

РАЗДЕЛ I. СОЦИАЛЬНЫЕ ПРОБЛЕМЫ ТРАНСФОРМАЦИИ ЭКОНОМИКИ РОССИИ

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ПРОБЛЕМЫ РЕГУЛИРОВАНИЯ РЫНКА ЦЕННЫХ БУМАГ В СТРАНАХ С ПЕРЕХОДНОЙ ЭКОНОМИКОЙ

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PROBLEMS OF THE SECURITIES MARKET REGULATION IN THE COUNTRIES WITH TRANSITION ECONOMY

Аннотация. Рассмотрены проблемы и возможные пути регулирования рынка ценных бумаг в странах Центральной и Восточной Европы и Центральной Азии. Показано, что наряду с внедрением принципов англо-американской и континентальной европейской моделей регулирования рынка ценных бумаг возможна разработка собственных принципов или сочетание этих принципов регулирования. Дана оценка эффективности и целесообразности внедрения основных принципов англо-американской и континентальной европейской моделей регулирования рынка ценных бумаг в странах с переходной экономикой. Представлены основные принципы и стандарты регулирования и контроля рынка ценных бумаг, принятые в мире и рекомендованные международными организациями и регулирующими органами, в сравнении с регулированием рынка ценных бумаг в странах с переходной экономикой. Выявлены основные недостатки регулирования рынка ценных бумаг в разных странах. На основе проведенного анализа сформулированы предложения по

Abstract. The article considers the problems of the securities market regulation in the countries with transition economy. The article studies the main ways of the securities market regulation in the countries of Eastern and Central Europe and Central Asia. In the article case studies were made, comparative analysis of the securities market regulation compliance to the main principles accepted in the world was done, main shortcomings of regulation in different countries were discovered.

Key words: securities market, securities regulation, transition economy.

дальнейшему совершенствованию регулирования рынка ценных бумаг в странах с переходной экономикой, в частности, с использованием позитивного опыта реформирования финансового сектора и регулирующей базы отдельных стран.

Ключевые слова: рынок ценных бумаг, регулирование рынка, переходная экономика.

Issues of regulation of the financial system as a whole and regulation of the securities market particularly are a great challenge for the countries with transition economy. Current legal systems regulating securities markets in the countries of Central and Eastern Europe and Central Asia began to develop since the time these countries chose market economy. There were three ways of setting legal systems: to adopt either principles set in Anglo-American or Continental European (sometimes called Romano-German system) systems, to develop own principles, or to make some symbiosis of above-mentioned. Most of Central and Eastern European countries preferred Continental European legislation system and/or symbiosis of this system with own principles. In this system there is almost no limitation for banks to operate in the securities market. Adoption of these principles is mainly conditioned by nearness of Western European countries, especially Germany and France. Besides, there is also one essential factor—the securities markets in the countries with transition economy were (and still are) in stage of formation, whereas the introduction of Anglo-American model requires existence of highly developed securities market [1; 2; 11; 12]. Although securitization is remarkable, the dominating sphere of financial market in Continental European model is banking system. Banks are big players in the securities market. The securities market in these countries, in contrast to the USA, is a market of big participants and not small shares [1; 2; 10]. The reconstruction and development of financial sphere in Central and Eastern European countries began from banking system. Banking system should be reconstructed and developed, whereas the securities market—newly established.

The IOSCO objectives and principles of securities regulation and EU directives have been

viewed as general benchmarks for most countries of Central and Eastern Europe and Central Asia. The IOSCO offers the following groups of principles: principles relating to the regulator, principles for self-regulation, principles for the enforcement of securities regulation, principles for cooperation in regulation, principles for issuers, principles for auditors, credit rating agencies and other information providers, principles for collective investment schemes, principles for market intermediaries and principles for secondary markets [9]. However, the implementation of above principles was not on the same level in different countries with transition economy. In new EU member states the EU directives were almost fully adopted. In some countries like Croatia, Serbia or Armenia activities have been made to harmonize the securities legislation with the EU directives while in other countries EU directives are not formally viewed as a benchmark. The securities market legislation is considered fully compliant with the IOSCO securities regulation principles in all new EU member states (Estonia, Lithuania, Latvia, Poland, Check Republic, Slovakia, Hungary, Slovenia, Romania and Bulgaria), as well as Croatia, Serbia, Ukraine and Moldova. In the Russian Federation, Macedonia, Armenia, Montenegro, Bosnia & Herzegovina, Kazakhstan and Kyrgyzstan the securities market legislation has medium compliance with the IOSCO securities regulation principles. The securities market legislation in Georgia, Albania, Azerbaijan and Uzbekistan has low compliance and in Belarus, Turkmenistan and Tajikistan – very low compliance with the IOSCO securities regulation principles [5].

Main problems in implementing the IOSCO principles in the countries with transition economy are connected with financial instruments regulations. In most countries it is conditioned with the low level of development or practically

absence of derivative market and the regulation thereof. Main problems in implementing the IOSCO principles relating to the financial instruments are observed in Georgia, Armenia, Belarus, the Russian Federation, Moldova, Bulgaria, Albania, Bosnia & Herzegovina, Montenegro and Lithuania.

Main problems in implementing the IOSCO principles for collective investment schemes (CIS) are observed in Armenia and Georgia. This is conditioned by the actual absence in these countries collective investment schemes. However, Armenia has been doing important steps towards introducing funded pension system and the regulation thereof. During the recent years a number of laws, regulations and other legal acts have been adopting which shall regulate the field. Moreover, in 2014 Armenia is planning to introduce a multi-pillar pension system two of the pillars of which will use collective investment schemes (voluntary and mandatory funded pension pillars).

Main problems in implementing the IOSCO principles for secondary markets are observed in Bosnia & Herzegovina, Belarus, Georgia, Bulgaria, Azerbaijan and Albania.

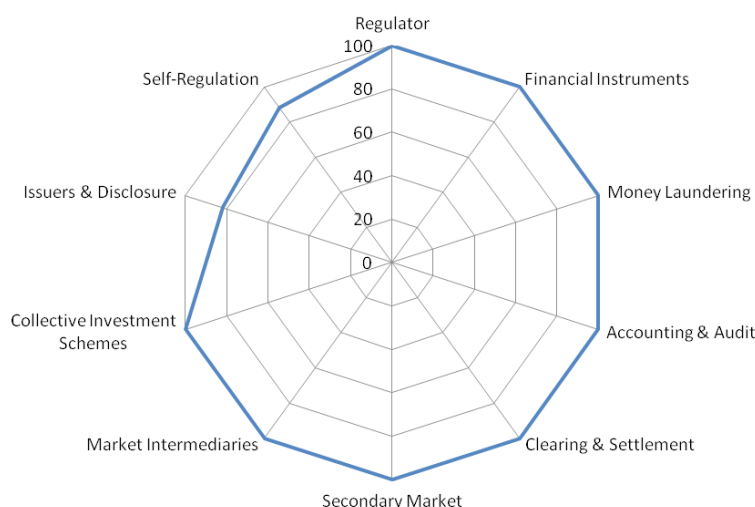
Main problems in implementing the IOSCO principles for market intermediaries are observed in Armenia and Azerbaijan. Main problems in implementing the IOSCO principles for clearing and settlement are observed in Belarus

and Albania. Main problems in implementing the IOSCO principles for self-regulation are observed in Montenegro and Azerbaijan.

The only country where essential problems of implementation of the IOSCO principles relating to accounting and audit are observed is Albania and the only country where problems of implementation of the IOSCO principles relating to money laundering are observed is Belarus.

Estonia is one of the countries not only in Eastern Europe but in the world that is in front of reforms in the securities market and harmonizing its legislation to the EU directives and implementing the IOSCO securities regulation principles. The Russian Federation is the country with the biggest economy in Eastern Europe and is commonly viewed as a benchmark for other members of the Commonwealth of Independent States. Armenia is leading in reforms of the financial system in the South Caucasus where the securities market is on the lowest level among Eastern European countries. Taking into account mentioned above and the main goals of the study, i.e. revealing the problems of the securities market regulation in the countries with transition economy, the compliance of the securities market legislation with the IOSCO Principles in Estonia, the Russian Federation and Armenia was analyzed in more details.

The compliance of the securities market legislation in Estonia with the IOSCO principles is shown in pic. 1.



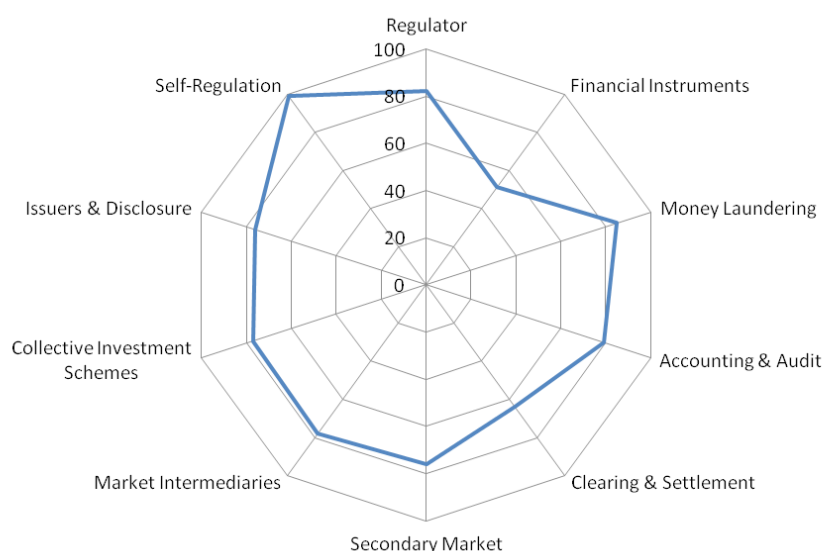
pic. 1. Compliance of the Securities Market Legislation in Estonia with the IOSCO Principles [5]

As it can be seen from pic. 1, securities market regulation in Estonia is highly compliant with IOSCO securities market regulation principles. Minor problems exist in the sphere of self-regulation and issuers and disclosure regulation. The level of compliance with the IOSCO principles is approximately 100% in all fields of the securities market regulation with the exception of self-regulation and issuers and disclosure regulation. However, the level of compliance with the IOSCO principles there is also higher than 80%. It should be also noted that after legislation compliance assessment, amendments to the Securities Market Act of Estonia were made. As a result of this the Securities Market Act of Estonia currently fully corresponds with the Market in Financial Instruments Directive (MiFID), the Takeover Directive and the Capital Adequacy of

Investment Firms and Credit Institutions Directive [5; 9].

Above analyses show that the securities market regulation in Estonia is highly compliant not only with the IOSCO securities regulation principles but also with the EU directives. Thus, Estonia may be viewed as a benchmark for securities market regulation in the countries of Easter Europe and Central Asia. For further research the models of the Russian Federation and Armenia are analyzed. The securities market regulation in the Russian Federation has been developing during the last decades. It is largely based on the Continental European principles and on the own legislation peculiarities.

The compliance of the securities market legislation in the Russian Federation with the IOSCO principles is shown in pic. 2.



pic. 2. Compliance of the Securities Market Legislation in the Russian Federation with the IOSCO Principles [5]

As it can be seen from pic. 2, the main problems in the Russian Federation are connected with the financial instruments, particularly with the derivatives regulation. However, the other fields of the securities market regulation, with the exception of self-regulation, are also not fully compliant with the principles of securities market regulation of IOSCO. The level of compliance with the IOSCO principles is more than 75% in the fields of money laundering, accounting, the securities market regulator, secondary

market, market intermediaries, issuers and disclosure regulation. The level of compliance with the IOSCO principles is between 50% and 75% in the field of clearing and settlement regulation. The only field where the compliance with the IOSCO principles is on 50% level is financial instruments regulation.

As it was mentioned above, the current legislation regulating the securities market in Armenia is mainly based on Continental European principles. In contrast to the Russian Federation,

securities regulation in Armenia has been developing aiming full synchronization with EU directives. Estonian model was taken as a benchmark. This is mainly conditioned by the fact Estonia has one of the most compliant with the IOSCO principles and EU directives legislation among Central and Eastern European countries. The activities of Estonian securities market during the last decades are always on high level and Estonia is always in the front of securities market reforms. For choosing Estonia as a main benchmark for securities market regulation in Armenia is largely conditioned also by the fact that both in Armenia and Estonia the organized securities market as well as the settlement, clearing and depository systems are operated by the NASDAQ OMX.

Like in other counties with transition economy, changes in legislation began in banking sphere. Several laws were changed, others—newly adopted. The Republic of Armenia, like most Eastern European countries, adopted Continental European legislation on banking sphere. In 1993–2004 a great number of laws and other legal act were adopted, particularly laws of the Republic of Armenia on “Foreign Exchange Regulation and Currency Control”, on “The Central Bank of the Republic of Armenia”, on “Banks and Banking”, on “Bank Secrecy”, on “Bankruptcy of Banks”, a number of Regulations of the Central Bank of Armenia, which are mandatory for banks, credit organizations, and even non-bank organizations (in part of payments and settlements) operating in the Republic of Armenia. In 1998 the new Civil Code and in 2001 the new law on joint stock companies were adopted, which also emphasized Continental European principles [3; 4]. Consequently, at the beginning of 2001, Armenia already had enough developed legislation on banking and credit system, but there was neither developed securities market nor legislature regulating it. The legal acts regulating the securities market also appertained to Continental European model. So, the model set in the financial area of Armenia – both in banking sphere and in the securities market – before 2000 could be considered to be a Continental European model with some local adjustments.

However, in 2000 a new law regulating the securities market was adopted, which changed the way of development of the securities market of Armenia. This was the “Securities Market Regulation Law of the Republic of Armenia”. All main principles of this law correspond with the Anglo-American model. Some amendments were done to adjust this law to the legal environment of the financial sphere of Armenia, but there were a lot of discrepancies between these laws. Thus, since 2000 the situation in the area of regulation of financial sector of the Republic of Armenia became ambiguous: on the one hand—banking system regulated by Continental European legislation, on the second hand – the securities market regulated by Anglo-American legislation. A symbiotic model has been created. For example, in accordance with the law of the Republic of Armenia on “Banks and Banking Activities” of 1996, the banks, branches thereof, branches of foreign banks operating in the territory of the Republic of Armenia may deal in a broad range of services in the securities market of Armenia: issue, purchase (discount), sell and serve securities, payment documents, travelers’ checks, cards and other instruments, implement investment and subscription (underwriting) activities, provide services of financial agent (representative), manage the securities and investments owned by other persons (trust management). In addition, law states that banks are not allowed to implement only industrial, trade and insurance activities [6]. Simultaneously the “Securities Market Regulation Law of the Republic of Armenia” [8] set a number of restrictions for banks to operate in the securities market. First with adoption of this law dual subordination was set in the financial sphere: banks continued to be accountable to the Central Bank of Armenia, but for dealing in securities market banks, as other organizations, should be accountable to the Securities Commission of the Republic of Armenia. The law defined professional activity in the securities market as activity which must be licensed by the Securities Commission of the Republic of Armenia. So, if banks wanted to deal in securities market they had to apply for licenses to the Securities Commission.

Nonetheless, some operations were allowed for banks to execute without license of professional activity in the securities market. Thus, the Securities Market Regulation Law provided for that certain securities could be instruments of brokerage activity for banks without the brokerage license (a type of the securities market professional activity). Above securities include: a) securities issued or guaranteed by the state bodies or the communities of the Republic of Armenia; b) securities issued or guaranteed by the Central Bank of Armenia. The same exclusions were also provided for the trust management and securities custodial activities, but not for dealer activities. All these exceptions had been done as amendments to the Securities Market Regulation Law due to impossibility of demanding banks to get licenses for operations with these securities. Here must be remembered that the banks are the main investors in these types of securities and only banks participate in the primary allocation of the ones.

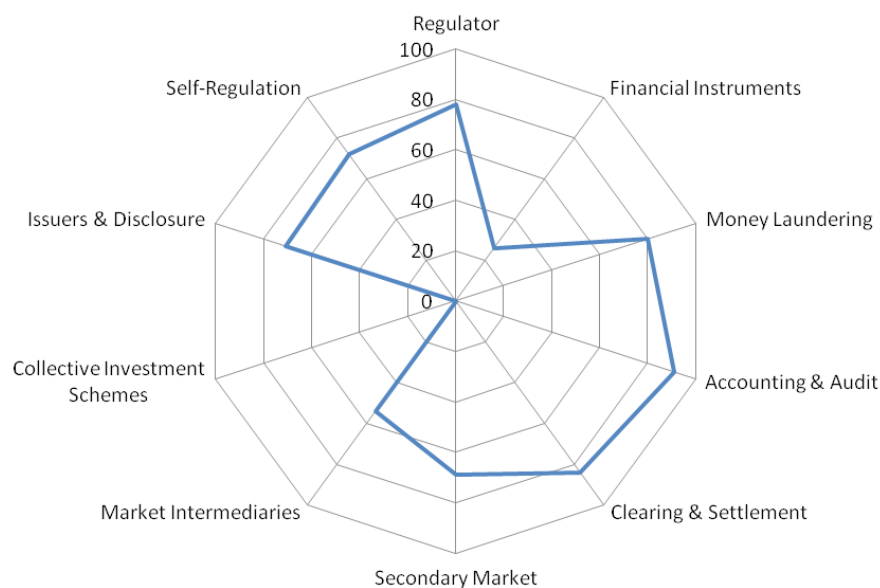
In case banks anyway got licenses for the professional activities in the securities market, a number of obstacles existed for their activities. According to the Securities Market Regulation Law stock exchanges and the central depository (the only organization, which performs the functions of a centralized custodian, securities registry and clearing and settlement in Armenia) in the territory of Armenia could be formed only as self-regulatory organizations (hereinafter—SRO). In accordance with the Securities Market Regulation Law, only a person, who had a license of professional activity in the securities market, could be a member of SRO. Moreover, the law provided for that only broker and/or dealer might become members of stock exchanges, and that only the members of stock exchanges might directly participate in trading in the securities and other stock commodities by using the means of stock exchange. So, the banks were eliminated from the exchange trades by adopting the Securities Market Regulation Law of 2000. In 2001 some amendments were made to the law and banks formally got the right of directly participating in trading in certain securities mentioned above, but only if this is provid-

ed for by the rules of the stock exchange. Thus, due to the complicated legal field and a number of discrepancies banks with their broad share in trading were eliminated from the exchange trades.

In 2005 – 2007 further changes to the legislation were made. First the regulation and supervision over the whole financial system, including the securities market, was transferred to the Central Bank of Armenia. Then a new law regulating the securities market was adopted which replaced the older one. The newly adopted Securities Market Law was fully based on the Continental European principles of regulation. Then the only operator of the regulated market (Armenian Stock Exchange) and the only operator of settlement system (Central Depository of Armenia) were transferred to one of the world's biggest stock market operators – NASDAQ OMX. By changing the legislation and transferring key trading facilities and settlement and depository systems to the NASDAQ OMX the process of changing appropriate trading, clearing and settlement rules began which is largely accomplished not but not fully finished yet.

Thus, in 2006 a mega-regulator of financial system was created and since 2007 the regulatory framework of the securities market has been based on the Continental European principles. These changes allowed to minimize the obstacle for developing the securities market including development of project of introduction of the collective investment schemes and, particularly, funded pension system. Funded pension system needs especially detailed regulation because this system is, to a great extent, to secure pension age people's livelihood.

The compliance of the securities market legislation in Armenia with the IOSCO principles is shown in pic. 3.



pic. 3. Compliance of the Securities Market Legislation in Armenia with the IOSCO Principles [5]

As it can be seen from Pic. 3, the main problems in Armenia are connected with the financial instruments and collective investment schemes regulation. Weakness of financial instruments regulation is mainly conditioned with the derivatives market. The level of compliance with the IOSCO principles is more than 75% in the fields of accounting, clearing and settlement, securities market regulator and money laundering regulation. The compliance in the field of accounting is about 90%. Here it should be noted that the level of compliance is currently much higher since during the recent years much efforts have been made to introduce International Financial Reporting Standards (IFRS) to the financial system of Armenia. Beginning from 2011 all investment firms, investment funds, management companies, investments banks, organized market (stock exchanges) operators, clearing and settlement companies, depository companies as well as the reporting issuers in the securities market shall present financial statement in accordance with the IFRS. The level of compliance with the IOSCO principles is between 50% and 75% in the field of self-regulatory organizations, issuers and disclosure, secondary market and market intermediary regulation. The level of compliance with the IOSCO princi-

ples in the field of financial instruments regulation is on 25%. The level of compliance with the IOSCO principles in the field collective investment schemes is 0% [5; 9]. However, the absence of collective investment schemes regulation is not matter in Armenia any more since the EBRD Securities Markets Legislation Assessment was done in 2007 and the most of the legislation has been adopted after that. Nonetheless, there are a lot of problems and inconsistencies within the legislation regulating collective investment schemes. Both problems in the derivatives and collective investment schemes regulation are to a great extent conditioned by the nonexistence of such instruments in Armenia at the moment.

The above analyses and case studies shows that the most positive way of development of the securities market regulation in the countries with transition economy is introduction of the Continental European principles of financial system regulation, as a whole, and the securities market regulation, particularly. Research also shows that harmonization of the securities market regulation with the EU directives and implementation of the IOSCO principles are of high importance for the countries with transition economy but are on different levels in different countries.

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