

**Note on the continuation of the legal procedure regarding the increase of Oil Terminal S.A.' social capital**

According to Law no. 15/1990 on the reorganization of state economic units as autonomous companies and commercial companies and to Government Decision no. 834/1991 on the establishment and evaluation of fields in the patrimony of companies with state capital and taking into account the Commission's proposals for the fields' establishment and evaluation, constituted by the Order of the Minister no. 5302/10.04.2002, according to GD 19/2001, the Ministry of Industry and Resources issued 2 (two) Certificates attesting the property right for Oil Terminal S.A.,as follows:

- series M03, no.11703 on the field with a surface of 254,261.325 sqm and
- series M03, no.11704 on the field with a surface of 129,334.70 sqm.

According to the provisions of art. 210 point 1 of the Companies Law no. 31/1990 *"social capital can be increased by issuing new shares or by increasing the nominal value of existing shares in exchange for new contributions in cash and/or in kind"*.

According to the provisions of art.32<sup>2</sup> point 1 of the Government Emergency Ordinance no.88/1997 regarding the privatization of companies *"The social capital of companies to which the attestation certificate of the property right on fields has been issued is increased by right with the value of fields mentioned in the certificate."*

By EGSM Decision no. 4/12.06.2020, Oil Terminal S.A.' shareholders approved the following:

- the termination of Shareholders Extraordinary General Assembly Decision no. 6/10.10.2016.
- the finding of the increase of Oil Terminal S.A.' social capital by the value of the two fields in surface of 254,261.325 sqm and namely in surface of 129,334.70 sqm, object of property certificates series MO 3, no. 11703/02.02.2011 and series MO 3, no. 11704/02.02.2011.
- making an application to the judge assigned by ONRC to appoint one or more experts to evaluate the two fields to be included in company's social capital increase process.

According to this decision, the company sent to ONRC the application to appoint an expert. By Resolution no. 16280/07.07.2020 pronounced in file no. 60751/06.07.2020 the Trade Register Office by Constanta Court appointed Mapps Master Appraisal SRL as expert to evaluate fields to be included in the process of company's social capital increase.

Mapps Master Appraisal SRL issued Expert Report no. 155/2021 regarding Oil Terminal S.A.' social capital increase, here-by annexed.

According to the provisions of art. 215 para. 3 of Companies Law no. 31/1990 *"After submitting the expert report, the extraordinary general assembly, convened again, considering the experts' conclusions, may decide social capital increase"*

According to the provisions of art. 12 para. 5 and of Law no. 137/2002 regarding accelerating privatization, *“(5) If the certificate attesting property right on fields was not followed, prior privatization, by the appropriate increase of social capital or if the certificate is issued after privatization, social capital is increased by the value of fields, **which shall be considered contribution in kind of state or of a territorial administrative unit, as applicable, in exchange of which additional shares shall be issued incumbent upon the public institution involved.***

*(5<sup>1</sup>) The increase of social capital by the value of fields for which certificates attesting property right were issued is made with no issue premium.*

*(5<sup>2</sup>) The price for subscription of shares related to the preferential right exercised by existing shareholders within the increase of social capital by the value of the fields for which certificates attesting property right were issued, shall be established with no issue premium.”*

Consequently, additional shares issued corresponding to the value of fields are incumbent upon the public institution involved and the issue of new shares shall be made at a price equal to the nominal value of shares, namely 0.1 lei.share.

Therefore, for the continuation of the social capital increase procedure, shareholders approval is required regarding:

- The value of the contribution in kind, the number of shares related to the contribution in kind while mentioning the nominal value of each and the total value of these shares;
- The value of the cash contribution, the maximum number of shares related to the cash contribution while mentioning the nominal value and the total value;
- The appointment of a FSA authorized intermediary to elaborate the proportionate prospectus and to fulfill any and all legal formalities of registration, approval, execution of prospectus, according to legal provisions of FSA Regulations regarding securities issuers and operations and delegated Regulation (EU) no. 980/2019 of European Commission,
- The empowerment of the Board of Directors to fulfill any and all formalities to implement EGSM decision including, but not limiting to the following:
  - Approval of the proportionate prospectus,
  - Monitoring and coordinating the approval of the proportionate prospectus by FSA and its publication,
  - Implementation of the offer (establishment and approval of subscription procedure, of date, place and payment methods, of how subscriptions are approved and evaluated, taking measures regarding unsubscribes shares and any other measures required),
  - Termination of subscription and notification of FSA regarding the final situation of subscriptions,
  - Approval of final results after the subscriptions termination; determination of the exact value increasing social capital, from which, how much is contribution in kind and how much is cash contribution, while detailing the number of shares issued for the contribution in kind and the total number of shares issued for the cash contribution; establishment of the social capital value after the increase and social capital's distribution per shareholder; modification of constitutive act corresponding to the increase; taking ancillary decision to inform FSA regarding subscription termination and to register in ONRC and register company.

According to the provisions of art. 173 of Financial Supervisory Authority Regulation no. 5/2018:

*“(1) The increase of social capital by cash contribution is made by issuing new shares offered for subscription to:*

- a) *Holders of preferential rights, belonging to shareholders existing on registration date who did not alienate them during their trade period and to those who acquired them during their trade period, if the case;*
- b) *Public, provided that the new shares were not totally subscribed during the exercise period of preferential right, if the issuer does not decide their annulment within EGSM.*
- (2) *The number of preferential rights issued is equal to the number of shares registered in the issuer's register on the registration date.*
- (3) *The increase of social capital shall be made by granting the possibility to keep the percentage held by each shareholder in its social capital.*
- (4) *The withdrawal of the preferential right can be decided by EGSM provided that provisions of art. 97 para. (1) of Law no. 24/2017 are met.*  
*24/09/2021 – the paragraph was repealed by Regulation 13/2021.*
- (6) *EGSM Decision of social capital increase mentions the number of preferential rights required for the subscription of newly-issued share, the price of subscription or the method for determining the subscription price for new shares based on the preferential rights and the period of subscription, the price/method of determining the price for new shares offered to public after the subscription based on preferential rights, if the case.*
- (7) *If EGSM attributions regarding social capital increase are assigned to issuer's board of directors according to art. 114 para. (1) of Law no. 31/1990, the provisions of this article regarding EGSM and its decision to increase social capital are applicable to the board of directors meeting and to the decision regarding this operation.*
- (8) *If EGSM decides to trade preferential rights, their trade is made on the same regulated market on which related securities are trade, in compliance with specific regulation of that market.”*

*According to the provisions of art. 12 of the Constitutive Act of Oil Terminal S.A.:*

*(4) The extraordinary general assembly is gathered as many times as needed in order to make a decision for:*

*.....*

*f. social capital increase;*

*.....*

*(6) ..... **The decision** for the modification of the company's main activity object, of decrease or **increase of social capital**, of changing legal form, of merging, of division or of dissolution of the company is made by a majority of at least two thirds of the voting rights held by presented or represented shareholders. If the extraordinary general assembly can not work due to non-fulfilment of the conditions presented above, the assembly gathered within the second convocation requires the presence of shareholders, representing at least one fifth of the voting rights total. The decisions are made by the majority of votes held by present or represented shareholders.”*

Considering the above-mentioned, we request to the Shareholders Extraordinary General Assembly the following:

1. **The approval for the continuation of social capital increase procedure** by the contribution in kind of **2,283,000,282 shares** and the cash contribution in maximum value of **154,610,814.80 lei**, by issuing a maximum number of **1,546,108,148 new shares**, nominative, in dematerialized form, with a nominal value of **0.1 lei/share**, from which:
  - a) **Contribution in kind** – a number of **2,283,000,282 shares**, with a nominal value of **0.1 lei/share**, in total value of **228,300,028.20 lei**, representing the value of fields for which certificates attesting

property rights were issued, established by evaluation report no. 155/2021 issued by Mapps – Master Appraisal SRL, J40/7308/2004, CUI 16400917, and namely:

- i. Field in surface of 254,261.325 sqm, located in Constanta county, no. 2 Caraiman street, registered in land book no. 215416 held by OCPI, cadastral number 215416, according to certificate attesting property right on fields series M03 no. 11703/02.02.2011, and
  - ii. Field in surface of 129,334.70 sqm, located in Constanta county, no. 2 Caraiman street, registered in land book no. 215382 held by OCPI, cadastral number 215382, according to certificate attesting property right on fields series M03 no. 11704/02.02.2011.
- b) **Cash contribution** – a maximum number of **1,546,108,148** shares, with a nominal value of **0.1 lei/share**, in a total value of maximum **154,610,814.80 lei**, to be offered to subscription to other shareholders in preferential right exercise, in order to maintain participation in Oil Terminal S.A. social capital on registration date.

*Social capital increase process shall be carried out with no issue premium according to provisions of art. 12 para. 5<sup>1</sup> and para. 5<sup>2</sup> of Law no. 137/2002 regarding some measure for accelerating privatization. Shareholders may exercise preferential rights within 45 days since the date mentioned in the proportioned prospectus to be elaborated by the authorized intermediary. The number of preferential rights is equal to the number of shares registered in the issuer's register on the registration date. A preferential right is equal to one share.*

*The subscription rate is of 6.574363900926190. The actual number of shares to be subscribed by each shareholder when exercising of preferential right is determined by multiplying the subscription Rate by the number of shares held. If the result is not a whole number, the result is rounded down to the nearest whole number.*

2. *The approval for the empowerment of the Board of Directors to appoint an intermediary authorized by FSA, to issue the proportionate prospectus and to fulfill any and all legal formalities related to registration, approval, implementation of prospectus, according to the provisions of FSA Regulation regarding securities issuers and operations and of delegated Regulation (EU) no. 980/2019 of European Commission.*
3. *The approval for the empowerment of the Board of Directors to fulfill any and all formalities to implement EGSM decision including, but not limiting to the following:*
  - a) *Approval of the proportionate prospectus,*
  - b) *Monitoring and coordinating the approval of the proportionate prospectus by FSA and its publication,*
  - c) *Implementation of the offer (establishment and approval of subscription procedure, of date, place and payment methods, of how subscriptions are approved and evaluated, taking measures regarding unsubscribes shares and any other measures required),*
  - d) *Termination of subscription and notification of FSA regarding the final situation of subscriptions,*
  - e) *Approval of final results after the subscriptions termination; determination of the exact value increasing social capital, from which, how much is contribution in kind and how much is cash contribution, while detailing the number of shares issued for the contribution in kind and the total number of shares issued for the cash contribution; establishment of the social capital value after the increase and social capital's distribution per shareholder; modification of constitutive act corresponding to the increase; taking ancillary decision to inform FSA regarding subscription termination and to register in ONRC and register company.*

After the approval and implementation of EGSM Decision according to those above-mentioned, another ESGM will be convened, whose agenda will include the modification of Oil Terminal S.A' constitutive act while mentioning the new social capital increased, its new structure so that additional shares corresponding to the field's value are incumbent upon the public institution involved, according to art. 204 para. 1 and 2 letter a) of Companies Law no. 31/1990 according to which

*“(1) The constitutive act may be modified by the decision of the general assembly or of the Board of Directors, namely of the directorate, adopted according to art. 114 para. (1), or by the decision of the court, according to art. 223 para. (3) and art. 226 para.*

*(2) The authentic form of the modifier act adopted by members is mandatory when having as object: a) the increase of social capital by the subscription as contribution in kind of a property(...)”.*

Oil Terminal S.A. will do the best efforts to continue to take further steps in order to complete the process of social capital increase, while protecting legitimate interests of all its shareholders.

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