

SECURITIES MARKET TRENDS

CURRENT SITUATION

From the day the last edition of the White Book (White Book 2008) was published there have been no significant developments in relation to the securities market regulations in Serbia. The decreasing trend of securities trade on the Serbian market in the first half of 2009 was generally result of global financial crisis, nevertheless it was also enhanced by slow process of reform of the securities market regulations.

Namely, the Proposal of the Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments is still in the National Assembly procedure while it seems that the Draft Law on Securitization is completely forgotten. The only noteworthy recent activity of the National Assembly in relation to securities market regulations is adoption of amendments to the Law on Investment Funds in July 2009.

General conclusion is that Serbia needs significant changes of the securities market regulations in order to attract more international investors, these changes should in particular allow clear legal basis for the announced IPO's.

Since the Draft Amendments to the Law on Market of Securities and Other Financial Instruments and the Draft Law on Securitization were subject of the FIC review in the previous edition of the White Book hereby we once again present the main concerns of the FIC members relating to these two documents. Furthermore we also present our review of recently adopted changes of the Law on Investment Funds.

On the other hand In relation to the takeover bid, with the Opinions of the Ministry of Finance dated February 2nd, 2009 and May 22nd 2009 and Opinions of the Securities Commission dated July 14th 2009 and August 7th 2009, significant developments in respect to the interpretation of the takeover bid regulations have been introduced.

By its opinion dated February 2nd 2009, Ministry of Finance, after having the joint session with the representatives of the Securities Commission came to the following conclusions:

- that in case of contribution of shares of Serbian open joint stock company into the limited liability company

in excess of 25%, this limited liability company is to be considered as acquirer of shares and thus obliged to launch the mandatory takeover bid;

- that in case of disposal of shareholding in limited liability company, which holds shares of Serbian open joint stock company, the acquirer of such shareholding therewith becoming indirect holder of shares of Serbian open joint stock company is obliged to launch mandatory takeover bid for the remaining shares of the Serbian open joint stock company if by such acquisition reaches the limits prescribed in the Takeover Law and its Article 6.

By its opinion dated July 14th 2009, Securities Commission has further developed standpoints from the above-described Opinion of the Ministry of Finance. Namely, the acquirer of the shareholding in limited liability company which holds directly or indirectly (through its subsidiary) shares of Serbian open joint stock company has the obligation to launch the takeover bid for remaining shares of both, directly owned Serbian joint stock company and its subsidiary, being Serbian open joint stock company. All this in case if acquirer by such acquisition indirectly reaches the limits prescribed in the Takeover Law and its Article 6. This is irrespective whether a Limited Liability Company is domestic or foreign legal entity.

By its Opinion issued on May 22nd 2009, the Ministry of Finance provided the guidelines and explanations regarding the implementation of the provisions of the Takeover Law concerning the moment in which the obligation to publish the takeover bid occurs. Under the said Opinion this obligation arises at the moment in which the agreement constituting the legal ground for the acquisition of more than 25% of the shares of the open joint stock company (combined with the shares previously obtained, as the case may be) has been concluded, even if the validity of the agreement is placed under a condition precedent, such as the concentration approval by the Commission for Protection of the Competition.

Furthermore, the Opinion of the Securities Commission published on August 7th, 2009 introduced changes regarding the price of a single share targeted by the takeover bid in cases in which the obligation to launch such bid occurred upon acquiring limited liability company holding shares in a Serbian open joint stock company. The Securities Commission took

a stance, that in the case when the limited liability company is acquired solely for the purposes of the acquisition of the shares in targeted open joint stock company(ies), the price of the shareholding in the limited liability company should be considered as relevant for determining the price in the takeover bid. If not, the price is to be determined applying the rules set out by Takeover Law.

POSITIVE DEVELOPMENTS

As mentioned above, in July 2009 the National Assembly of the Republic of Serbia has adopted the Law on Amendments and Supplements to the Law on Investment Funds. The Law introduce several positive novelties, which according to the proposer's explanation are introduced as an answer to global crisis challenges and existing issues in current business activities of investment funds. The future results of these changes are yet to be seen.

As the first important novelty the Law provides possibility for the management companies to, directly or indirectly, acquire investment units or shares of an investment fund which it manages up to 20% of the net value of the fund's assets. The amendments also allows management company to possess (directly or indirectly) share in the capital of the private investment fund which it manages.

The Law further introduces possibility of investing investment funds' assets (with 20% restriction) into investment units of open investment funds.

The important novelty is also provision according to which the assets of an investment fund may be invested abroad in accordance with foreign currency activities regulations.

According to the Law the management companies are now obliged to engage at least one portfolio manager (employed for indefinite period of time) instead of previous obligation of engaging at least one portfolio manager for each fund managed. The Law also clearly divides responsibilities of the management of the management company which shall define investment politics and goals while portfolio manager shall be responsible for execution of such politics and goals.

According to the amended Article 32 the investment restrictions may be exceeded during the first six months from the day of investment fund foundation.

The Law also introduces possibility for entities other than banks and broker-dealer companies to provide sales services as agents in accordance with the regulations which should be adopted by the Securities Commission. We are expecting that respective regulations will be adopted very soon.

Instead of previously stipulated 10% the amended Law enables a member of an open investment fund to acquire up to 20% of the net assets value of the open investment fund.

Finally, the Law allows management company to (in its own name and for the account of an open fund) take a debt with the repayment term up to 360 days (instead of previously stipulated 90 days) by means of loan agreement and repo agreements with other investment funds or banks (with restriction of up to 20% of the net assets value of the fund).

REMAINING ISSUES

The main issues remaining in relation to the securities market regulations, (most of them already presented in the White Book 2008):

- Proposed Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments are still in Parliament procedure;
- Proposed Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments leave certain unsettled issues, the main being:
 - preliminary notification rules are not clear enough;
 - the final sale i.e. actual subscription and payment for securities still should be made based on the fixed price contained in the prospectus approved by the Commission for Securities; at the same time pricing rules in relation to the new issuances of shares set by the Company Law remain applicable, so that there is collision of two laws in this respect, or the pricing range to be included in the preliminary notification could be established only within the boundaries set by the Company Law;

- lack of by-laws needed for the implementation of IPO.
- Draft law on Securitization is not in the National Assembly procedure;
- The presented Opinions of the Ministry of Finance and the Securities Commission and therewith-introduced interpretation of the Takeover Law shall significantly influence so far established practice in Serbia. Partially, these interpretations could be seen as contradictable to the basic principles of the Serbian contractual law and the Law on Market of Securities and Other Financial Instruments in regard to the provisions dealing with the moment of the acquisition of shares.

FIC RECOMMENDATIONS

- Harmonize all regulations related to securities with EU and other international standards, in order to increase trust of foreign investors. In that sense the adoption of new Law on securities market and the Law on Takeover of Joint Stock Companies is required;
- Amendments to the Law on Market of Securities and Other Financial Instruments should be adopted as soon as possible;
- Amendments to the Law on Market of Securities and Other Financial Instruments should include book building possibility to a greater extent;
- Once the amendments to the Law on Market of Securities and Other Financial Instruments to the Law are enacted in the National Assembly additional explanations and Clarifications of instruments introduced by the said amendments will and have to be contained in by-laws that are yet to be enacted by both the Commission for Securities and the Belgrade Stock Exchange;
- It is necessary to adopt regulations on establishing and work of credit rating agencies, as well as control of work of these agencies;
- Pricing rules for share issuance should not be defined by the Company Law, or exemptions in case of IPOs should be introduced;
- Draft Law on Securitization should be included in the National Assembly procedure and adopted as soon as possible;
- The Securities Commission should as soon as possible adopt all necessary by-laws in accordance with the amended Law on Investment Funds (i.e. in the term stipulated by the Law);
- Contradictions arising from interpretations provided in Opinions of the Ministry of Finance and the Securities Commission on Takeover Bid should be further clarified in order to provide firm and stabile legal framework enabling structuring of future transactions on Serbian market.