

SIGNIFICANT CHANGES TO THE LAW ON SECURITIES 2019

On 26 November 2019, the National Assembly of Vietnam passed a new Law on Securities No. 54/2019/QH14 ("**New Securities Law**"), which will come into effect from 1 January 2021 and replace the Law on Securities No. 70/2006/QH11 (as amended by Law No. 62/2010/QH12) ("**Current Securities Law**").

The New Securities Law aims to address shortcomings in the Current Securities Law and to create legal bases, ensure sustainable development and safety of Vietnam securities markets.

Below is a summary of the significant changes under the New Securities Law:

1. Securities offering

Face value of securities

A bond has a par value of VND100,000 or a multiple thereof, while a share has a fixed face value of VND10,000. An issuer is permitted to offer and sell securities less than par value if this reflects the market price at which their outstanding securities are trading on an exchange.

Previously, companies with shares trading at a market price lower than their face value had difficulty raising capital by issuing additional shares at face value. The new regulation is expected to remove these difficulties.

However, this may technically be problematic if the charter capital (as recorded in the enterprise registration certificate of an issuer) is higher than the actual contributed capital. It is unclear what source of capital the issuer may use to offset against the difference. We believe that the authorities will need to issue further guidance on conditions of the issuance of low-price securities and on how to record actual contribution capital and charter capital in a consistent manner.

Tightening conditions for securities offerings

Conditions for securities offerings of an issuing company are stricter and more detailed to protect investors' interests. In particular:

- The conditions for an initial public offering of shares include:
 - (i) having a charter capital of at least VND30 billion (an increase from VND10 billion under the Current Securities Law);
 - (ii) having made a profit for two consecutive years preceding the issuance registration year (as compared to one-year profit making under the Current Securities Law);
 - (iii) undertaking to sell at least 15% of the voting shares to 100 investors or more other than the major shareholders (this ratio is 10% if the charter capital of the issuer is VND1,000 billion or more);
 - (iv) the major shareholders committing to hold at least 20% of the charter capital of the issuer at least one year from the closing of the offering; and
 - (v) the sale shares being listed or registered for trading within 30 days from the closing of the offering.
- For a secondary public offering of shares, the value of additional shares must not exceed the total value of all outstanding shares and the offering is only considered successful if 70% or more of the additional shares are sold.
- Conditions for a public offering of bonds include:
 - (i) having a charter capital of at least VND30 billion (an increase from VND10 billion under the Current Securities Law);
 - (ii) engaging a securities company as a consultant to apply for registration of public offering of bonds, unless the issuer is a securities company;
 - (iii) the issuer having a positive credit rating (subject to the Government's detailed guidelines); and
 - (iv) the bonds being listed within 30 days from the closing of the offering.

- Only strategic investors and professional securities investors are permitted to purchase shares, convertible bonds, bonds with warrants issued by public companies, securities companies, and securities investment fund managers in their private placements. The lock-in period is at least three years for strategic investors and at least one year for professional securities investors.
- Only professional securities investors are permitted to purchase bonds (other than convertible bonds, bonds with warrants) issued by public companies, securities companies, securities investment fund managers in their private placements.

Cancellation of a public offering of securities

- A public offering of securities must be canceled in one of the following circumstances:
 - for an initial public offering for shares:
 - less than 100 investors (other than the major shareholders) participate in the share purchase; or
 - less than 15% (or 10% if the charter capital of the issuer is VND1,000 billion or more) of the voting shares are sold;
 - the sale shares account for less than 70% of the approved offered shares, and the proceeds of the sale are used to finance a project approved by the shareholders in a secondary public offering of shares; or
 - under a decision of courts, arbitrators or competent authorities.

2. Public companies

Stricter conditions applied to public companies

- A company is considered a public company if (i) it completes an initial public offering of shares; or (ii) its charter capital is at least VND30 billion, and 10% or more of the total voting shares are owned by 100 shareholders or more (excluding major shareholders).
- Public companies who do not satisfy the conditions above will have their public company status deregistered.
- The conditions above do not apply to public companies with shares listed or registered to trade on a stock exchange on or before 1 January 2021 (i.e. the effective date of the New Securities Law).

Mandatory public offering (MPO)

The New Securities Law clarifies that both 'direct and indirect' ownership of 25% or more of voting shares will trigger an MPO. Under the Current Securities Law, the term 25% share ownership was

ambiguous and resulted in confusion within the business community whether the share ownership only covers direct ownership. In addition, the New Securities Law clearly sets out the MPO hurdles of 35%, 45%, 55%, 65% and 75% respectively (as compared with an acquisition of a further 10% or more shares on top of an existing 25% or more shareholding as contemplated by the Current Securities Law).

Share redemption

The Current Securities Law is silent on conditions for a share redemption. Instead, these conditions are guided by lower level legislation (such as Government decrees and Ministry of Finance's circulars). However, to unify and simplify licensing procedure, the New Securities Law stipulates that a public company conducting a share redemption is required to decrease its charter capital in light of the Law on Enterprise 2014. Currently the redeemed shares are considered as treasury shares and remain in the company's accounting books until they are sold.

3. Securities trading market

- The New Securities Law removes the definitions of securities trading centers and stock exchanges. Instead, the Vietnam Stock Exchange (VNSE) and its subsidiaries will handle the organization and operation of the Vietnam securities trading market. Accordingly, VNSE will be granted more rights and obligations, such as rights to offer auction and bidding services and technology infrastructure development services.
- Stock exchanges and securities trading centers that were established and operating before 1 January 2021 will continue to operate under the New Securities Law until VNSE is established to take over the rights and obligations of these organisations.
- The New Securities Law also expands the definition of securities trading members to include commercial banks, foreign bank branches, and other similar financial organizations, as well as traditional securities companies.

4. Vietnam Securities Depository and Clearing Corporation (VNSDCC)

- Under the New Securities Law, the Vietnam Securities Depository (VSD) will continue to operate until the VNSDCC is established to take over its rights and obligations.
- A clearing fund will also be formed from member contributions with an aim of compensating for damages and completing securities transactions on behalf of the clearing members or investors who are incapable of fulfilling their payment obligations.

5. Securities companies, securities investment fund management companies

- In addition to obtaining an incorporation and operation licence, securities companies, securities investment fund management companies, and branches of foreign securities companies/ securities investment fund management companies in Vietnam (together “Securities Companies”) must apply for an enterprise registration certificate (ERC) as required by the Law on Enterprise 2014. The deadline for Securities Companies that are licensed before 1 January 2021 to obtain an ERC is 1 January 2023.
- Securities Companies that are licensed before 1 January 2021 must satisfy all regulatory requirements set out in the New Securities Law, for example, charter capital, facilities and personnel qualifications by 1 January 2023. Failure to meet those conditions by the deadline would cause the relevant licence to be withdrawn.
- Under the New Securities Law, the following activities undertaken by a fund manager/a securities company require a prior approval from the State Securities Commission of Vietnam (SSC):

- (i) offering and listing of securities in a foreign country;
 - (ii) outbound indirect investment; or
 - (iii) providing one or all of the following services
 - (i) online securities trading; (ii) securities depository; clearing and payment of securities; services on derivatives market; providing or co-operating with credit institutions to provide one or all of the following services:
 - (i) loan to customers to buy securities; (ii) securities lending; (iii) money advance of selling securities.
- The New Securities Law does not require a share transfer by a shareholder of the securities companies/fund managers to obtain an approval of the SSC. Instead, the licensing procedure set out in the Law on Enterprise 2014 should be followed.

The New Securities Law has introduced a number of important amendments and new provisions. Some of the amendments clarify the operation of provisions or align this law with the Law on Enterprise 2014. However, some of the amendments (such as conditions of the issuance of low-price securities) are still in quite general terms, and, accordingly, will need to be further guided by the Government.

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