

20 August 2018

New Regulation on issuers of financial instruments and market operations

More than one year after Law no. 24/2017 on issuers of financial instruments and market operations ("**Financial Instruments and Market Operations Law**") entered into force to set out the updated legal regime governing issuers of financial instruments and market operations in relation to financial instruments admitted to trading and abrogated the corresponding provisions under Law no. 297/2004 on capital markets, the Financial Supervisory Authority ("**FSA**") finally updated the secondary legislation.

Regulation no. 5/2018 on issuers of financial instruments and market operations ("**Financial Instruments and Market Operation Regulation**") entered into force on 21 July 2018, repealing Regulation no. 1/2006 on issuers of financial instruments and market operations as well as certain secondary and tertiary pieces of legislation issued by the FSA and the former National Securities Commission ("**NSC**") on issuers of financial instruments and market operations, such as:

- NSC Instructions no. 4/2011 on registration and de-registration of securities from the records of NSC;
- NSC Regulation no. 1/2008 on the implementation of Directive 2007/14/CE laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;
- NSC Regulation no. 6/2009 on exercising certain rights of shareholders in the general meetings of the companies; and
- FSA Instructions no. 3/2009 on direct and indirect holdings.

While it essentially maintains the provisions of the above-mentioned pieces of legislation, the Financial Instruments and Market Operations Regulation harmonises all relevant legislation and also brings certain novelties as compared to the former legal framework. Some of the updates are briefly outlined below:

- reaching the threshold of 33% of the voting rights held in a certain issuer as a result of (i) acquiring shares by novating the privatisation contract, in accordance with the privatisation contract or (ii) distribution of shares to the members of a SEP - Shareholders Employees Programme Association (in Romanian, Asociatie PAS – Programul Actionarilor Salariati) in accordance with the privatisation contract, is expressly considered an excepted transaction (as part of the privatisation process) and does not trigger the obligation of launching a mandatory takeover offer;
- completion of the takeover procedure will not trigger the squeeze-out mechanism if corporative events generating changes in the share capital of the issuer are initiated and/or running following the takeover procedure;
- an additional case for de-registration of financial instruments from the FSA records is now regulated to allow de-registration in other cases set out under the law (other than those expressly set out in the Financial Instruments and Market Operations Regulation);
- the procedure of the shareholders' withdrawal in accordance with article 134 of Law 31/1990 on companies is now regulated in detail;
- the Financial Instruments and Market Operations Regulation includes specific provisions implementing Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse such as: (i) non-exhaustive list of inside information; (ii)



regulation of rumours, press news and internet posts in relation to inside information delayed from public disclosure in accordance with article 17 of the Market Abuse Regulation; and (iii) provisions setting out the criteria for determining that a certain communication is an investment recommendation, as defined under the Market Abuse Regulation.

This material is for general information only and is not intended to provide legal advice. For further information on this topic please contact us at: office@volciucionescu.com. The Volciuc-Ionescu website can be accessed at www.volciucionescu.com.