

Regulation No. 4/2013
on underlying shares for depositary receipts

In force as of 7 October 2013

*The **consolidation of 20 July 2015** is based on the publication in the Official Journal of Romania, Part I No. 622 of 7 October 2013 and includes the amendments made by the following acts:*

*Regulation 8/2014; Regulation 15/2014;
Last amendment as at 17 November 2014.*

SECTION 1
General Provisions

Art. 1. - Art. 1. - was amended by Regulation 8/2014 on 28/05/2014

(1) This regulation lays down rules applicable in all situations in which depositary receipts which shall be admitted to trading in a Member State are issued, based on a prospectus published and approved by the home competent authority, based on the:

Paragraph (1) was amended by Regulation 15/2014 on 17/11/2014

a) shares issued by a company headquartered in Romania, which shall be admitted to trading for the first time on a regulated market in Romania as a result of an initial public sale offering and which shall be entrusted to a central depositary; and/or

b) shares issued by a company headquartered in Romania, which are already listed on a regulated market in Romania or which belong to the same class of shares already listed on a regulated market in Romania; and/or

c) allotment rights which shall be admitted to trading on a regulated market in Romania and entrusted to a central depositary and which are issued attached to the shares referred to in Letters a) and b), which are offered and subscribed within public sale offerings.

(2) Depositary receipts shall be issued with the consent of the issuer of the underlying shares/allotment rights, as appropriate.

Art. 2. - (1) The terms and expressions used in this regulation shall have the meanings assigned in Art. 2(1) of Capital Market Law No. 297/2004, as subsequently amended and supplemented, hereinafter referred to as Law No. 297/2004, and in the regulations issued for its application by the National Securities Commission, hereinafter referred to as NSC, and by the Financial Supervisory Authority, hereinafter referred to as FSA.

(2) For the purposes of this regulation, the terms and expressions below shall have the following meanings:

a) underlying shares or shares – means the shares deposited with the central depository based on which the depository receipts are issued;

Letter a) was amended by Regulation 8/2014 on 28/05/2014

b) shareholder – means the natural person or the entity governed by public or private law directly or indirectly holding:

(i) shares of the issuer, in its own name and on its own behalf;

(ii) shares of the issuer, in its own name, but on behalf of other natural person(s) or legal entities;

(iii) depository receipts underlain by the shares of the issuer, in which case the holder of the depository receipt is deemed the holder of the underlying shares represented by the receipt;

c) depository receipts underlain by underlying shares (depository receipts) – means the securities which give the holder the rights and obligations corresponding to the underlying shares based on which they were issued, and also the right to obtain, through conversion, underlying shares;

c¹) depository receipts underlain by allotment rights – means the securities which give the holder the rights and obligations corresponding to underlying allotment rights based on which they were issued, and also the right to obtain, through conversion, allotment rights or, directly, underlying shares, as the case may be;

Letter c¹) was inserted by Regulation 8/2014 on 28/05/2014.

d) central depository – means the entity provided at Art. 146(1) of Law No. 297/2004, carrying out deposit operations of shares and/or of the allotment rights, as the case may be, and also registry operations for the issuer defined at Letter e);

Letter d) was amended by Regulation 8/2014 on 28/05/2014

d¹) underlying allotment rights or allotment rights – means the allotment rights defined in the acts of NSC/FSA, as the case may be, issued in the case of the public offerings referred to in Letter a) of Art. 1(1), based on which depository receipts are issued;

Letter d¹) was inserted by Regulation 8/2014 on 28/05/2014.

e) issuer – means the issuer of the underlying shares and of the underlying allotment rights, as the case may be;

Letter e) was amended by Regulation 8/2014 on 28/05/2014

f) issuer of the depository receipts underlain by shares/allotment rights – means the entity which issued the depository receipts underlain by shares/allotment rights;

Letter f) was amended by Regulation 8/2014 on 28/05/2014

g) conversion rate – means the ratio mentioned in the issuing documents of the depository receipts, which establishes the number of shares/allotment rights corresponding to a depository receipt underlain by shares/allotment rights, and which is used for the calculation of the number of shares/allotment rights and of the number of depository receipts underlain by shares/allotment rights which may be obtained further to the conversion of depository receipts underlain by shares/allotment rights, and of shares/allotment rights, into depository receipts underlain by shares/allotment rights.

Letter g) was amended by Regulation 8/2014 on 28/05/2014

(3) The depositary receipts underlain by shares/allotment rights covered by this regulation shall not be those referred to in Letter b) of Art. 28(8) of Law No. 297/2004.

Paragraph (3) was amended by Regulation 8/2014 on 28/05/2014

SECTION 2

Record-Keeping of Underlying Shares based on which Depositary Receipts Are Issued

Art. 3. - (1) The underlying shares, based on which depositary receipts are issued, shall be recorded in a special global account opened in the name of the issuer of depositary receipts and on behalf of the holders of depositary receipts in the central depository's system, if the issuer of depositary receipts is a participant in its system, or, where appropriate, in the system of a participant of the central depository whose client is the issuer of depositary receipts, separately from any other account in which holdings of shares, based on which no depositary receipts are issued, are recorded.

(2) The underlying shares, based on which depositary receipts are issued, are blocked in the special account referred to in Para (1), so that they may be transferred only as provided in Para (4). Depositary receipts shall be issued/cancelled, as a result of the conversion of shares into depositary receipts, and of depositary receipts into shares, provided that underlying shares are blocked/unblocked.

(3) The operations to credit the special account referred to in Para (1) with the number of underlying shares based on which depositary receipts are issued, and blocking the underlying shares, shall be carried out only after and based on the corresponding instructions sent to the central depository or, as appropriate, to the participant in the central depository system, based on the prospectus for depositary receipts, approved by the competent authority of the home Member State, established in accordance with Letter k) of Art. 2(2) of Regulation No. 1/2006 on issuers of and operations with securities, approved by Order No. 23/2006 of the National Securities Commission, as subsequently amended and supplemented, hereinafter referred to as Regulation No. 1/2006.

(4) Depositary receipts shall be converted into shares and shares shall be converted into depositary receipts in compliance with Paras (5) through (10).

(5) The central depository may make transfers on securities, required for the conversion of the depositary receipts into shares and of the shares into depositary receipts.

(6) The transfers referred to in Para (5) may be made among the accounts of the same participant or, as appropriate, among the accounts of 2 participants in the central depository system.

(7) Depositary receipts shall be issued based on the request for conversion and confirmation by the central depository or, as appropriate, by the participant in the central depository system of the transfer of the shares into the special account referred to in Para (1), and of blocking those shares.

(8) Where depositary receipts are converted into shares, the issuer of depositary receipts must forthwith notify the central depository or, as appropriate, the participant in the central depository system, of the receipt of a request for conversion, so that underlying shares be unblocked and transferred, as provided by Para (6), from its special account to another account, in the name of the person that held the depositary receipts subject to conversion.

(9) Every blocking or unblocking operation of the underlying shares through their transfer into or from the special account, within the meaning of Paras (5) through (8), shall be recorded in the central depository system based on "FoP – Free of Payment" type instructions without change of

ownership, sent by the participant(s) involved, in accordance with the rules issued by the central depository in that respect.

(10) The transfer instructions referred to in Paras (7) and (8) shall always be based on and in compliance with the request for conversion, and the issuer of depositary receipts must forthwith issue/cancel the depositary receipts, immediately after the registration of transfers and in accordance with the provisions of the prospectus for depositary receipts, approved by the competent authority of the home Member State.

SECTION 3

Rights and obligations related to underlying shares

Art. 4. - (1) The rights and obligations related to the underlying shares, based on which depositary receipts were issued, shall belong to the holders of depositary receipts, in proportion to their holdings of depositary receipts and in consideration of the conversion rate between the underlying shares and depositary receipts, and in compliance with the provisions of this regulation. The issuer of depositary receipts shall act exclusively based on the instructions given by the holders of depositary receipts and only within their limits.

(2) The issuer of depositary receipts shall be fully liable for the actions carried out based on the instructions given by the holders of depositary receipts and only within their limits also where it fails to act based on those instructions.

(3) The issuer of depositary receipts shall facilitate the receipt and exercise by the holders of depositary receipts of the rights related to the underlying shares, corresponding to their holdings of receipts, and shall be liable for reflecting all corporate events affecting the underlying shares on the depositary receipts.

Art. 5. - (1) The provisions of Art. 116(1), (1¹), (2) and (6) of Regulation No. 1/2006 shall apply appropriately also in the case of holdings of depositary receipts and of the persons with holdings established both by shares and by depositary receipts.

(2) For the purposes of calculating the voting rights held by a person in accordance with Para (1), account shall also be taken of the number of the underlying shares corresponding to the depositary receipts held.

(3) The holder of the depositary receipts must concomitantly inform the company issuing the underlying shares, FSA and the regulated market where the underlying shares are traded, of achieving, exceeding or falling under these thresholds, within the deadline provided for in Art. 116(1) of Regulation No. 1/2006.

(4) The issuer of the underlying shares notified as provided in Para (3) must inform the public of that operation in accordance with Art. 105(3¹) of Regulation No. 1/2006, within maximum 3 working days of receipt of such information.

Art. 6. – The provisions of Art. 203 of Law No. 297/2004 shall apply appropriately also in the case of holders of depositary receipts, taking into account the number of shares held by them, including those corresponding to the depositary receipts.

SECTION 4

General Meeting of the Shareholders of the Issuer

Art. 7. - (1) The issuer of the depositary receipts in whose name depositary receipts, based on which underlying shares are issued, are registered shall act as shareholder within the meaning and for the purposes of the application of Regulation No. 6/2009 on the exercise of certain rights of shareholders in general meetings of trading companies, approved by Order No. 44/2009 of the National Securities Commission, as subsequently amended and supplemented, hereinafter referred to as Regulation No. 6/2009.

(2) The issuer of depositary receipts shall have access to the general meeting of shareholders as provided in Art. 243(3) of Law No. 297/2004.

Art. 8. – The issuer of depositary receipts shall be fully liable for correctly, completely and timely informing the holders of depositary receipts, in compliance with the provisions included in the issuing documents of the depositary receipts, in connection with the information materials and documents related to the general meeting of shareholders, made available to the shareholders by the issuer of the underlying shares.

Art. 9. - (1) The issuer of the depositary receipts shall vote in the general meeting of shareholders in accordance with and within the limits of the instructions of the holders of depositary receipts holding such capacity on the date of reference established as provided in Letter d) of Art. 2 of Regulation No. 6/2009, and also in compliance with the provisions included in the issuing documents of the depositary receipts.

(2) By way of exception to the provisions of Art. 14(5) of Regulation No. 6/2009, the issuer of depositary receipts may, in the general meeting of the shareholders of the same issuer, cast for some of the underlying shares votes different from those cast for other underlying shares.

(3) When calculating the presence quorum in a general meeting of shareholders, account shall be taken only of those underlying shares for which the issuer of depositary receipts casts its vote in the general meeting of shareholders, including by abstention, in compliance with the instructions received in accordance with Para (1). The issuer of depositary receipts shall inform the issuer of the underlying shares, when calculating the presence quorum in the general meeting of shareholders, of the percentage of voting rights corresponding to the underlying shares for which it shall cast its vote in the general meeting of shareholders.

Art. 10. - (1) For the exercise by the holder of depositary receipts of its rights and obligations in connection with a general meeting of shareholders, such holder of depositary receipts shall send the entity at which its account of depositary receipts was opened the voting instructions for the items of the agenda of the general meeting of shareholders, so that said information may be sent to the issuer of depositary receipts.

(2) The issuer of depositary receipts shall be fully liable for taking all necessary measures, so that the entity keeping records of the holders of depositary receipts, intermediaries involved in supplying custody services to them on the market where the same are traded and/or any other entities involved in keeping records of the holders of depositary receipts report to it the voting instructions of the holders of depositary receipts for the items of the agenda of the general meeting of shareholders.

Art. 11. – By way of derogation from the provisions of Art. 14(4), first sentence of Regulation No. 6/2009, the issuer of depositary receipts may empower each of the holders of depositary receipts

from whom it received instructions in accordance with Art. 9(1) or any third party appointed by any of those holders of depositary receipts to participate and vote in the general meeting.

Art. 12. – With a view of exercising the right provided in Art. 7 of Regulation No. 6/2009, the issuer of depositary receipts shall submit to the issuer of underlying shares an affidavit indicating the percentage of the share capital for which it exercises such right. Such percentage shall be calculated by exclusively taking into account the number of underlying shares corresponding to the holdings of depositary receipts of the persons who gave instructions.

SECTION 5

Corporate events

Art. 13. - (1) The issuer shall pay the dividends to the issuer of depositary receipts in proportion to its holdings at the time of registration established by the general meeting of shareholders that approved the distribution of those dividends, subject to the same terms and in compliance with the same procedure as in the case of the other shareholders. The issuer of depositary receipts shall be fully liable for the amounts resulting from the payment of the dividends thus received to be distributed to the holders of depositary receipts, in proportion to their holdings at the time of registration established by the general meeting of shareholders that approved the distribution of those dividends.

(2) The rule referred to in Para (1) shall apply to all corporate events related to the underlying shares.

(3) The issuer shall make public the reports provided in Chapter III of Title IV of Regulation No. 1/2006, and by the acts of NSC/FSA, as the case may be, regarding the issuer's reporting obligations throughout the trading period on a regulated market of the allotment rights, in observance of the provisions of Art. 105(3¹) and Art. 122(2) of such regulation.

Paragraph (3) was amended by Regulation 8/2014 on 28/05/2014

SECTION 5¹

Special Provisions Applicable to Depositary Receipts Underlain by Allotment Rights

SECTION a 5¹ was inserted by Regulation 8/2014 on 28/05/2014.

Art. 13¹. - (1) The provisions of Arts. 3, 4 and 16 regarding the suspension from trading, and of Art. 17, shall apply accordingly also in the case of the issuance of depositary receipts underlain by allotment rights. In such situation the expressions 'shares', and 'depositary receipts' shall be interpreted as reference to 'allotment rights', and to 'depositary receipts underlain by allotment rights'.

(2) The issuer of the depositary receipts in whose name the allotment rights underlying the depositary receipts are registered shall not have the capacity as shareholder in the sense provided by Regulation No. 1/2006 and Regulation No. 6/2009.

(3) Upon the registration with the central depository of the shares newly issued within the initial public offering, the number of underlying shares provided at Art. 3(1) shall be equal to the number of underlying allotment rights based on which the depositary receipts were issued.

(4) As of the registration date of the newly issued shares with the central depository and as of the admission date of the same to trading on a regulated market, the depository receipts underlain by allotment rights shall be converted into depository receipts underlain by shares.

(5) Subsequent to the date referred to in Para (4), any request for conversion of the depository receipts shall lead to the receipt of the shares replacing those allotment rights.

(6) The conversion of depository receipts into allotment rights, or of allotment rights into depository receipts shall not be possible if such restriction is provided in the prospectus for depository receipts.

SECTION 6

Final Provisions

Art. 14. - *Art. 14. - was amended by Regulation 15/2014 on 17/11/2014*

(1) Depository receipts may be issued for a number of underlying shares representing no more than 1/3 of the total number of shares issued by the issuing company. If the depository receipts are issued as a result of a public sale offering, then the depository receipts may be issued for a number of underlying shares representing no more than 2/3 of a number of shares being offered, without exceeding 1/3 of the total number of shares issued by the issuing company. If the public offering is primary, the ceiling of 1/3 shall be calculated by reference to the share capital resulting from the increase.

(2) FSA may provide for derogations from the provisions of Para (1), by reference to the issuer's share capital, shareholding and/or number of shares subject to the public sale offering so that to ensure the minimum conditions for admission or maintenance of shares to trading on a regulated market in Romania.

(3) After the initial issue of the depository receipts and after the account referred to in Art. 3(1) is opened, the conversion of depository receipts into shares, and the conversion of shares into depository receipts, may be made in compliance with the provisions of Art. 3(4), without any restrictions, provided that the limit of 1/3 of the share capital referred to in Para (1) is complied with.

(4) The provisions of Paras (1) through (3) shall apply accordingly also in the case of the depository receipts underlain by allotment rights, by reference to the corresponding number of shares.

Paragraph (4) was inserted by Regulation 8/2014 on 28/05/2014.

Art. 15. - **(1)** Within 30 days of the entry into force of this regulation, the central depository must submit to FSA the necessary documentation for the modification and/or supplementation of their own regulations, in accordance with the provisions of this regulation.

(2) Prior to the amendment and/or supplementation of their own regulations in accordance with Para (1), the central depository shall make transfers on securities, as effect of the conversion of the depository receipts into shares and of the conversion of shares into depository receipts, only as provided by this regulation.

Art. 16. - **(1)** Where the underlying shares traded on a regulated market of Romania are suspended/withdrawn from trading, FSA shall notify the relevant supervisory authority of the market operator where the depository receipts are admitted to trading of this situation, and of its causes. If shares are suspended from trading, FSA shall also notify the period of suspension or,

where it is not known, FSA shall appropriately notify when the suspension is ended, at the time it is ended.

(2) The operator of the regulated market where the shares are traded shall notify the operator of the regulated market where the depositary receipts are traded as provided in Para (1).

Art. 17. - (1) The provisions of Letter b) Art. 51(1) and Art. 53(1) of Regulation No. 13/2005 on the authorisation and operation of the central depository, clearing houses and central counterparties, approved by Order No. 60/2005 of the National Securities Commission, as subsequently amended and supplemented, shall not apply where the participant in the central depository opens an account in the name of the issuer of depositary receipts and on behalf of the holders of depositary receipts, in which the underlying shares, based on which those depositary receipts were issued, are recorded and blocked.

(2) In the case of the special global account in which the underlying shares, based on which depositary receipts are issued, are recorded, referred to in Art. 3(1), the reporting obligation provided for in Art. 146(6) and (7) of Law No. 297/2004 is fulfilled by providing the central depository with the information on the issuer of depositary receipts.

(3) With a view of fulfilling its tasks for supervision and protection of investors, FSA shall be entitled to request the issuer of depositary receipts the documents and information showing the holdings and the identity of the holders of depositary receipts, including, as appropriate, the instructions given by them to the issuer of depositary receipts.

Art. 18. - (1) Infringement of the provisions of this regulation shall be deemed petty offense.

(2) Perpetration of the petty offenses referred to in Para (1) shall be established and sanctioned by FSA as provided by Law No. 297/2004.

Art. 19. – This regulation shall enter into force on the date of its publication in the Official Journal of Romania, Part I.