "inside information" as information or any event not disclosed to the public which may impact investors' investment decisions or is likely to affect the value and price of the shares or relevant capital markets instruments of the issuer. If any inside information comes to the attention of any persons (i) who hold, directly or indirectly, 10.0% or more of the share capital or the voting rights of the issuer company; or (ii) regardless of such threshold, who hold privileged shares which give its holder the right to nominate or elect board members for such issuer (and which the issuer is not itself aware of) such persons must make a public disclosure regarding such inside information. Examples of insider information set out in the disclosure guidelines include the following:

- material administrative or legal proceedings, extraordinary income and profit, mergers and acquisitions, material changes in the financial position of the company;
- material changes related to financial assets, such as cases where the total of acquisition or disposal fees of financial fixed assets reach 5% of the value of the assets indicated in the latest disclosed balance sheet of the company; or where the company acquires or disposes of 10% or more of another company's shares or total voting rights or adds profit to its share capital after the sale of financial assets;
- an acquisition of shares by non-shareholders or shareholders without management control over the company in a manner which would give them management control; and
- a change of independent auditors or senior management.

Publicly listed companies may suspend the disclosure of inside information by taking full responsibility for any non-disclosure in order to protect its legitimate interests, provided that (i) such suspension does not mislead investors; (ii) the company is able to keep any related inside information confidential; and (iii) the board of directors resolves on the necessary precautions in order to protect the interests of the issuer and not to mislead investors, or an officer authorized by the board of directors approves such precautions in writing.

Once the suspension conditions are eliminated, the issuer company must disclose the inside information on Public Disclosure Platform. In such disclosure the suspension decision and the reasons for the suspension must be indicated. Inside information must be publicly disclosed if its confidentiality cannot be preserved.

9.2.4. Continuous Information

The following changes in share ownership or management control in a company must be publicly disclosed under the Disclosure Communiqué by persons conducting the relevant transactions:

- a person or persons acting together becoming direct or indirect holders of 5.0%, 10.0%, 15.0%, 20.0%, 25.0%, 33.0%, 50.0%, 67.0% or 95.0% of the issued share capital or voting rights of a public company in Turkey are required to disclose such acquisitions on the Public Disclosure Platform and, thereafter, to disclose on the Public Disclosure Platform their transactions in the shares or voting rights of such company, when the total number of the shares or voting rights they hold falls below or exceeds such thresholds;
- the founding shareholder is required to disclose on the Public Disclosure Platform any direct or indirect acquisition of 5.0%, 10.0%, 15.0%, 20.0%, 25.0%, 33.0%, 50.0%, 67.0% or 95.0% of the issued share capital or voting rights of the company by investment funds belonging to a founding shareholder, and also to disclose on the Public Disclosure Platform its transactions in the shares or voting rights of such company, when the total number of the shares or voting rights that it holds falls below such thresholds;
- persons with managerial responsibility in a publicly listed company or persons with close relations to any such persons

must publicly disclose their transactions relating to the shares or other capital markets instruments of such company as at the date when the aggregate value of the transactions performed by such persons reach TL 250,000 in one calendar year;

- In addition, companies must make necessary updates within two business days notice in respect of any changes relating to the general information on the company disclosed on Public Disclosure Platform. The Central Registry Agency is responsible for updating the shareholding chart indicating a publicly listed company's real person and legal entity shareholders who hold directly 5.0% or more of the shares or voting rights of such publicly listed company, in case of any changes.

Any changes in rights attached to different classes of shares in publicly listed companies must be disclosed on the Public Disclosure Platform and changes relating to the voting rights must be notified to the Central Registry Agency.

The Authors:

- Omer Collak
Partner
ocollak@paksoy.av.tr
+90 212 366 47 00

- Okkes Sahan
Counsel
osahan@paksoy.av.tr
+90 212 366 47 00

- Pinar Tuzun
Associate
ptuzun@paksoy.av.tr

UKRAINE

By Mykola Stetsenko, Co-Managing Partner, Glib Bondar, Senior Partner, and Andriy Romanchuk, Counsel, Avellum

1. Market Overview

1.1. Biggest ECM and DCM transactions over the past 2-3 years

Historically, the Ukrainian market was not as famous for its national equity capital and debt market as opposed to other financial centres. The situation has not changed much during the last decade and there are still very few national capital markets transactions.

This situation is expected to change once the current securities law reform is enacted (it is expected to happen later in 2020).

1.1.1. Equity Capital Markets Transactions

During the last two years, as the result of the major reform of the banking sector aimed to make the financial system crisis-resistant, there was a large number of private offerings by banks seeking additional capitalisation. During 2018-2019, the volume of issued shares amounted to approximately EUR 2.8 billion. Some large businesses in other sectors also opted for private placements instead of public offerings to improve its capital structure for example, by way of debt-to-equity conversions.

1.1.2. Debt Capital Markets Transactions

The major part of the transactions with debt securities in Ukraine includes transactions with (i) Ukrainian government bonds (in Ukrainian: obligatsii vnutrishnih derzhavnyh pozyk Ukrainy) (ii) municipal bonds (in Ukrainian: obligatsii mistsevyh pozyk), and (iii) corporate bonds.

The most popular debt securities traded in Ukraine are Ukrainian governmental bonds. In 2019, the Ministry of Finance of Ukraine issued Ukrainian government bonds for a total amount of approximately UAH 334 billion (approximately EUR 11.2 billion). To facilitate the purchase of the Ukrainian governmental bonds by foreign investors, Clearstream linked Ukraine to its network in May 2019.

Municipal bonds are also relatively popular instruments. A recent municipal bonds issue was the UAH 300 million (approximately EUR 10 million) 3-year 9.79% municipal bond issued by the Lviv City Council in 2019.

Examples of recent corporate bonds issues include: (i) the UAH 250 million (approximately EUR 8.5 million) 5-year 19% corporate bonds issue by Stock Company "Ukrposhta" (Ukrainian national postal operator) in 2018, and (ii) the UAH 200 million (approximately EUR 6.7 million) issue by Joint Stock Company "TASCOMBANK" (one of the largest Ukrainian banks) in 2019.

Notably, the Tascombank issue was first-ever corporate bonds issue in Ukraine complying with EU standards. The issue provided for two series of bonds equal to UAH 100 million (approximately EUR 3.4 million) each, one to be redeemed in 5 years, and another in 10 years. Each series provides for the annually resettable coupon. This transaction was truly innovative for the Ukrainian market.

Despite there is some movement on the Ukrainian capital market, the Ukrainian blue-chip companies and quasi-sovereigns prefer to raise funds on the international capital markets due to, among others, absence of the sufficient demand for debt securities in Ukraine.

2. Overview of the local stock exchange and listing segments (markets)

The Ukrainian laws provide a number of the requirements applicable to the Ukrainian stock exchanges and other professional participants of the capital market. Trading on the stock


Mykola Stetsenko


Glib Bondar


Andriy Romanchuk

AVELLUM

exchanges has to comply with the rules of the respective stock exchange that has to be registered with the National Securities and Stock Market Commission of Ukraine (the NSSMC). The NSSMC supervises the Ukrainian stock exchanges and regulates their activities.

As of today, there are only six stock exchanges in Ukraine. Based on the volume of the exchange contracts, the biggest stock exchanges are the Perspectiva Stock Exchange and the PFTS Stock Exchange.

In terms of trading on the stock market, the Ukrainian government bonds accounted for 94.6% of the total volume of the exchange contracts concluded within the Ukrainian stock exchanges in 2019. The volume of traded shares in 2019 was equal to 0.11%. Corporate bonds accounted for 2.9% of the total volume of the exchange contracts on the stock exchanges in 2019.

The total volume of the securities' exchange contracts made with the securities exchanges amounted to UAH 305 billion (approximately EUR 10 billion) in 2019. Notably, the exchange contracts on the secondary market amounted to 98.9% of the total volume of the exchange contracts in 2019.

There is no concept of regulated and non-regulated markets in Ukraine. Ukrainian stock exchanges divide the securities into two groups: (i) listed securities and (ii) non-listed securities.

Both listed and non-listed securities have to be included in the stock list to be traded on the stock exchange. The listed securities should be also included in the stock register of the stock exchange.

Listed securities are considered a more attractive instrument than non-listed securities. At the same time, Ukrainian law establishes strict requirements for the listed securities and their issuers, therefore as of today the biggest part of the listed securities constitute the Ukrainian government bonds.

The non-listed securities can be also freely traded on the stock exchange, however, the requirements to such securities and their issuers are less strict than to the listed securities.

2.1. Admission of the foreign issuers' securities

Foreign issuers' securities can be admitted to trading in Ukraine only after obtaining the NSSMC's decision on admission of such securities to trade in Ukraine.

For the foreign securities to be admitted to trading in Ukraine, the following requirements have to be satisfied:

(i) the issuer has to be registered outside of Ukraine under laws and regulations of the state of registration;

(ii) the securities issue and/or the prospectus has to be registered in the state of registration of the issuer or with the stock exchange of the state, where such securities are traded;

(iii) the securities should be assigned with the ISIN and the CFI codes;

(iv) the securities have to be accepted to trade on at least one stock exchange approved by the NSSMC (which are Nasdaq, Inc, NYSE, the EU stock exchanges, Hong Kong Exchanges, and Clearing);

(v) there should be submitted a written confirmation from the Central Securities Depositary on the possibility to account for the foreign securities on the correspondent account of the Central Securities Depositary opened with the foreign central securities depository or with the international depositary clearing company.

The NSSMC decides on the admission of the foreign securities to trade in Ukraine within 30 calendar days from the day of submission of all required documents.

Once the securities are admitted to trading in Ukraine, the stock exchanges admit them to trading on the stock exchange

as the non-listed securities.

3. Key Listing Requirements

Ukrainian law provides that the listed securities are the securities that are listed on the stock exchange and were included in the stock register as corresponding to the listing requirements.

3.1. ECM

The shares may be listed on the stock exchange provided that the issuer complies with, at least, the following requirements:

(i) it has existed for at least three years;

(ii) its minimum equity capital amounts to UAH 300 million (approximately EUR 10 million);

(iii) its minimum annual net income from the sale of goods, works and services for the last fiscal year amounts to UAH 300 million (approximately EUR 10 million) (excluding banks);

(iv) its minimum market capitalisation amounts to UAH 100 million (approximately EUR 3 million);

(v) the portion of its free float shares constitutes 10% of the share capital or valued at UAH 75 million (approximately EUR 2.5 million);

(vi) the number of its shareholders amounts to 150;

(vii) it has an officer who holds the position of a corporate secretary; and

(viii) it conducts an annual audit under international auditing standards involving an independent external auditor for at least two years.

The stock exchange also may establish a separate segment for non-listing shares for new companies, which may be interesting for the investors aiming to develop medium-sized businesses in Ukraine. Admission to such segment is subject to the compliance by the issuer with the following requirements:

(i) the issuer has existed for at least one year (or at least six months provided that all other requirements during such period have been met);

(ii) minimum market capitalization is UAH 20 million (EUR 670 thousand);

(iii) minimum of 50 shareholders compose the issuer;

(iv) the issuer conducts an annual audit under the international auditing standards;

(v) the issuer is encouraged to follow corporate governance principles and international financial reporting standards.

3.2. DCM

For the debt securities to be included in the stock register, the following conditions have to be satisfied:

(i) the issuer should exist for at least two years (subject to certain exceptions);

(ii) the net assets value of the issuer and/or the security provider should be at least UAH 300 million (approximately EUR 10 million);

(iii) the net profit from the sale of goods, works or services of the issuer and/or the security provider should be not less than UAH 300 million for the last year (except for the banks);

(iv) the issuer and/or the security provider should not have losses for the previous financial year;

(v) no default has occurred;

(vi) the nominal value of the securities issue should be equal to at least UAH 100 million (approximately EUR 3.4 million).

The above requirements do not apply to the issue of (i) Ukrainian government bonds, (ii) municipal bonds, or (iii) bonds of international financial organisations.

Municipal bonds can be included in the stock register if the nominal value of the issue exceeds UAH 50 million (EUR 1.7 million).

Ukrainian government bonds and bonds of international financial organisations are included in the stock register without completion of the listing procedures.

The stock exchange can establish additional requirements for the inclusion of the securities in the stock register (such as compliance with the corporate governance principles, additional requirements to the financial statement of the issuer etc.). The stock exchange further monitors compliance with the listing requirements and in case of violations can decide on the delisting of the securities.

4. Prospectus Disclosure

4.1. Regulatory regimes (Prospectus Regulation or

similar)

A public offering of the securities requires the preparation and submission of the prospectus. The Ukrainian prospectus regulations were drafted based on EU Regulation 2017/1129 of the European Parliament and of the Council of 14 June 2017.

The prospectus should provide the investors with all the necessary information to allow an investor to make an investment decision on the purchase of the respective securities.

Ukrainian laws provide that prospectus should contain three parts: (i) a summary, (ii) a registration document, and (iii) a document on the securities. The prospectus may consist of one or more separate documents.

The information that has to be disclosed in the prospectus depends on the type of the offered securities.

For example, the prospectus for the corporate bonds issue should contain information about:

(i) Any risks associated with the public offering, the issuer's business, and its securities;

(ii) the financial statements of the issuer for the last two years and the last interim financial statements that precede the date of submission of the prospectus to the NSSMC.

(iii) planned or forecasted profit of the issuer;

(iv) officials of the issuer and the persons performing managing functions;

(v) majority shareholders of the issuer;

(vi) any court proceedings involving the issuer that have or may have a significant adverse effect on the issuer and its financial performance;

(vii) any significant changes in the financial position of the issuer and position in the market in which the issuer operates;

(viii) any material transactions of the issuer conducted outside of its ordinary course of business.

In case of any significant changes related to the information contained in the prospectus (for example, (i) change of the issuer's officials, or (ii) bankruptcy of the issuer), the prospectus should be amended accordingly.

Substantial changes to the prospectus have to be made in the form of an annex to the prospectus and submitted to the NSSMC for approval.

4.2. Local market practice

In the case of a public offering of securities, the information contained in the prospectus and subsequent changes to the prospectus have to be disclosed. Such disclosure has to be made by way of:

(i) publication of the prospectus and changes to the prospectus in the official printed edition of the NSSMC;

(ii) inclusion of the prospectus and changes to the prospectus in the public information database of the NSSMC;

(iii) publication of the prospectus and changes to the prospectus on the webpage of the issuer; and

(iv) publication of the prospectus and changes to the prospectus webpage of the relevant stock exchange.

The issuer should disclose the information contained in the prospectus and changes to the prospectus at least 10 days before entering into the agreements with the first owners of the securities.

4.3. Language of the prospectus for local and international offerings

The prospectus has to be prepared in Ukrainian. If the prospectus contains references to other documents, they should be also prepared in Ukrainian.

The prospectus of the foreign issuers should be prepared in Ukrainian and, upon the discretion of the issuer, can be also prepared in English or in other languages of the European Union state, where the securities are offered for sale or a public offering or admitted to trading on the stock exchange.

5. Prospectus Approval Process

5.1. Competent Regulator

The prospectus has to be submitted to the NSSMC for approval.

5.2. Timeline, number of draft submissions, review and approval process

Once the prospectus is complete, it has to be submitted for approval of the NSSMC in paper form and electronic form together with the supporting documents. The supporting documents include, among others, the issuer's approval for

entering into the transaction, constituent documents of the issuer, the financial statements, and contact details of the people responsible for preparation of the prospectus.

The NSSMC reviews and approves the prospectus or refuses to approve it within 20 business days from the day of the submission of all necessary documents. In certain cases, such terms can be shortened to 10 business days (for example, if the issuer's securities have been admitted to trading on the stock exchange).

If amendments are made to the prospectus, the NSSMC reviews and approves them within seven business days from the receipt of all necessary documents.

The NSSMC may refuse to approve the prospectus if:

(i) the submitted documents do not comply with requirements of the Ukrainian law;

(ii) there are inconsistencies between the provisions of the submitted documents;

(iii) there is false or incomplete information in the submitted documents;

(iv) the issue of the securities is conducted in bad faith.

The prospectus, which consists of a single document, is valid for the public offering within 12 months from the date of its approval by the NSSMC. If the prospectus consists of a few documents, the period of 12 months must be calculated from the date of the approval of the last document by the NSSMC.

6. Listing Process

The primary placement of the securities can be made either by way of (i) a public offering, or (ii) a private offering.

6.1. Public offering

Ukrainian laws provide that a public offering of securities is an offer addressed to an indefinite number of persons on the purchase of securities at the price and conditions determined by such offer. To make a public offering, it is necessary to apply for the admission of securities to trade on the stock exchange and inclusion of the securities in the stock register administered by the stock exchange.

The public offering of the debt securities can take from three to six months. The stages of the public offering are described below.

6.1.1. Preparatory steps

The process of the issue of the securities starts from the adoption of a resolution of the issuer's competent body approving the contemplated issue of the securities (the "Approval"). Once the Approval is available, the issuer should proceed with the engagement of the underwriter (if it plans to engage one). The issuer should be mindful that the audited financial statements for the last two financial years would be necessary for the issue.

6.1.2. Preparation of the prospectus and other documents for the approval by the NSSMC

A separate work-stream required for the public offering is a preparation of the prospectus. The final version of the prospectus has to be signed by the issuer, the auditor, the stock exchange and the underwriter (if engaged for the transaction). Despite this step is not expressly required by the Ukrainian law, it is usually done so.

The issuer has to submit the prospectus and other documents to the NSSMC within 60 days from the adoption of the Approval. The NSSMC has 20 business days (10 business days in certain cases) for review of the submitted documents. If the prospectus and other submitted documents are in good order, the NSSMC issues a temporary certificate on registration of the issue and approves the prospectus.

After the prospectus is approved, the issuer has to publish the prospectus and the notification on the publication of the prospectus for the review of the potential investors.

6.1.3. Further steps

Upon publication of the prospectus, the issuer has to agree on the servicing of the securities' issue with the Central Securities Depositary. Furthermore, the ISIN code has to be assigned to the notes.

After completion of the above steps, it is necessary to prepare and depose the temporary global notes certificated with the Central Securities Depositary.

Afterward, the issuer has to submit the documents on the public offering to the NSSMC and to make a publication on a public offering. Upon completion of these formalities, the issuer places the securities by way of the public offering.

6.1.4. Closing formalities

The issuer has to approve the results of the issue within 60 days from the date of termination of the term for the placement of securities. Within 15 days from the approval of the results of the issue, the issuer has to submit to the NSSMC the report on the results of the securities' issue. The NSSMC has 25 business days to (i) register the submitted report and (ii) issue the certificate on registration of the securities.

The issuer has to publish the report on the results of the securities' issue within three business days from the registration of the respective report by the NSSMC. The global notes certificate has to be obtained and deposited with the Central Securities Depositary within seven business days from the day of the receiving of the certificate on registration of the corporate bonds.

6.2. Private offering

A private offering is placement of securities that is carried out among a predetermined circle of persons, the number of non-qualified investors among which may not exceed 150 persons. Preparation of the prospectus is not required for private placement.

The private offering of the debt securities can take from two to five months. The term for the placement of bonds by way of private offering is shorter than in the case of the public offering due to the absence of the requirement to prepare a prospectus. The stages of the private placement of securities are similar to the stages of the public placement (except for the requirement of the preparation and approval of the prospectus).

6.3. Ukrainian government bonds

The Ministry of Finance of Ukraine acts as the issuer and conducts the placement of the Ukrainian government bonds. The National Bank of Ukraine acts as the agent for servicing of the issue and redemption of the Ukrainian government bonds. The Ministry of Finance of Ukraine determines the amount and conditions for each issue of Ukrainian government bonds per the framework terms of issue and the procedure for placement approved by the Cabinet of Ministers of Ukraine.

Ukrainian government bonds are placed at auctions conducted by the National Bank of Ukraine at the initiative of the Ministry of Finance of Ukraine. Only primary dealers (Ukrainian banks approved by the Ministry of Finance of Ukraine) can participate in the auction and purchase Ukrainian government bonds on the primary market.

Primary dealers can participate in the placement of Ukrainian government bonds on their own and at their own expense or to act as brokers for their clients. The placement of Ukrainian government bonds is carried out by electronic trading systems and takes the form of (i) auction and (ii) the fixed-income sales.

7. Corporate Governance

Listed companies are subject to a more prudent corporate governance requirements. In particular, such companies must establish a supervisory board, consisting of at least 1/3 of the independent directors. Moreover, certain mandatory committees (audit committee, remuneration committee etc.) must be established. While the supervisory board itself is subject to a number of regular reporting requirements, including for the purpose of evaluation of the supervisory board's performance.

Additionally, earlier this year the NSSMC adopted the Corporate Governance Code of Ukraine (the "Code"), which reflects the latest developments in the field of environmental, social and corporate governance by securities issuers.

This Code was developed under the G20/OECD Principles of Corporate Governance, which are the international benchmark for good corporate governance. Besides, the Code reflects the recommendations of the Growth and Emerging Markets Committee IOSCO Final Report on Corporate Governance. The disclosure recommendations are consistent with those set out in the United Nations Conference on Trade and Development (UNCTAD) Guidance on Good Practices in Corporate Governance Disclosure. The provisions of the IFC's corporate governance standards and various national codes have also been taken into account and inspired the drafters of this Code.

The provisions of the Code are not mandatory. Thus, the issuers are not obligated to comply with it. As in many other countries, in Ukraine, it is an instrument of soft law. However, compliance with the Code is highly recommended to companies entering capital markets.

In addition to the requirements established by law, the Code provides best practices aimed to provide potential investors with the necessary comfort. The document clearly defines the role of the shareholders, the supervisory board and the executive body in managing the company. Finally, it highlights the role of the company's other stakeholders and its commitment to achieving sustainable development.

8. Documentation and Other Process Matters

N/A

9. Ongoing Reporting Obligations (Life as a Public Company)

Listed companies should comply with various ongoing reporting obligations established by applicable regulations, in particular, disclose regular and special information about the issuer, insider information, information about the owners of voting shares above, whose shareholding exceeds respective thresholds. The scope of disclosure requirements is extensive and includes most areas of company's activities (among others, information on granting consent to significant transactions; changes in the composition of the issuer's officers; the decision of the issuer on reduction of the share capital; initiation of bankruptcy proceedings against the issuer; changes in the rights of issuer's shareholders etc.)

From a technical standpoint, such disclosure is made either by placing such information in the publicly accessible information database of the NSSMC (http://stockmarket.gov.ua) or through a person dealing with the disclosure if regulated information on behalf of stock market participants.

9.1. Annual and interim financials

The regular information includes annual and interim one.

Annual financials include, in particular, the annual financial statements certified by the auditor supplemented with the auditor's report made by an independent auditor.

The reporting period for preparing annual information is a calendar year. Disclosure of annual information must be made not later than 30 April of the year following the reporting one.

Interim financials include interim financial statements (either audited or not).

The obligation to disclose interim information applies to joint stock companies whose shares have been publicly offered and/or admitted to trading on a stock exchange by inclusion in the exchange register, banks and issuers, whose securities other than shares have been publicly offered and/or admitted to trading on a stock exchange by inclusion in the exchange register.

Interim information is to be prepared at the end of each quarter and disclosed no later than the 30th of the month following the reporting quarter.

9.2. Ad hoc disclosures

Ad hoc disclosures concern the special information, i.e., information that has changed in comparison to the one disclosed within the regular disclosure.

It includes, among others, information on granting consent to significant transactions; changes in the composition of the issuer's officers; the decision of the issuer on reduction of the share capital; initiation of bankruptcy proceedings against the issuer; changes in the rights of issuer's shareholders, etc.

Such information should be disclosed in the form of notification either (i) on the website of the issuer whose securities are admitted to trading on the stock exchange, (ii) in the publicly accessible information database of the NSSMC (http://stockmarket.gov.ua) or (iii) through a person dealing with the disclosure if regulated information on behalf of stock market participants.

The Authors:

■ Mykola Stetsenko
Co-Managing Partner
mstetsenko@avellum.com
+380445913355

■ Glib Bondar
Senior Partner
gbondar@avellum.com
+380445913355

■ Andriy Romanchuk
Counsel
aromanchuk@avellum.com
+380445913355

UNITED KINGDOM

By Pawel J. Szaja, Partner and Elena Dzhurova, Associate, Shearman & Sterling

1. Market Overview

London has long been considered one of the preeminent locations for a company considering listing of equity or debt securities. The London Stock Exchange's (LSE) Main Market is the world's most international market for the admission and trading of equity, debt and other securities, and despite the difficult market conditions, challenges of Brexit and current conditions relating to the spread of COVID-19, London has retained its leading position in 2019 and 2020 in terms of initial public offering (IPO) deal count, debt listings and deal volume as compared to all other European listing venues. The city's deep and knowledgeable pool of institutional investors and stable and developed legal environment have laid the foundation for a thriving venue for primary and secondary offerings.

London's equity and debt markets are relatively sector-agnostic and attract companies from a broad range of industries and geographies. In April 2019, Saudi Arabian Oil Company issued its inaugural USD 12 billion of bonds on the Main Market of the LSE, which is thought to be the most oversubscribed debt offering in history, while Abu Dhabi's sovereign bond issuance raised USD 10 billion a few months later. Also in 2019, Airtel Africa plc, Trainline plc, Network International plc, Huatai Securities Co, Ltd, Finablr plc and Helios Towers plc each debuted on the LSE, with IPO pegging their initial valuations in excess of GBP1 billion.

However, despite a string of large IPOs, 2019 was generally a slow year for the equity markets in London, with PwC's IPO Watch Europe 2019, reporting a 60% decrease in the number of IPOs reported on the LSE from 68 in 2018 to 27 in 2019. Similarly, the amount raised through those IPOs fell by 39% over the same period, from GBP9.6 billion in 2018 to £5.9 billion. This was largely precipitated by a significant reduction in the number of companies joining the LSE's AIM, with only 10 admissions in 2019 compared to 34 in 2018, reflecting political instability surrounding Brexit, increased risk aversion on the part of investors and greater availability of growth capital in private markets. In contrast to slow IPO activity, the secondary equity markets were relatively active with placings increasing 19% year-on-year.

In 2019, 897 bonds were issued on the London Stock exchange with $377.4 billion in debt capital raised. These figures represent a slight increase in the number of bonds issued compared to 2018, but a corresponding decrease in the volume of debt capital raised year-over-year. That being said, 2019 saw a greater share of international debt issuers on the London Stock Exchange, with 53% of debt capital raised being for international companies, compared to only 48% in 2018. Moreover, listings on the LSE's newly formed International Securities Market (ISM) have risen substantially since the ISM's inception in 2017. In 2019, 131 bonds were listed on the ISM, with debt capital raised on the exchange increasing by 127% year-over-year to £36.6 billion.

2. Overview of the local stock exchange and listing segments (markets)

The LSE is the primary stock exchange in the United Kingdom, although there are also a small number of companies listed on other exchanges, including NEX Exchange and Euronext London (which is primarily used in cases where a company is pursuing a dual IPO on one of Euronext's other European exchanges).

The LSE operates four main markets: the Main Market, the Alternative Investment Market (AIM), the Professional Securities Market (PSM) and the ISM. Equity securities are primarily listed on the Main Market or the AIM, while debt securities are primarily listed on the Main Market, PSM or the ISM.

The Main Market is the LSE's flagship market and is a "regulated market" under the EU Directive on Markets in Financial Instruments (No. 2014/65/EC) (MiFID II). Issuers seeking

admission to trade securities on the Main Market must ensure that the prospectus is approved by the U.K. Listing Authority (UKLA) and that the securities are admitted to the Financial Conduct Authority's (FCA) Official List.

The AIM operates as a multilateral trading facility under MiFID II, rather than a regulated market, and currently qualifies as an EU SME Growth Market (which confers on companies traded on such markets certain relaxations under the EU's prospectus and market abuse regimes). The AIM has a less prescriptive regulatory and governance regime. The AIM is the preferred London market for smaller and/or growth companies looking to list equity securities that will have a small free float as there is no formal minimum free float requirement on AIM, whereas companies seeking admission to the Main Market will ordinarily need at least a 25% free float. Issuers seeking admission to the AIM are not required to seek admission to the FCA's Official List.

The PSM and the ISM are exchange-regulated markets which are outside of the scope of the Transparency Directive 2004/109/EC (the "Transparency Directive") and the Prospectus Regulation (EU) 2017/1129 (the "Prospectus Regulation"), however the issuers with securities admitted to the trading on the PSM or ISM are subject to the Market Abuse Regulation ((EU) 596/2014) (MAR).

Like the Main Market, application for admission to trading on the PSM is a two-stage parallel process in which application must also be made to the UKLA for approval of the listing particulars and admission of the securities to the FCA's Official List.

The ISM was established in 2017 to provide a simplified admission process for issuers seeking to either restrict their offering to qualified investors or offer a high denomination of debt securities, which therefor affords them the ability to rely on certain exemptions in the prospectus regime. Admission to the ISM does not require that a prospectus or listing particulars are approved by the UKLA, but rather, the offering document need only comply the ISM rules and be approved by the LSE. For these reasons, issuers listing on the ISM are required to comply with a far less stringent regulatory scheme.

2.1. Listing Segments

As noted above, issuers seeking admission to trading on the Main Market or PSM generally undertake a two-stage parallel process in which application is contemporaneously made to list the securities on the FCA's Official List. However, in certain instances, issuer's seeking admission to the Main Market may forego the Official List requirements by seeking admission to the "high growth" segment (HGS) or the "specialist fund" segment of the Main Market. The HGS is a transitional segment designed to attract high growth companies, in particular internet and technology businesses, seeking access to the Main Market due to their size and stage of development, but who are not able to meet all the requirements for being on the FCA's Official List at the time of their IPO. A HGS company is typically larger than an AIM company and is contemplating to ultimately join the premium segment of the Main Market. In order to be admitted to the HGS, the company must be incorporated in the U.K. or the European Economic Area (EEA), must have a minimum free float of 10% at IPO and must demonstrate historic revenue of compound annual growth rate (CAGR) over the past three years of 20% or more, among other requirements.

An issuer seeking admission to the Official List must decide early in the process whether to seek admission to the "premium" listing segment of the Official List or to the "standard" listing segment. A premium listing is only available to equity shares issued by trading companies or closed or open-ended investment entities, while standard listings cover the issuance of equity securities, Global Depositary Receipts (GDRs), debt securities and securitised derivatives that are required to comply with the minimum requirements in the European Union (EU). Both segments are available to U.K. and non-U.K. incorporated companies; however, a 'premium' listing will require the company adhere to the U.K.'s super-equivalent rules which are more stringent than the EU minimum requirements, both in terms of eligibility criteria and continuing obligations. On the other hand, a standard listing allows issuers to access the Main Market by meeting EU harmonised standards only rather than the U.K. 'super-equivalent' requirements.

As the premium listing requirements mandate that a company meet the U.K.'s highest standards of regulation and corporate

governance, companies that achieve a premium listing may take advantage of a lower cost of capital through greater transparency and investor confidence. In addition, a premium listing is one of the necessary criteria for inclusion in the FTSE U.K. indices, which may be an important consideration for a company in deciding whether to seek a premium listing.

3. Key Listing Requirements

The listing requirements for the admission of equity and debt securities vary depending on the market. For instance, the HGS and AIM are tailored specifically to permit smaller and growing issuers to access public markets, with lower thresholds for admission and less stringent continuous disclosure requirements. The following table outlines some of the key listing requirements for listing equity and securities on the various markets.

3.1. Equity Capital Markets

The following list outlines some, but not all, of the key listing requirements for premium listings and standard listings and for admission to the HGS and AIM:

- Domicile: Issuers applying for admission to the HGS must be domiciled in the U.K., whereas issuers applying for a premium listing, standard listing or for admission to the AIM may be domiciled in any country. It is worth noting however that for companies planning to undertake a premium listing in order to gain the benefit of inclusion in the FTSE indices, the FTSE index rules may require the issuer be incorporated in the U.K. or a 'developed country' as defined under the FTSE index rules.

- Minimum Capitalization and Free Float: For premium listings and standard listings, issuers must have a minimum market capitalization of £700,000 and provide a minimum float of 25% of the securities. The HGS imposes no market capitalisation requirement, but requires a minimum free float of 10% with a value of at least £30 million (the majority of which must be raised at admission). The minimum capitalization and free float for an AIM issuer is subject only to the Nomad's assessment of appropriateness.

- Historical Financial Information: The requirements for a premium listing, standard listing and admission to the HGS each mandate that three years of audited unqualified accounts are provided. However, applications for a premium listing state that the age of the latest audited financials must be no more than six months before the date of the prospectus or nine months before admission, while the requirements for standard listings and admission to the HGS require that the age of the latest audited financial information is no more than 18 months before the approval of the prospectus where audited interim financials are included or 15 months where unaudited interim financials are included. Issuers applying to the AIM must only provide three years of audited financial information (if available), with the age of the latest audited financial information being no more than 18 months before the approval of the admission document if audited interim financial information is included or 15 months if unaudited interim financial information is included.

- Trading Record: An issuer applying for a premium listing must have published or filed historical financial information that covers at least three years and represents at least 75% of the issuer's business for that three-year period. Issuers seeking admission to the HGS must demonstrate a 20% CAGR in revenue over a three-year period. There is no trading record or revenue criteria applicable for standard listings or for admission to the AIM.

- Sufficient Working Capital (Main Market (Premium Listing and Standard Listing)): An issuer applying for a standard listing must include a statement that the issuer and its subsidiary undertakings have sufficient working capital available for the group's requirements for at least the next 12 months from the date the prospectus is published and this statement may be qualified. An issuer applying for a premium listing must also include a similar statement which can be qualified.

In light of COVID-19 crisis and the imposed public health measures, on 8 April 2020 the FCA issued a Technical Supplement related to the working capital statements in prospectuses and circulars during the COVID-19. The FCA recognizes the significant uncertainty and disruptions that the COVID-19 is causing. The FCA advised issuers preparing working capital statements and model a "reasonable worst-case scenario" to highlight the underlying assumptions related to the disruptions caused by the COVID-19 to their business and such assumptions can be disclosed in an unqualified working capital statement.

- Sponsor: An issuer applying for a premium listing must appoint a sponsor approved by the FCA to act as an adviser in its application for a premium listing and on certain subsequent events.

For issuers applying to the HGS, a "Key Adviser" is required to provide confirmation of the company's eligibility and in the case of specific transactions, but there is no need to maintain a Key Adviser on a continuous basis. Issuer's seeking admission to the AIM must appoint a nominated adviser ("Nomad") for admission and throughout the issuer's life on AIM.

■ Free Transferability: The requirements for a premium listing, standard listing and admission to the HGS each stipulate that securities must be freely transferable, fully paid and free from any liens or restrictions on the right of transfer. The AIM rules stipulate that Securities must be freely transferable except where: (i) in any jurisdiction, statute or regulation places restrictions upon transferability or (ii) the company is seeking to limit the number of shareholders domiciled in a particular country to ensure that it does not become subject to statute or regulation.

■ Electronic Settlements: Each market requires that securities are eligible for electronic settlement.

■ Directors' Independence: An issuer applying for admission to each of the segments of the main market must ensure that the election of independent directors is approved by majority of shareholders, and the majority of non-controlling shareholders. There is no such requirement for the election of independent directors for AIM listed companies.

■ Additional requirements applicable to premium listing issuers: Issuers that have a premium listing must carry on an independent business as its main activity at all times, and must demonstrate that it exercises operational control over the business it carries on as its main activity. Moreover, whereas each of the other segments or markets allow for the domestic law of the issuer to govern pre-emption rights, premium listed issuers must comply with U.K. law requirements related to pre-emption rights. In addition, the total of all issued warrants or options to subscribe for equity shares in a premium listing (excluding rights under employees; share schemes) must not exceed 20% of the issued equity share capital. Finally, applicants for a premium listing with a controlling shareholder must enter into a relationship agreement with that shareholder, whereas applicants for a standard listing, or to the HGS or AIM are not required to enter into any such agreements.

3.2. Debt Capital Markets

For the admission of debt securities to the Main Market, the UKLA must approve securities and prospectus to the Official List, while the LSE must admit the debt securities to trading on the Main Market. For the admission of debt securities to the PSM, the UKLA must approve securities and listing particulars to the Official List, while the LSE must admit the debt securities to trading on the PSM. The admission of debt securities to the ISM is significantly different, as the LSE only approves the admission particulars, while the securities are not listed on the Official List.

The following list outlines some, but not all, of the key listing requirements for admission to the Main Market, PSM and ISM:

■ Historical Financial Information: For admission to the Main Market, issuers must have audited IFRS accounts, published or filed for a two-year period. The date of the latest audited financials must be no more than six months before the planned issuance. For admission to the PSM, issuers must have audited accounts, published or filed for a two-year period (or shorter where the issuer has not been in operation). Where the issuer does not have IFRS accounts, a narrative description of the differences between IFRS and the local accounting principles adopted by the issuer should be provided (although this requirement may be waived). The date of the latest audited financials must be no more than six months before the planned issuance. For admission to the ISM, an issuer must have published audited financial statements that cover two years at a minimum. The date of the latest audited financials may not be more than 18 months before the date of the admission particulars. The LSE may, in certain circumstances, accept financial statements for a shorter period or waive the requirement for financial statements.

■ Electronic Settlements: Each market requires that securities are eligible for electronic settlement.

■ Disclosure Regime: Where a prospectus is submitted for admission to the Main Market, that prospectus is governed by the Prospectus Regulation (which is fully implemented in the U.K. law) and the FCA's Prospectus Rules, which differ depending upon the minimum denomination of the debt securities. Where listing particulars are submitted for application to the PSM, the disclosure rules are based on the wholesale regime of the Prospectus Regulation. The admission particulars submitted in connection with an application to the ISM should contain all information prescribed by the ISM Rulebook.

4. Prospectus Disclosure

4.1. Regulatory regimes and local market practice

For the purposes of this section, we will focus on the disclosure requirements applicable to a company seeking listing of its securities on the Official List of the FCA and admission to trading on Main Market. The AIM Rules for Companies are applicable to companies seeking admission to AIM (assuming that they do not conduct an 'offer to the public') and in which case the key disclosure document is an 'admission document'.

When the company is seeking admission to the Main Market the key disclosure document is a prospectus. The prospectus regime in the U.K. is currently governed by the Prospectus

Regulation (which is fully implemented in the U.K. law) and the delegated legislation which includes the Commission Delegated Regulation (EU) 2019/980 (PR Delegated Regulation) relevant for the format, content, scrutiny and approval of the prospectus and the Commission Delegated Regulation (EU) 2019/979 (Prospectus RTS Regulation) relevant for the technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal. In addition, the PR Delegated Regulation imposes specific minimum information requirements for a prospectus as set out in the Annexes of the PR Delegated Regulation. The relevant Annexes that will apply in each particular case are prescribed by Articles 2 to 23 of the PR Delegated Regulation and will depend on, among others, the type of securities being issued, the type of issue (in certain cases), the nature of the issuer, whether the issuer has a complex financial history or has made a significant financial commitment. The U.K. government has made a large number of changes to U.K. law (as it currently implements and includes EU law), including in relation to the prospectus, listing, transparency and market abuse regimes to ensure that, in the absence of some new legal and regulatory relationship with the EU taking their place, those regimes will continue to operate effectively and broadly in line with the way in which they operated before the U.K. left the EU. In addition, following the full implementation of the Prospectus Regulation, the FCA has replaced much of the content of the Prospectus Rules in its Handbook (which also contains the FCA's Listing Rules, Transparency Rules and disclosure requirements with respect to MAR (together, the "Listing, Transparency and Disclosure Rules" or LTDRs)) with appropriate extracts from the relevant, directly applicable EU regulations. These FCA rules are now referred to as the Prospectus Regulation Rules (PRRs).

The Prospectus Regulation requires a prospectus to be written in an easily analysable, concise and comprehensible form and to contain the necessary information which is material to an investor for making an informed assessment of the financial position, etc., of the issuer, the rights attaching to the securities being offered and the reasons for the issue and impact on the issuer. It may be published in a single document (which is the typical U.K. practice) or in three separate documents comprising a registration document (containing information relating to the issuer), a securities note (containing information concerning the securities being offered) and a prospectus summary.

Key information that the Prospectus Regulation requires to be included in a prospectus includes:

- risk factors informing potential investors of the material risks to the issuer, its industry and the securities being offered. These should be specific to the issuer or shares being offered, be grouped into a limited number of categories with the most material factor listed first and, where possible, there should be a quantitative assessment of each risk;
- the last three years' audited financial information prepared in accordance with IFRS or, in the case of a non-EEA issuer, in accordance with national accounting standards where these standards are considered equivalent to IFRS, such as US GAAP. This minimum three-year period can be relaxed by the FCA for certain mineral or scientific research-based companies seeking a premium listing and which have been operating for a shorter period of time, subject to certain conditions and does not apply to companies seeking a standard listing;
- details of any significant changes in the financial or trading position of the company since the date of the latest published audited or interim financial information included in the prospectus;
- a working capital statement covering the 12-month period from the date of the prospectus, although in practice the company and its sponsor will normally ask the reporting accountants to cover a period of 18 to 24 months in its working capital exercise as a precaution;
- an operating and financial review (OFR) describing the company's financial condition, changes in financial condition and results of operations for the periods covered by the historical financial information included in the prospectus. This is similar to, but not quite as broad as, the management discussion and analysis required in a US IPO;
- summaries of material contracts entered into outside of the ordinary course of business by the company's group in the past two years (or longer if material obligations or entitlements remain outstanding);
- details of any significant shareholders of the issuer, whose interest is notifiable under the issuer's national laws;
- details of any related party transactions that the company has entered into during the period covered by the historical financial information and up to the date of the prospectus;
- details of any legal proceedings that the company has been party to in the last year;
- prescribed information on the company's directors and senior management, including remuneration, benefits and interests in the shares of the company (including share options) and also with respect to the company's corporate governance; and

responsibility statements from the company, the directors and any proposed directors, confirming that they accept responsibility for the information contained in the prospectus and that, to the best of their knowledge (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and contains no omission likely to affect its import.

The prospective issuers can omit information from a prospectus in limited circumstances where the FCA may authorise that disclosure of such information would be contrary to the public interest, seriously detrimental to the issuer (provided that the omission would not be likely to be misleading the public) or the information is of minor importance in the specific situation and would not influence the assessment of the financial position and prospects of the issuer.

A supplementary prospectus will need to be published if any significant new factor, material mistake or inaccuracy relating to the information included in the original prospectus arises during the period after publication of the original prospectus but before the later of the securities being admitted to trading and the closing of the offer to the public. Significantly, the issuance of a supplementary prospectus triggers withdrawal rights for any investor who had previously agreed to purchase shares in the offering. Such rights are exercisable before the end of the second working day after the day on which the supplementary prospectus was published.

5. Prospectus Approval Process

5.1. Competent Regulator

The FCA is the 'competent authority' in the U.K. for reviewing and approving prospectuses and the company will need to follow the formal admission requirements set out in the London Stock Exchange's Admission and Disclosure Standards (ADSs) Chapter 3 of the Listing Rules.

With respect to an AIM IPO, the applicants must submit to LSE an admission document disclosing certain information required by the AIM Rules and they must comply with the admission requirements as set out in Rules 2 to 6 of the AIM Rules (as discussed in further detail below).

5.2. Timeline, number of draft submissions, review and approval process

The IPO prospectus review and approval process takes approximately 3-4 months, assuming 3-4 submission of drafts. Each submission of the draft prospectus should be made by no later than 16:00 in electronic form via the Electronic Submission System of the FCA. The review of the initial submission will be subject to ten clear working days and each subsequent submission will take five clear working days. As a matter of practice, the objective will be for the issuer's counsel to submit an advanced initial draft of the prospectus to minimise the number of comments and turns of the draft while each subsequent submission will also include a blackline showing changes from the previous draft to facilitate the review process. For a premium listing IPO, the appointed sponsors will be submitting the review package as opposed to the issuer's counsel in the standard IPO process. In the case of an AIM IPO, the NOMAD is responsible for the submission.

Issuers contemplating drawdowns under approved prospectuses, submission of supplemental prospectuses or further issuances of GDRs will benefit from a shorter review process as it takes five clear working days for FCA to review the initial draft and three clear working days for each subsequent submission. On the other hand, debt offerings (plain vanilla) and Medium Term Note Programmes are subject to four clear working days for the initial submission and two clear working days for each subsequent submission.

The approval of the prospectus can follow once the FCA clears the prospectus of comments.

6. Listing Process

6.1. Timeline, process with the stock exchange

As mentioned above a company seeking listing should follow the formal admission requirements. The LSE regulates the admission of securities to trading on the Main Market, and in doing so it is responsible for publishing the ADSs. The listing approval process runs in parallel with the prospectus approval process and has no effect on the overall timetable of the offering.

In the case of an AIM IPO, the Listing Rules and the ADSs will not be applicable. Instead, applicants will be required to comply with the AIM Rules for Companies published by the LSE and their Nomads with the LSE's AIM Rules for Nominated Advisers. The PRRs will generally not be relevant to an AIM IPO, since it will usually be structured so as to avoid being an 'offer to the public' under FSMA (i.e. it will be an offer which, under the Prospectus Regulation, is exempt from the obligation for a prospectus to be published because it is only made to 'qualified investors' (e.g. institutional investors)). The eligibility criteria for an AIM admission are similar to those for a standard listing on the Main Market; however, as mentioned above there is no formal minimum free float for an AIM admission.

The ADSs require that an issuer contacts the LSE no later than 10 business days before the application for admission is to be considered, using a prescribed form titled 'Form 1' and accompanied by a draft copy of the prospectus. The application will, however, be considered provisional at this stage and will only be deemed to be a formal application once the prospectus has been approved by the FCA. The formal application and the final prospectus must be submitted to the LSE by no later than midday at least two business days prior to the consideration of the application for admission. Written confirmation of the number of securities to be allotted must also be provided by no later than 16:00 on the day before admission is expected to become effective, unless the LSE has agreed in advance to extend this to no later than 07:00 on the day of admission.

The requirements of Chapter 3 of the Listing Rules include submitting certain documents by midday two days before the FCA is to consider the application for admission (the '48 hour documents'). These include a prescribed form of application for admission and a copy of the prospectus that has been approved by the FCA (or another relevant authority in the company's 'home member state' (ordinarily the member state of the EEA in which the company has its registered office), in which case a certificate of approval from such authority and a translation of the summary of the prospectus will be required) and written confirmation of the number of shares to be allotted. In addition, a prescribed Shareholder Statement, confirming the number of shares to be admitted and the number of those shares which are in public hands, and a prescribed Pricing Statement, confirming the pricing of the new shares being issued, will need to be signed by the sponsor and submitted to the FCA on the day of admission.

For a premium listing IPO, in accordance with Listing Rule 8.4.3R the company's sponsor will also need to make a declaration to the FCA in the prescribed form (the "Sponsor Declaration") either on the day the FCA is to consider the application for approving the company's prospectus (prior to its approval) or at another time agreed with the FCA in certain circumstances. The Sponsor Declaration will (as mentioned above), among other things, confirm that: (i) the sponsor has taken reasonable steps to satisfy itself that the directors of the company understand their responsibilities and obligations under LTDRs; (ii) the company has satisfied all requirements of the Listing Rules relevant to an application for listing; (iii) that the applicant has satisfied all applicable requirements set out in the PRRs; (iv) the directors have established procedures which will enable the company to comply with the LTDRs on an ongoing basis; (v) the directors have established procedures which will provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and prospects of the company and its group; and (vi) the directors of the company have a reasonable basis on which to make the required working capital statement. In order to support this declaration, the sponsor will require the reporting accountants and the legal advisers to provide it with various comfort letters (which will also be addressed to the company) on the matters covered by the Sponsor Declaration.

Rules 2 to 6 of the AIM Rules for Companies require that the company provides the LSE with certain information at least 10 business days before the expected date of admission. This covers similar information to that required by Form 1 for a Main Market IPO but also includes additional information such as a brief description of the business, the names and functions of directors and proposed directors and details, insofar as they are known, of any significant shareholders (i.e. holding 3% or more of any class of shares in the company). At least three business days prior to admission, the company must submit a completed application for admission, in the LSE's prescribed form, and an electronic copy of its admission document. These final documents must be accompanied by a declaration from the company's Nomad ("Nomad Declaration"), similar to a Sponsor Declaration, confirming matters such as the company's appropriateness for admission on AIM and that the AIM Rules for Companies and the AIM Rules for Nominated Advisers have been complied with, in particular that the admission document complies with the content requirements set out in Schedule Two of the AIM Rules for Companies. As with the Sponsor Declaration, the Nomad will obtain comfort letters from the reporting accountants and the legal advisers to support its declaration.

In the case of either a Main Market IPO or an AIM IPO, admission to trading will only become effective once the LSE has announced this on a regulatory information service.

7. Documentation and Other Process Matters

7.1. Over-allotment

7.1.1. What is over-allotment

An over-allotment is an option available to the underwriters/managers that allows the sale of (i) additional shares or (ii) certain additional debt securities such as convertible and exchangeable debt securities ("Debt Securities") (as applicable) from what a company plans to issue in (i) an initial public offering or secondary/follow-on offering or (b) debt offering (as applicable).

The over-allotment option gives the underwriters/managers the right, but not the obligation, to purchase from the issuer

or the selling shareholder a specified number of additional shares/Debt Securities beyond the number in the original offering at the offering price.

7.1.2. Greenshoe vs Brownshoe structure

There are two different types of over-allotment structures: (i) greenshoe structure and (ii) brownshoe structure, otherwise known as "reverse greenshoe". In summary, a greenshoe is when the underwriter/manager exercises its option to obtain additional shares/Debt Securities at the initial offering price whilst the brownshoe option gives the underwriter/manager the put right to sell the shares/Debt Securities to the issuer at a later date but only if the share/Debt Security price falls below the offering price.

The greenshoe option customarily used in the United Kingdom is limited to 15% of the size of the original offering and the option can be exercised within 30 days of the relevant offering.

7.2. Stock lending agreement

A stock lending agreement is entered into between one or more of the shareholders and the stabilisation manager and it allows the stabilisation manager to borrow up to 15% of the total number of shares comprised in the offer. The purpose of the stock lending agreement is to allow the stabilisation manager to settle, on admission any over-allotments made in connection to the offer. If the stabilisation manager borrows any shares pursuant to the stock lending agreement, it will be required to return to the shareholder either equivalent securities or the cash equivalent in case the over-allotment option is exercised ("set-off" mechanism).

7.3. Stabilisation

7.3.1. What is stabilisation?

Stabilisation is the process whereby the market price of a security is supported through the buying of securities up to a certain level for the limited purpose of preventing or slowing down the price decline. A stabilisation manager is appointed to act on behalf of the syndicate, in respect of a new issue of shares or bonds, by buying and selling the securities in the open market. The terms of the stabilisation are usually agreed in the underwriting agreement and are subject to the requirements set out in MAR.

It is important to note that stabilisation may only be used to support the market price of the shares and not to increase the price in excess of the offering. For example, if the price of shares in the aftermarket drops below the offering price, the stabilisation manager, acting on behalf of the syndicate, purchases securities in the market, thereby supporting the share price. However, if the price of the shares in the aftermarket increases above the offering price, the stabilisation manager will not engage in stabilisation. Instead, in the case of equity deals, the underwriters in this case will close their short position by exercising the over-allotment option referred to in 8(a) above.

7.3.2. Stabilisation and MAR

Under MAR, stabilisation is exempted from the prohibition on insider dealing, market manipulation and unlawful disclosure of inside information so long as:

- the undertaking of the stabilisation is for a limited period (in respect of shares the time period is no longer than 30 calendar days whilst in respect of bonds it is no longer than 60 days) ;
- relevant information is disclosed to the competent authority;
- disclosure is made in the offering documents; and
- the undertaking is in compliance with adequate limits with regard to price.

The European Securities and Markets Authority ("ESMA") indicated that disclosure obligations will include further requirements, namely that (i) prior to the stabilisation, issuers must disclose where the stabilisation measure may occur (whether it be on or outside a trading venue); and (ii) after the stabilisation, issuers must disclose the trading venue on which the stabilisation transactions were carried out.

The government of the United Kingdom has published the U.K. implementation of MAR (the "U.K. MAR") that will apply following Brexit. The changes are designed to ensure that the U.K. markets and financial instruments continue to be subject to the same level of requirements as under MAR. The FCA will be the U.K. regulator for purposes of U.K. MAR to which the ESMA' s powers and functions will also be transferred.

8. Corporate Governance

8.1. Corporate governance code / rules (INED, board and supervisory composition, committees)

For a company with a premium listing on the Main Market, this will include either complying with the U.K. Corporate Governance Code (the "Code") (which is expected by the investor community) or, alternatively, explaining in its annual report why it does not comply. The Code covers matters such as the composition and responsibilities of the board and its committees and executive remuneration. The Code prescribes

certain independence requirements for the directors of companies seeking premium listing. Under the Code at least half of the board must be composed of independent non-executive directors. In addition, the chairman should be separate from the Chief Executive Director, independent on appointment and should not act as chair when the committee is dealing with the appointment of his or her successor. In addition, the nomination committee should also comprise a majority of independent non-executive directors, while the remuneration and audit committees should be comprised entirely of independent non-executive directors and have at least three members.

The Code does not apply to companies with a standard listing or companies admitted to trading on AIM; however, they are still required to make disclosures about the corporate governance regime they follow. These companies may choose to follow a specified corporate governance code voluntarily, as investors will often expect them to do so. For example, AIM companies often follow the Corporate Governance Guidelines for Small and Mid-size Quoted Companies published by the Quoted Companies Alliance.

8.2. Any other Environmental, Social, and Governance ("ESG") considerations

The revised U.K. Stewardship Code 2020 that took effect on 1 January 2020 highlighted the importance of ESG criteria which are becoming more relevant for investors. Investors are expected to consider material ESG matters, including climate change, as part of their investment which is going to have an impact on the corporate governance and internal policies of the issuers. Given the investors increased focus on the ESG criteria, certain issuers, in particular in the context of bond offerings, will typically seek 'ESG rating' provided by a third party, such as MSCI, for the purposes of increasing the marketability of the bonds.

9. Ongoing Reporting Obligations (Life as a Public Company)

Listed companies are required to comply with various ongoing reporting obligations, which vary based on whether the securities are included on the Official List, the market on which the securities trade, and the nature of the securities offered. Once a company has been admitted to trading on the Main Market of the LSE and listed on the Official List of the FCA, it will be subject to an additional layer of regulation. Even where the company has not been listed on the Official List, or where has been admitted to trading on the PSM, AIM or ISM, certain ongoing reporting obligations will apply.

In addition to the statutory and common law provisions applicable to all U.K. companies, there are a variety of rules that apply to issuers on U.K. regulated exchanges, including the UKLA Listing Rules (which form part of the FCA Handbook), the LTDRs, Corporate Governance Rules, the PRRs and the ADSs. Issuers admitted to the premium or standard listing segments must comply with each of the above obligations, while issuers on the PSM must comply only with the LTDRs and the PRRs. These rules do not apply to AIM, ISM or HGS companies.

Moreover, both listed and unlisted companies will need to ensure that they meet the ongoing obligations under MAR, as a breach of MAR by an individual or legal person is a civil offence punishable by a fine and administrative sanction. As such, companies admitted to the ISM will be obliged to comply with MAR, although such companies will not be obliged to comply with the LTDRs, Corporate Governance Rules, PRRs and the ADSs. However, the rules prescribed under the ISM rulebook impose similar obligations on ISM companies.

9.1. Annual Reports

For all companies with listed shares, and those with a retail listing of debt, the rules on financial statements are set out in the LTDRs. The LTDRs provide that an issuer must publish audited annual accounts within four months of its financial year end and unaudited interim accounts within three months of the end of the interim financial period. Both annual and interim accounts must be compliant with the requirements set out in the LTDRs. Where a company is domiciled in the EU, the financial statements must be prepared in accordance with IFRS as adopted by the EU.

Issuers of wholesale debt and issuers who only have securities listed on the PSM or ISM are subject to a somewhat more relaxed regulatory framework which provides an extended six-month period for issuers to produce their annual reports and permits the issuer to prepare their reports in accordance with national accounting standards. Issuers on the ISM and PSM are exempted from the requirement to prepare interim reports.

9.2. Periodic Reporting

Periodic reporting requirements for companies listed on the LSE's main markets vary depending on the market. The following list outlines some, but not all, of the key periodic reporting requirements for premium listings and standard listings and for admission to the HGS, AIM, PSM and ISM:

- Corporate Governance: Issuers with securities admitted to the premium segment of the Main Market must comply with the Code. Issuers with securities that are admitted to the standard segment, the HGS or the PSM are not by virtue of

being admitted to these markets subject to the Code, but must disclose (i) the corporate governance code to which they are subject, (ii) the extent of compliance with such code (iii) and a description of internal controls and risk management arrangements. Issuers with securities that are admitted to the PSM must include similar disclosure, but are not required to disclose the internal controls and risk management arrangements. There are no specific corporate governance requirements that attach to issuers under the ISM rules.

- Cancellation: 75% shareholder approval is required for the cancellation of premium listed securities and for securities on the AIM. No shareholder approval is required for securities on the other listing markets and segments.

- Transfer Between Listing Categories: 75% shareholder approval is required to transfer securities from a company with a premium listing. No shareholder approval for transfer between listing categories of any of the other aforementioned listing segments and markets, save for the fact that 75% shareholder approval is required when transferring from the HGS to a listing segment other than the premium segment of the Main Market.

- Prospectus Supplement: Where greater than 10% of the securities of same class are admitted to trading, a prospectus supplement is required for securities listed on the Main Market, including premium listings, standard listings, and securities on the HGS. No such requirement exists for securities on the AIM, PSM or ISM, subject to the caveat that a prospectus is required where a public offer is made under the Prospectus Regulation.

- Significant Transactions: There are no specific disclosure requirements for significant transactions for ISM or PSM issuers. Issuers with securities admitted to the standard segment and high growth segment of the Main Market also generally do not have any specific requirements for significant transactions, although reverse takeovers require re-admission to the respective market.

Where securities have been admitted to the premium segment of the Main Market: (i) an announcement is required for significant transactions exceeding 5% of any class tests, (ii) shareholder approval, a circular and appointment of a sponsor is required for significant transactions exceeding 25% of any class tests and (iii) shareholder approval, a circular and appointment of a sponsor is required for related party transactions exceeding 5% of any class tests. All reverse takeovers require re-admission.

Where securities have been admitted to the AIM: (i) an announcement is required for significant transactions exceeding 10% of any class tests or related party transactions exceeding 5% of any class test and (ii) disposals in a 12-month period exceeding 75% in any class tests require publication of a circular and shareholder approval. All reverse takeovers require re-admission.

The Shearman & Sterling team also included Michael Scargill, a counsel and a Head of UK Knowledge Management in the London M&A practice, as well as the associates Evangelia Andronikou and Alex Despotovic (both London-Capital Markets).

The Authors:

- Pawel J. Szaja
Partner
pawel.szaja@shearman.com
+44 7834 433 687

- Elena Dzhurova
Associate
elena.dzhurova@shearman.com
+44 783 408 8591

CEE
LEGAL MATTERS

www.ceelegalmatters.com