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Ринок цінних паперів Азербайджану на новій стадії

У статті розглядається законодавча база, підготовлена для розвитку ринку цінних паперів та цієї області загалом, стандарти й правила, прийняті для усунення потенційних проблем, Закон «Про ринок цінних паперів», метою якого є підготовка нового законодавства про цінні папери й перехід ринку на нову ступінь. Також розглядаються такі питання, як сфера діяльності фінансових ринків, професійні учасники ринку цінних паперів, послуги інвестиційних компаній, створення Компенсаційного фонду для усунення ризиків інвесторів, розміщення нових емісій, емітентні звіти та ін.

Ключові слова: цінні папери, ринки капіталу, інвестиції, акції, біржа, кліринг, депозитар, статутний капітал, емісія, емітент, закон.

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Рынок ценных бумаг Азербайджана на новой стадии

В статье рассматривается законодательная база, подготовленная для развития рынка ценных бумаг и этой области в целом, стандарты и правила, принятые для устранения потенциальных проблем, Законе «О рынке ценных бумаг», целью которого является подготовка нового законодательства о ценных бумагах и переход рынка на новую ступень. Также рассматриваются такие вопросы, как сфера деятельности финансовых рынков, профессиональные участники рынка ценных бумаг, услуги инвестиционных компаний, создание Компенсационного фонда для устранения рисков инвесторов, размещение новых эмиссий, эмитентные отчеты и др.

Ключевые слова: ценные бумаги, рынки капитала, инвестиции, акции, биржа, клиринг, депозитар, уставный капитал, эмиссия, эмитент, закон.

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Securities market of Azerbaijan in a new phase

The article covers legislative framework, which is prepared to develop the securities market, standards and regulations aimed at developing this field and regulating possible problems. The article also mentions issues related to the preparation of the legislation and new Law on «Securities market» which is developed to take the securities market into new phase. Moreover, the article touches upon the sphere of activity of the financial markets, professional participants of the securities market, services of the investment firms, creation of the compensation fund to regulate the risks of investors, allocation of the new issues, issuer reports and other matters.

Keywords: securities, capital market, investment, fund, exchange, clearing, depository, authorized capital, issue, issuer, law.

Since 1998 legislation has been developed to form the securities market and as of 2000 the securities market has been operational. Later, several new laws, standards and regulations have been prepared by the State Committee for Securities of the Republic of Azerbaijan to strengthen the infrastructure and regulate the possible risks. During the last 10 years, processes happening in world economy and money and capital markets have raised the issue of regulation of relationship of the financial markets and market participants. President Ilham Aliyev has signed an order approving the State Program on «Development of securities market in the Republic of Azerbaijan in 2011–2020 (6). The main objective of the program is to form a modern and efficiently operating securities market in line with international standards which can provide wide capitalization opportunities to the economy and ensure reliable risk management. Besides, the aim is to provide informative and awareness works on securities market (1).

In order to realize the benefits of the capital markets for the economy, it is necessary to build convenient and reliable system, taking into consideration the socioeconomic and political aspects (3). Economic growth in the country and changes made in the legislation have made it necessary to update the legislation on securities and prepare the Law on «Securities» in order to take the securities market into the new development phase. Financial markets: Sphere of activity of the financial markets is usually divided into two parts:

1. Money market.

2. Capital market.

Money market mainly deals with regulating money market.

The main objective of the capital market is to ensure the flow of savings made in the economy to the economic agents in need of financing and to form the infrastructure to enable the people in need of financing to access the market. Activities of the market participants and operational mechanism of the market has to be taken into account in addition to ensuring the formulation of the deep, liquid and transparent market (3).

1. Regulated markets – operations done through investment securities quoted in exchange.

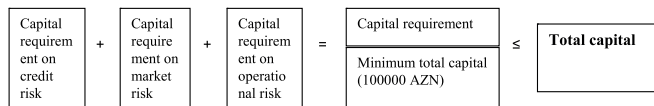
2. Unregulated markets – instead of public offering of the securities in the market or through auction, the deal is done between the seller and the buyer. In this case sellers and buyers get in touch and agree on sale through brokerage firm via phone, fax or electronic tools. Even though this kind of transactions are called over-the-counter transactions, currently in securities market of Azerbaijan this kind of agreements have regulated mechanism and are semi-regulated. Since the last financial crisis, Financial Market Directives of the European Union member states envisions the regulation and supervision over the operational systems created as an alternative for exchange (7).

Professional participants: In order securities market to operate professional participants are needed to conduct the different kinds of activities in the market.

Even though there are professional participants when the market commences, it is necessary to re-form the participants taking into consideration the requirements of the market. According to the new law, professional participants will be investment firm, exchange, clearing organization, depository of the investment fund and central depository. These will be incorporated as a joint stock company and will have to get a license depending on its field of activity to operate. Licenses for the investment firms will be single license for providing services such as brokerage, dealer or underwriting. These firms will only be allowed to conduct permitted activities. According to the existing legislation, brokerage and dealer firms were given a license for 5 years, however, based on new law investment firm activities will be given a permanent license as this will be the case for exchange, clearing and depository services. These changes will eliminate time constraints on the activities of the professional market participants and will positively affect their ability to formulate long term strategy.

The existing law did not define any capital requirement for the professional market participants, whereas new legislation determines that supervisory authority defines minimum capital amount for the authorized capital and its formulation procedures for the investment firm, exchange, clearing organization, depository of the investment fund and central depository.

Taking into account that asset management, transactions conducted on behalf and via account of a client, professional participants have to have adequate level of capital to mitigate the possible risks arising (2). Total capital requirement is equal to the sum of capital requirement calculated taking into account the credit risk, market risk, operational risk and concentration risk:



Another change is that professional participants such as central depository, exchange, clearing organization, depository of the investment fund and investment firm have to prepare financial statements not later than 4 months from the end of the financial year, have them audited, submit them to supervisory authority together with audit opinion and disclose them using mass media.

It would have been more appropriate to have different capital requirements for the companies that take all or part of the responsibility for providing asset management or underwriting services for the investment firms and companies that only provide intermediary services. Considering that companies that only provide intermediary services for the purchase and sales of the securities do not raise funds and do not take on great amount of liability vis-a-vis their clients, reporting requirements for these firms could have been different than other firms.

Moreover, professional participants of the market can acquire the share that would allow the professional participant to raise the significant share to 25%, 50% and 75% of the authorized capital and also allow the investment firm, exchange, clearing organization, depository of the investment fund and central depository only after receiving the consent of the supervisory authority. The same person cannot directly or indirectly acquire controlling share (50% and above) of more than one company.

Existing legislation allowed to get the license for the investment firm activity (brokerage) within short period of time (9), whereas according to the new law final application for getting license will be considered in two stages after the initial application, submitted by the founders, and respective state registration. Besides, branches and representatives of the local investment firm can operate in the Republic of Azerbaijan or outside of the country based on the permission of the supervisory authority.

While existing legislation allowed the person to take any position at the brokerage firm by only passing attestation at the supervisory authority, new legislation requires a person to have minimum of 3 years of experience in financial services sector for becoming a member of supervisory body, management board and head of the branch of the investment firm, and 4 years of experience in audit or related services to become a member of audit committee of the investment firm, exchange, clearing organization, depository of the investment fund and central depository.

Services of investment companies: According to the new law, following operations have been identified that investment firms can conduct with the financial instruments:

1. Reception and execution of client requests. In this kind of activities companies do not take any risk and merely executive the operation on behalf of the client and client's account.

2. Portfolio management for individual investors. In case of possessing permission for managing firm's assets they will be allowed to manage individual investors' portfolios only, however, according to the law on «Investment funds» they will not be allowed to form and operate equity or other kinds of funds (4).

3. Providing investment recommendations. Companies will provide recommendations on issuance, how to get listed and other consulting services to investors, issuers and other capital market participants and will receive payments and commissions in return. Brokerage firms have been fulfilling these services for years to support the development of the securities market, however, they do not receive any payment from the clients in return;

4. Allocation and underwriting of the securities without bearing responsibility or allocation and underwriting of the securities with bearing responsibility. According to the existing law, companies providing dealer services can allocate the newly issued securities based on purchase orders without bearing any responsibility and do not bear any responsibility for the part of securities that has not been allocated. According to the new law, companies will be able to take over the responsibility for the allocation of the part of the new issues and will have to have enough capital and other requirements. There will be a need for the brokerage companies with low amount of capital to boost their capital.

Supporting investment services are the following:

1. Management and maintenance of clients' accounts, including conducting operations related to loading the securities or derivatives with liability;

2. Signing deals with investors through securities or derivatives or lending.

According to the existing regulations, brokerage firms only executed clients' orders, whereas they will also be able to participate in financing investors' orders. In order this kind of financial operation to work, it is necessary for the investment firm to be able to keep the financial instrument in its account

or securitize the instrument in order to be able to regulate the promptness of the transaction and risks of the investment firm. As mentioned above, these transactions will necessitate capital requirements and new financing sources. Investment firms will be able to providing lending for the clients through issuing new debt securities or equity (IPO – Initial Public Offering). In the practice of different countries, a client is able to use 20, 35 or 50% of his own funds and the rest can be covered using credit limit. In case when there is a loss in value of the security in the amount of credit used to purchase the security, the security is immediately sold to cover the credit position (8).

3. Even though services, such as capital structure of the legal entity, operational strategy and recommendation on reorganization, research related to securities or derivatives and financial analysis are being done by the existing professional participants, the new requirements will bring development of professional staff and human resources into the agenda;

4. Foreign exchange related to providing main investment services. Currently, brokerage firms conduct operations with their own account and on behalf of the client to fulfill the requirements of the client. The new law will approve this operations mechanism.

Market innovation – Investor Compensation Fund: Since the formation of capital market in Azerbaijan it has been considered to create this kind of funds, however there has not been a necessity to create a fund to insure the investor risks. Due to the fact the market participants were not allowed to take additional risks and there were limited number of investors and deals in the market, besides supervisory authority being able to control the situation, there has not been a need for creating compensation funds for the investors. According to the new law, if ratio of deals to the GDP in the securities market exceeds 25% for 2 consecutive years, investor compensation fund has to be set up to provide compensation. Taking into account that formation of this kind of fund will protect investors and will allow to attract new investors, it would have been reasonable to immediately set up the fund without considering the ratio of deals to GDP. Entities who have got license to operate as an investment firm in the territory of the Republic of Azerbaijan have to participate in the fund when the investor compensation fund is created.

It is considered to form the fund's means from following sources:

- Service fee paid by the participants of the fund;
- Commissions paid to investment firms;
- Returns made through investment activities;
- Payments on insurance contracts;
- Payments received on liquidation services provided by the investment firms.

Allocation of the new issues: According to the existing law it was allowed for investment securities – 1 year for equities and longer allocation period for all kinds of bonds (15 and 5 days respectively from the declaration date), whereas, according to the new law public offering of the securities is not allowed to exceed 3 months including subscription period being not more than 7 working days from the date of subscription announcement (5).

Publicly offered securities can only be bought by money and these funds will be kept in clearing organization or in a special bank account opened by the issuer in a bank determined by the supervisory authority. These funds can be used by the issuer after

the allocation is completed and issue or report on the results of public offering passed state registration by the supervisory authority. Subscription was conducted based on nominal price till today, whereas according to the new law the price corridor of the publicly offered securities has to be in the issue prospectus or has to be declared 3 days prior to the subscription date. Orders can be entered into the trading system of the exchange only within price corridor of the security defined in prospectus.

Statements of issuers: Irrespective of its legal form, issuers whose securities have been publicly offered and traded in regulated market will publicly distribute its annual financial statement within 4 months from the year end and has to ensure that it is accessible for the public for next 5 years. Besides annual financial statements, approved annual and semiannual management reports have to be submitted to the supervisory authority. Significant events that happened during the past 6 months and main risks and problems for the upcoming 6 months have to be mentioned in the interim management report.

Comments on their impact on the interim financial statements, as well as information on the deals made with various persons have to be included into the interim report. Moreover, issuers have to prepare, in accordance with the regulations of the supervisory authority, the list of shareholders who have significant share and have to make sure the list is accessible for the public.

In international practice, unlike in Azerbaijan, companies with publicly traded securities announce, in advance, the date when the financial statements will be disclosed each quarter and the company is obliged to disclose the financial statements in the predetermined dates. Even in some countries there is a strict deadline for the companies to disclose their financial statement and companies may face fines and penalties in case if they fail to do so.

Disclosure of the information by the Issuers: Issuers which had public offering of the securities and whose securities is publicly traded have to disclose information to the public in the following cases:

- a) issuance for the borrowing purposes;
- b) in case it provides guarantee;
- c) if any changes occur in the utilization of the funds that have been attracted via public offering mentioned in the issue prospectus.

Matters considered in this case are more about the issuers who issue debt securities. Moreover, disclosure of the deals and operations to the public by the joint-stock companies significant to the activities of the company whose shares have been publicly offered is one of the important elements. In international practice, companies listed in exchanges have to disclose the information of public interest during the day and this prompt information flow is important to ensure the business transparency and financial depth.

It can be considered for the companies in a regulated market, whose investment securities is listed, to disclose the following information:

- a) Borrowing contracts, advertising and sponsorship agreements significant to the company;
- b) confirmation or rejection information by the attorneys of the company of the company information published in print or online media (within maximum of 3 days);

c) repurchase of the share by the company or information on operations with the company shares in exchange or over-the-counter by the shareholders having significant share;

d) disclosing financial statement indicating financial position of the company within 20 days from the end of each quarter with 7 days in advance notice;

e) Disclosing the decisions of the general meeting of the shareholders, supervisory board and management board within 1 day, latest.

As this kind of decisions and information immediately affects the market price of the securities, it is important to make sure that investors get this information in under fair time and conditions. This is very important to ensure the transparency in the market.

Authorities of the State Committee for Securities of the Republic of Azerbaijan (SCS) are being expanded: According to the existing legislation only the management positions at the National Depository Center, which has been established by the SCS, were appointed and dismissed by the SCS, whereas according to the new law management positions at the investment firm, exchange, clearing organization, depository of the investment fund and central depository will be approved by the shareholders after being agreed with the SCS. Moreover, in cases defined in the law, members of the executive board of the investment firm, exchange, clearing organization, depository of the investment fund and central depository can be prematurely dismissed. Besides, the SCS will also participate in the management of the investors compensation fund. The

SCS will be allowed to appoint and dismiss the members of the supervisory board of the fund.

In general, it is understandable for Azerbaijan to increasing control over the capital market and to provid additional authorities to the supervisory authority taking into account the increasing control over the capital market and limiting its activities in a global level after it caused the global financial crises. Significantly increasing the scope of authority of the supervisory authority can negatively affect the developing capital market. It is necessary to identify optimal level of authorities for the supervisory authority taking into consideration the depth, development level and working mechanism of the market.

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Біхевіористична теорія на страховому ринку

У статті розглянуто основні положення теорії біхевіоризму, які характеризують поведінку індивідів на страховому ринку. Актуальність дослідження підтверджують результати емпіричних досліджень науковців західної економічної думки, зокрема праці нобелівських лауреатів Д. Канемана і А. Тверські. Практична цінність дослідження полягає в поясненні окремих процесів прийняття рішень та мотивації учасників страхового ринку.

Ключові слова: теорія біхевіоризму, прийняття рішення, раціональність, індивід, страхове покриття, страховий платіж.

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Бихевиористическая теория на страховом рынке

В статье рассмотрены основные положения теории бихевиоризма, характеризующие поведение индивидов на страховом рынке. Актуальность исследования подтверждают результаты эмпирических исследований ученых западной экономической мысли, в частности работы нобелевских лауреатов Д. Канемана и А. Тверски. Практическая ценность исследования заключается в объяснении отдельных процессов принятия решений и мотивации участников страхового рынка.

Ключевые слова: теория бихевиоризма, принятие решения, рациональность, индивид, страховое покрытие, страховой платеж.

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Behavioral theory on the insurance market

The article discusses the basic terms of the behavioral theory that characterize the decisions of individuals in the insurance market. The relevance of the study confirms the results of empirical research of sciences of Western economic thought, including the work of Nobel laureates D. Kahneman and A. Tversky. The practical value of the study is to explain certain decision-making processes and motivation of the participants in the insurance market.

Keywords: behavioral theory, decision-making, rationality, individuals, insurance coverage, insurance payment.