

## **Dual listings, or what should companies expect from two stock exchanges**

**Zhulieta Mandazhieva, Dnevnik newspaper, 16.06.2010**

Oftentimes in 2008, we heard from players on the stock exchange that the Bulgarian market simply does not have enough quality companies. This grievance still holds, to some extent, but what would happen if, instead, Bulgarian companies complain that there is not enough quality stock exchange happening here and start searching for alternatives?

During the short bloom of the Bulgarian stock exchange, every company that wanted to throw off the restraints of the family/friendly business model and search for fresh capital from a financial investor heard, time and again, of the benefits of listing: transparency, advertising, liquidity, investments at market prices, and the possibility of a just outcome. Naturally, there was always the stipulation that in such a small, illiquid, volatile, and easily manipulated market, these benefits may not be as readily accessible.

Following Bulgaria's accession to the EU, Bulgarian public companies that sought these benefits discovered another possibility on a legislative level: quick and easy listing on another EU member's stock exchange, based on the principle of the single passport. The procedure has been simplified and now covers the following: a general confirmation of the prospectus by the Bulgarian Financial Supervisory Commission and the corresponding notification, as soon as possible, to the respective supervisory authority of the member state, where the shares of the Bulgarian company will be registered for trade. The positive side of this process is that the prospectus has to be approved only once – by the supervisory authority of the sending state (where the company has its headquarters) – and the market for the company's shares widens with the capital available on the foreign stock exchange.

However, how does the process work in practice?

Unfortunately, the regulatory barriers, brought down to a minimum as a result of the certification, are not the only obstacle that prevents Bulgarian companies from reaching foreign markets. The next two most important aspects are the settlement of transactions and the tax regime with respect to transactions in financial instruments on regulated markets. By contrast to the existing framework in many EU member states, the settlement of trades in Bulgaria is still far from unified, despite all the initiatives undertaken to solve this issue, at the level of the European commission inclusive (where the 2003 Giovannini Report clearly outlined the key problems). The reasons why there has not been unification in that aspect are plenty: the varied historical backgrounds of the depository institutions in each member state, the different ownership structures they have (where the control of that authority is held by the stock exchange or by the members/users - as opposed to the majority owner being the state - the desire for the development and unification of the settlement and clearing systems is vastly different), and the different limitations imposed on the settlement procedure.

A good example of the obstacles faced is the shockingly long (around 4 years) "courtship" between the Bulgarian and Polish depository institutions. It is no secret that the Warsaw Stock Exchange has, for the last few years, done extremely well and even exceeded certain older and more developed exchanges. Apart from a few legislative tricks which the EU does not like (for instance, a 5% limit on foreign investments for Polish pension funds), both the size of the Polish economy and the proactive, business approach that the Polish stock exchange and depository use to attract new issuers have played a key role. In the end, the technological isolation of the Bulgarian "Central depository" (the lack of SWIFT membership and of support for certain standards of message transfer) was overcome, and the necessary connection between the two depositories was established. Thus, the theoretical possibility for Bulgarian public companies to be dual listed on the Bulgarian and Warsaw stock exchange turned real.

What is to come next?

Some Bulgarian public companies had expressed interest towards such actions long ago, and they are expected to accomplish the dual listing by the end of 2010. Nevertheless, these companies still face many obstacles that lack a uniform legislative solution and are likely to raise unique legal, technical, and tax issues. It remains interesting to see whether the exchange of information with regards to the actual

Shareholders' Register happens in time for general shareholder meetings and the distribution of dividends, considering that the settlement period on the Warsaw Stock Exchange is a day longer than that of the Bulgarian one. Despite the fact that it can happen in theory, investors who have bought shares on the Polish market are unlikely to be entered directly in the shareholder registry maintained by the Bulgarian "Central depository". Instead, the easier and more likely scenario, at least in the early stages of such trade, is the registration of a nominal owner (this could even be the Polish depository itself), who holds a disclosed omnibus account (a collective account that does not reveal the final holders). In such cases, proxy voting at shareholder meetings of Bulgarian companies is no longer sufficiently precise in the current legislation, since the same nominal owner would have to vote differently for different parts of the owned shares, according to the wishes of the actual owner of the respective package of shares. Furthermore, it is possible for local and foreign players to attempt to circumvent the requirements for disclosure of the actual owner of dematerialized shares through the purchase of shares on a foreign market. Depending on the percent of shares traded on the foreign market, this could facilitate a potential tender offer for a hostile takeover of a Bulgarian company. Therefore, from the point of view of the majority owners, it is recommended that companies listed on a foreign market undertake strong preventative measures, through a change in their internal statute or regulations, against hostile takeovers. In addition, double listings have the potential to create interesting cases related to the transfer of pledged shares. For instance, whereas the prohibition order on these shares must cover a transfer, free of payment, from the shareholder account with "Central depository" to the account of the Polish depository, such an agreement will have to be expressly included in the pawn contract and/or specified upon the initial securities freeze. In any case, until the Bulgarian stock exchanges comes back to life, the stock markets in other EU member states with low administrative expenses will remain a viable alternative for companies that have something to offer to investors. The pioneers among them will pave the way for how all companies overcome such challenges in the future.

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