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## CAPITAL MARKETS

Expected with great interest by all participants to the capital markets, the Regulation No. 5/2003 of the National Securities Commission ("NSC") is coming to detail the conditions and procedure of public offers, as generally described in the frame regulation on the matter -Emergency Ordinance No. 28/2002 with subsequent amendments and completions. The Regulation expressly repeals the previous two regulations relating to sale public offers (Regulation No. 6/1995) and purchase public offers (Regulation No. 16/1996).

**The Regulation provides for the minimum information to be included in the offer prospectus and its announcement. Any additional request for information/documentation triggers a new time limit for settlement of the offer authorisation.**

NCS shall issue its decision with respect to the authorisation of the sale public offer within maximum 30 business days, with respect to the purchase public offer within 7 business days and regarding the public take-over bid within 15 business days.

NCS retains the right to request, at any moment during the proceeding, documents attesting the data mentioned in the offer documentation or additional information.

A person or a group of persons jointly acting shall sell a stock representing at least 10% of

the shares issued by a listed company only by way of:

- a) secondary sale public offer;
- b) trading on the regulated markets, under condition that their accrued volume does not exceed, within a 6 month-period, 10% of the aggregate number of shares issued by the company;
- c) subscription within a purchase public offer.

**A shareholder holding an absolute majority position is entitled to make direct acquisitions on the market on which the securities are traded, but without exceeding the 90%+1 quota of the respective issuer's share capital**

The Regulation does not expressly provide for the applicable sanction in case of exceeding the 90%+1 threshold.

**NSC regulates criteria in order to establish a minimum offer price for all kinds of purchase public offers, either voluntary or mandatory.**

Thus, the price in the purchase public offer shall be at least equal to the biggest price between:

- a) the price paid by the bidder or any person with whom he is jointly acting, for the respective securities within the last 12 months preceding the offer launching, and
- b) the average trading price on the market of the issuer's shares, calculated for the last 12 months preceding the date on which the documentation relating to the

purchase public offer has been submitted.

The price proposed by the bidder in case of an obligatory public offer shall be at least equal to the arithmetic mean of the prices settled by the independent evaluators appointed with that end in view.

Imposing a minimum price by the NSC in case of non-mandatory purchase offers is subject to controversies, taking into account that this constraint is stipulated by a regulation. The frame law on the matter contains no provision for such a case, leaving freely the acquisition relationships established upon promotion and acceptance of a purchase offer.

**The deadline for the financial investment service companies to execute the obligation of requiring brokers' reauthorisation and the deadline for the attendance of the training course on the capital markets is November 28<sup>th</sup>, 2003**

Furthermore, the executive directors, the authorised dealers for financial investment services and at least one of the members of the Board of Directors of a financial investment services company should attend the training course on the capital markets, agreed by NSC, and should require the NSC to deliver the professional certificate by November 28<sup>th</sup>, 2003.

## TAXATION

**A**t the end of this summer, Romanian Government has issued new financial and

tax measures among which we mention: the settlement of the customs regime for goods sold in the duty-free shops, the setting up of the fiscal warehousing system, the establishment of the National Agency for Tax Administration, the amendment of certain enactments in the tax field (organisation and operation of the tax record, VAT, etc.)

All these measures have been approved by Government Ordinance No. 86, published in the Official Gazette No. 624 of August 31, 2003.

**Starting with January 1<sup>st</sup>, 2004, the declaring, finding, controlling, collecting and settlement activity with respect to the claims related to the employees' social contributions falls within the competence of the Public Finance Ministry and subordinated units as from the next year.**

The Public Finance Ministry replaces the National House for Pensions and Other Social Insurance Rights, National House for Health Insurances, National Agency for Labour Force Employment, Insurance National Fund for Work Accidents and Professional Diseases, in their rights and obligations, as regards this activity.

In this context, it is set employers' obligation to declare with the subordinate units of the Public Finance Ministry, with which they are registered as income and tax payers, all social contributions (social insurance contribution, unemployment insurance contribution, social health insurance contribution and work accident and professional disease insurance contribution)

due by the 25<sup>th</sup> of the month following the one for which the wage entitlements are due.

It is expressly provided that the time for declaring the social contributions is also deemed as term of payment.

The methods of settlement, declaring and payment of the obligations representing social contributions shall be monitored and supervised by Public Finance Ministry and subordinated units. The same provision applies for the finding and enforcing of misdemeanours related to this matter.

For the budgetary debts representing social contributions due by the January 1<sup>st</sup>, 2004, the Public Finance Ministry and the subordinated units shall accordingly carry on the relating proceedings.

The Public Finance Ministry also becomes de jure successor of the institutions above mentioned with respect to the disputes/trials having as object complaints against the enforcement or acts upon which ensuring measures are decided and enforced, as well as complaints relating to the reorganization and bankruptcy procedure.

**The budgetary debts representing social contributions, including interests, penalties and delaying penalties shall be registered with the Electronic Archives for Movable Assets**

The registration process shall start on January 1<sup>st</sup>, 2004 and its purpose is to ensure

the collecting of the above mentioned debts and relating interests and penalties.

**A new obligation for the employers natural or legal persons is set forth**

By February 15<sup>th</sup>, 2004, the debtors, the social contribution payers, natural or legal persons, having the capacity of employers have the obligation to draw up on their own responsibility and to file with the subordinated units of the Public Finance Ministry with which they are registered as income and tax payers, inventory statements relating to the balance of social contributions on December 31<sup>st</sup>, 2003 and still overdue on December 31<sup>st</sup>, 2004, including related accessories, per fiscal years.

Failure to file the inventory statement within the mentioned time limit is deemed contravention and is sanctioned with fine amounting from ROL 10,000,000.00 up to ROL 30,000,000.00.

**Conditions related to the issuance of the fiscal record certificate have been amended**

The fiscal record certificate is issued within 10 business days as from the requesting date, in exchange of a tax amounting to ROL 50,000.00. For emergency situations, the certificate may be delivered within 5 business days, in exchange of a tax amounting to ROL 200,000.00.

**Execution of the budgetary debts by way of compensation is differently performed depending on the way the compensation is carried out: ex officio or upon a request in this respect**

In case of budgetary debts paid off by way of compensation the paying off date is :

- a) for the compensation upon request, the date on which the compensation application has been filed with the competent authority;
- b) for the compensation carried out ex officio, the date on which the refunding or reimbursement application has been filed.

**New incentive is granted to State's debtors for the payment of the instalments already spread out**

The State's debtors are allowed to postpone the due payments, according to the agreed schedule. For the instalments representing incomes, taxes, contributions and other similar payments, the debtors should pay related interests and delaying penalties, according to the law.

The competent tax authority shall calculate and inform the debtor until the next scheduled deadline on the balance of interests and the related delaying penalty, which shall be deemed as current budgetary debts.

**Time limit for adjournment of the payment of due interests unpaid related to the budgetary debts subject to payment incentives has been reduced**

The time limit for adjournment of the payment of due interests unpaid is of 3 years for the debtors benefiting from the payment incentives related to the outstanding budgetary debts who pay off or

have paid off the amounts subject to these incentives.

The debtors having concluded payment incentive agreements for the budgetary debts and who produce evidences on the paying back of instalments and current budgetary debts by September 30<sup>th</sup>, 2003, as well as on the securities offered and payment of any other budgetary debts, are further on entitled to payment incentive, according to provisions of the Romanian law in force.

**Starting with January 1<sup>st</sup>, 2004, payment incentives for the budgetary debts in order to recover the outstanding payments are no longer granted**

The applications for obtaining payment incentives for the budgetary debts shall be filed by December 31<sup>st</sup>, 2003.

**Public Finance Ministry together with other ministries or authorities of the central public administration are authorised to issue comfort letters**

The comfort letter represents the document under which the issuer takes diligence obligations for the fulfilment of the contractual commitments.

**OIL INDUSTRY  
PRIVATISATION**

According to the Romanian Government, a strategic investor, Petrom's employees and the European Bank of Reconstruction and Development shall act as key players within

the privatization process of the National Oil Company Petrom.

**Sale of shares accompanied by a share capital increase**

The Ordinance No. 55 and the Decision No. 924 have been issued in 26<sup>th</sup> of August by the Government in order to adjust the privatization legal framework so as to facilitate the project's implementation. Although with a two months delay, the State Office for Privatization in Industry launched on the same date of 26<sup>th</sup> August the Petrom Privatization Announcement.

Briefly, the Announcement provides that the privatisation method shall combine the sale of shares through negotiation based on preliminary and non-binding bids with a share capital increase.

Thus, the privatisation of Petrom shall consist of offering a 51 % shareholding in Petrom to strategic investors (the Strategic Transaction) to be implemented as follows: (i) the sale of 12,580,689,954 existing shares by the Romanian State, representing 33.34% of the existing share capital and (ii) the simultaneous share capital increase under a full subscription and payment of newly issued shares to allow the strategic investor to hold 51% of the share capital of the Company upon such increase.

Strategic investors are defined as Romanian or foreign entities with experience in operating oil and gas companies and with proven financial and managerial resources, as well as the technical capabilities needed

to ensure the future development and viability of Petrom.

**Annual revenues from oil and gas operations in excess of US\$ 1,000 million - pre-qualification condition for the investors**

Companies seeking to pre-qualify for the bidding stage must provide documentary evidence of (i) annual revenues from oil and gas operations in excess of US\$ 1,000 million for the last three years and (ii) technical and managerial experience of a minimum of three years in the oil and gas field, appropriate to the size and profile of the Strategic Transaction.

Candidates that seek to pre-qualify for the bidding stage as a consortium (not to exceed four members) must provide documentary evidence referring to (i) combined annual revenues in excess of US\$1,300 million for the last three years, with a majority from oil and gas operations and (ii) technical and managerial experience of a minimum of three years in the oil and gas field appropriate to the size and profile of the Strategic Transaction (i.e. for at least one member of the consortium).

**Conditions of participation in the company's privatisation for EBRD and Perom's employees**

In line with the development of the Strategic Transaction, a stock of up to 5.0% of the share capital of Petrom could be allotted to the European Bank for Reconstruction and Development (EBRD) in a debt for equity

swap based on a pre-privatisation loan extended last year.

The employees of Petrom have been also granted with an option to acquire under the privatization process a stock of up to 2.0% of the share capital of Petrom, provided that at a later stage where the State decides to decrease its shareholding in the said company, the employees shall be entitled to increase their share stock up to 8% of the entire share capital of Petrom.

#### **Possible future developments**

As the Ministry of Economy and Commerce expressly retained the right to amend anytime during the privatization process the terms and conditions of the Announcement, the adjustments are supposed to come. Most probably, future amendments shall refer just to the bidding prequalification criteria, process time schedule and miscellaneous, as far as the privatization method has been approved through enactments having the force of law. Any amendment to the privatization method shall trigger changes in the applicable laws.

However, neither the Ordinance No. 55, nor the Decision No. 924 clarifies all matters related to the proposed share capital increases and the share assignments to be concluded with the employees.

Although the applicable regulations seek for, the Announcement does not expressly provide that all share capital increases are to

be made in cash, fully subscribed and paid up at the subscription date. Furthermore, no information is released in connection to premiums attached to newly issued shares.

As Petrom is listed on the Bucharest Stock Exchange, to consider a premium for the assignment of new shares under the capital increase process is mandatory, save for specific rules to come.

One would expect specific provisions to guide the negotiation of terms and conditions for the proposed debt for equity swap to be entered by and between Petrom and EBRD. Lacking such guidelines, the share price under the debt equity swap arrangement may lead to consistent debates, involving all the players in the privatization process.

Also, much is still to be done in relation to Petrom's employees. They have been granted with an option to purchase shares that might be called first for a price at least equal with the one paid by the strategic investor, but the State Office for Privatization in Industry is to issue norms in this matter.

The deadline for submitting the letters of intention is September 19, 2003, while the pre-qualified investors will be announced by September 30. The public institution involved plans to complete the privatization procedures by March 2004.