

New Vietnamese Securities Law 2019

On 26 November 2019, the National Assembly of Vietnam adopted the new Law on Securities (**Securities Law 2019**) to replace the Securities Law 2006. The Securities Law 2019 will come into effect from 1 January 2021.¹ Below are some notable points of the Securities Law 2019. This post is written by Nguyen Bich Ngoc.

1. AMENDED DEFINITIONS

1.1. **Related persons (người có liên quan)** - The scope of persons considered as a “related person” is extended to include individuals and organizations having interactive relation in the following circumstances:

- 1.1.1. with respect to an individual, the in-laws of such individual;
- 1.1.2. with respect to a fund management company (**FMC**), the securities investment funds and/or securities investment companies managed by such FMC; and
- 1.1.3. other cases in accordance with the Enterprise Law, which are not specified in the Securities Law 2019.²

1.2. **Professional securities investors (Nhà đầu tư chứng khoán chuyên nghiệp)** – The definition of professional securities investors is not limited to financial institutions as under the Securities Law 2006;³ but also includes:

- 1.2.1. companies with the paid-up charter capital of VND 100 billion or more,
- 1.2.2. listed organisations and organisations registered for trading,
- 1.2.3. individuals having securities practice licences, and
- 1.2.4. individual holding securities portfolio with value of at least VND 2 billion, or having taxable income in the latest year of at least VND 1 billion.⁴

2. PUBLIC OFFERS OF SECURITIES

Conditions for an initial public offer of securities:

2.1. A JSC is subject to stricter conditions to make an initial public offering (**IPO**). The Securities Law 2019 differentiates conditions between IPO of shares, bonds and fund certificates. The law also separates conditions of additional public offering of shares from those applicable to IPO of shares.

¹ Article 135.1 of the Securities Law 2019.

² Article 4.46 of the Securities Law 2019.

³ Article 6.11 of the Securities Law 2006.

⁴ Article 11 of the Securities Law 2019.

- 2.1.1. The conditions for IPO of shares applicable to a JSC include, *among others*,⁵
- (a) having the paid-up charter capital of at least VND 30 billion (as opposed to VND 10 billion under the current law);⁶
 - (b) the business operations in the 2 consecutive years (as opposed to 1 year under the current law) immediately preceding the year of registration for the offer must have been profitable, and there must not be accumulated losses calculated up to the year of registration for the offer;⁷
 - (c) at least 15% of the shares with voting rights (or at least 10% if the issuing JSC has the charter capital of VND 1000 billion or more) must be sold to at least 100 investors who are not major shareholders.⁸ The IPO may be cancelled if the issuing JSC fails to meet this “free float” condition;⁹
 - (d) before the IPO, the major shareholders of the issuing JSC must undertake to, together, hold at least 20% of charter capital for at least 1 year after completion of the public offer;¹⁰
 - (e) the issuing JSC must undertake to list or register the share trading and must implement such undertaking after completion of the public offer;¹¹ and
 - (f) the issuing JSC must open an escrow account to receive payment for the subscribed shares.¹²

Conditions for subsequent public offering of shares:

- 2.2. In case of subsequent public offering of shares, *among other conditions*,
- 2.2.1. the public JSC must be profitable for the year immediately preceding the year of registration for the offer and there is no accumulated losses as at the year of registration for the offer;¹³
- 2.2.2. the total par value of the additionally issued shares must not higher than the aggregate par value of the currently circulating shares, unless there is an undertaking to underwrite all of share or underwrite the unsold shares of the issuing public JSC;¹⁴ and
- 2.2.3. where the public offering is aimed at mobilizing capital to implement projects of the issuing organization, at least 70% of the total offered shares must be sold to

⁵ Article 15.1 of the Securities Law 2019.

⁶ Article 15.1(a) of the Securities Law 2019.

⁷ Article 15.1(b) of the Securities Law 2019.

⁸ Article 15.1(d) of the Securities Law 2019.

⁹ Article 28.1(b) of the Securities Law 2019.

¹⁰ Article 15.1(dd) of the Securities Law 2019.

¹¹ Article 15.1(h) of the Securities Law 2019.

¹² Article 15.1(i) of the Securities Law 2019.

¹³ Article 15.2(b) of the Securities Law 2019.

¹⁴ Article 15.2(c) of the Securities Law 2019.

investors. The issuing organization must prepare plan to make up the short fall of the capital intended to be mobilized from the public offering.¹⁵ The additional public offer may be cancelled if this condition is not satisfied.¹⁶

Registration of public offer of securities

2.3. Under the Securities Law 2019, besides the issuing organizations, the shareholders of a public JSC must register the public offering of securities with the SSC.¹⁷ It is not clear whether this registration is a separate procedure from or can be combined with the registration by the issuing organization, because Article 18 of the Law only provides general registration procedures for public offering of securities.

2.4. When submitting the application for public offering of securities to the SSC, the issuing organization must also submit registration dossier for listing or trading securities, except for the case of offering open-ended fund certificates.¹⁸

3. APPROVED AUDITING ORGANIZATIONS¹⁹

3.1. Under the Securities Law 2019, the SSC will publish the list of approved auditing organizations and auditing practitioners who are permitted to audit public interest-related organisations (*đơn vị có lợi ích công chúng*). These organisations include: public companies, listed organisations, organisations registered for trading, organisations making IPO of securities, securities companies, FMCs, securities investment companies and securities investment funds.²⁰

3.2. The approved auditing organizations (a) must explain, provide information and data related to the auditing of the public interest-related organisations at the SSC's request, and (b) after issuing audited financial statements, must notify the SSC of any detected material misstatements about compliance or misstatements in the audited financial statements.²¹

4. PRIVATE PLACEMENT OF SHARES, CONVERTIBLE BONDS, AND WARRANT-LINKED BONDS

4.1. Under the Securities Law 2019, the investors eligible for private placement of shares, convertible bonds and warrant-linked bonds by public companies, securities companies and FMCs include strategic investors and professional securities investors only.²²

4.2. The lock-up period on transfer of privately placed shares, convertible bonds

¹⁵ Article 15.2(d) of the Securities Law 2019.

¹⁶ Article 28.1(c) of the Securities Law 2019.

¹⁷ Article 16.1 of the Securities Law 2019.

¹⁸ Article 18.9 of the Securities Law 2019.

¹⁹ *Tổ chức kiểm toán được chấp thuận*

²⁰ Article 21.1-21.2 of the Securities Law 2019.

²¹ Article 21.3 of the Securities Law 2019.

²² Articles 31.1(b) and 31.3 of the Securities Law 2019.

and warrant-linked bonds of public JSCs is 3 years, in cases of strategic investors; or one year, in case of professional securities investors, from the date of completion of the private placement, except for transfers as a result of court judgments, arbitration awards or inheritance in accordance with the law.²³

5. PRIVATE PLACEMENT OF OTHER BONDS

5.1. The investors eligible for private placement of bonds of other types by public companies, securities companies, fund management companies not being public JSC include professional securities investors only.²⁴

6. PUBLIC COMPANIES

6.1. Under the Securities Law 2019, a public company is a JSC which:

6.1.1. has a paid-up charter capital of VND 30 billion or more, and has at least 10% of shares with voting rights held by at least 100 investors who are not major shareholders;²⁵ or

6.1.2. has successfully made an initial public offer of shares.²⁶

6.2. In the former case, the public JSC must register the shares trading on the trading system of unlisted securities within 30 days from the date becoming a public company according to the SSC's confirmation. After 2 years following the first trading date on the trading system of unlisted securities, the public company is entitled to apply for listing the shares [on stock exchange] upon satisfaction of the applicable listing conditions.²⁷

6.3. In the latter case, the public companies must register the shares for listing or trading on the Securities trading system within 30 days from the ending date of the public offer.²⁸

7. TENDER OFFER

7.1. Under the Securities Law 2019, the following circumstances will be subject to tender offer:

7.1.1. organizations, individuals and related persons intend to purchase shares with voting rights of a public JSC, circulating fund certificates of a closed-ended funds, which would result in their direct or indirect ownership of 25% or more of the total shares with voting rights or total fund certificates;²⁹

²³ Article 31.1(c) of the Securities Law 2019.

²⁴ Articles 31.2(b) and 32.4 of the Securities Law 2019.

²⁵ Article 32.1(a) of the Securities Law 2019.

²⁶ Article 32.1(b) of the Securities Law 2019.

²⁷ Article 34.1(d) of the Securities Law 2019.

²⁸ Article 34.1(dd) of the Securities Law 2019.

²⁹ Article 35.1(a) of the Securities Law 2019.

7.1.2. organizations, individuals and related persons holding 25% or more of the shares with voting rights of a public JSC or fund certificates of a closed-ended fund intend to purchase further, which would result in their direct or indirect ownership reaching or passing any of 35%, 45%, 55%, 65% or 75% thresholds of the total shares with voting rights of such public JSC or total fund certificates of such closed-ended fund.³⁰ This provision may not entirely new because it officially reflects the SSC's view on interpretation of the unclear Article 32.1(b) of the Securities Law 2006 under an official letter in 2016 (Official Letter No. 3636/UBCK-QLCB dated 27 June 2016 to F.I.T Investment JSC).

7.2. Same as the regulations of the Securities Law 2006, the acquisition of shares with voting rights or fund certificates in the above cases will not be subject to tender offer if so approved by the General Meeting of Shareholders or the Representative committee of the relevant investment fund.

7.3. The acquisition of shares via auction public offering, offering in cases of transfer the State-owned capital or SOEs' capital invested in other enterprises; or from de-merger, separation, merger, consolidation of enterprises; or transfer of shares, fund certificates according to court judgments or arbitration awards will also be exempt from tender offer requirement.³¹

8. ONE STOCK EXCHANGE

8.1. The Securities Law 2019 lays the foundation for one concentrated stock exchange in Vietnam being Vietnam Stock Exchange (**VSE**). The VSE will be an enterprise with more than 50% charter capital or voting rights held by the State. The VSE and its subsidiaries will operate under the management and supervision of the SSC, and will be the only organizations permitted to organize and operate the securities trading market.³²

9. VIETNAM SECURITIES DEPOSITORY AND CLEARANCE CORPORATION

9.1. Vietnam Securities Depository and Clearance Corporation (**VSDC**) will be incorporated as an enterprise with more than 50% charter capital or total voting rights held by the State. The VSDC will be in charge of securities registration, depository, clearance and payment, similar to the current VSD.³³

9.2. The Securities Law 2019 adds (a) regulations on clearance members (*thành viên bù trừ*) besides depository members as already provided under the current law, and (b) regulations on Clearance Fund (*Quỹ bù trừ*).³⁴ Accordingly,

³⁰ Article 35.1(b) of the Securities Law 2019.

³¹ Article 35.2 of the Securities Law 2019.

³² Articles 42 – 43 of the Securities Law 2019.

³³ Articles 52-55 of the Securities Law 2019.

³⁴ Articles 56.1(b), 56.4 and 67 of the Securities Law 2019.

- 9.2.1. clearance members are securities companies, commercial banks and branches of foreign banks having the licence to provide securities clearance and payment services and being admitted to the VSDC as clearance members; and
- 9.2.2. the Clearance Fund will be formed on the basis of contributions by clearance members for the purposes of compensating and completing securities transactions under the name of the clearance members in case the clearance members or relevant investors are insolvent. The Clearance Fund will be managed by the VSDC.

10. SECURITIES COMPANIES, FUND MANAGEMENT COMPANIES

Registration procedures

10.1. Under the Securities Law 2019, the license on establishment and operation in securities trading business (**Securities Trading Licence**) of securities companies and FMCs issued by the SSC will no longer serves as enterprise registration certificate of such companies. Instead, after obtaining the Securities Trading Licence from the SSC, securities companies and FMCs must apply for enterprise registration certificate (**ERC**) in accordance with the Enterprise Law.³⁵ It is not clear if the Securities Trading Licence will be issued to shareholders of the securities companies and FMCs (because at the time applying for this license, the securities companies and FMCs would not have been set up yet). The implementation of this provision would be provided by the Government.³⁶

10.2. The Securities Law 2019 gives securities companies and FMCs which have been licensed before the effective date of this law a 2-year time limit after 1 January 2021 and which satisfy the conditions under this law to apply for the ERC in accordance with the Enterprise Law.³⁷ The securities companies and FMCs will not have to apply for change of the Securities Trading Licence, unless there is specific requirement.³⁸

Conditions for establishment of securities companies and FMCs

10.3. The conditions for establishment of securities companies and FMCs under the Securities Law 2019 basically repeats those already provided under Decree 58/2012, except that the shareholders/ capital contributors who are not a financial constitutions are not required to have 5 consecutive years of operation before the year setting the securities company or FMC.³⁹

10.4. Under the Securities Law 2019,

³⁵ Article 71.1 of the Securities Law 2019.

³⁶ Article 71.3 of the Securities Law 2019.

³⁷ Article 135.2 of the Securities Law 2019.

³⁸ Article 135.2 of the Securities Law 2019.

³⁹ Article 71.6 of Decree 58/2012; Articles 74.2 and 75.2 of the Securities Law 2019.

10.4.1. A foreign investor being an institution and its related persons may own up to 100% charter capital of a securities company or an FMC if satisfying the conditions of this Law. These conditions include:

- (a) having licences for and 2 consecutive years of operation in banking, securities, insurance sectors before the year of capital contribution or share acquisition in the relevant securities company/ FMC;⁴⁰
- (b) the licensing authority of the country where the foreign investor is incorporated and the SSC has signed bilateral or multilateral cooperation agreement in securities sector;⁴¹ and
- (c) being profitable for 2 consecutive years before the year of capital contribution or share acquisition in the relevant securities company/FMC, and the financial statement of the latest year has been audited with unqualified opinion (*ý kiến chấp nhận toàn phần*).⁴²

10.4.2. Securities companies and fund management companies must publish the Charter of the company on their official websites;⁴³ and

10.4.3. An FMC license may be withdrawn if the relevant FMC fails to implement the fund management activities for 2 consecutive years.⁴⁴

Branches of foreign securities companies and foreign FMCs in Vietnam

10.5. The Securities Law 2019 allows foreign securities companies and foreign FMCs to establish branches in Vietnam provided that, *among others*,

10.5.1. the relevant foreign securities company has not set up or contributed capital in a securities company or FMC in Vietnam which already has more than 49% charter capital held by foreign parties;⁴⁵ and

10.5.2. the relevant foreign FMC is not the shareholder/ capital contributor or together with its related persons, directly or indirectly owning more than 5% charter capital of an FMC in Vietnam.⁴⁶

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⁴⁰ Article 77.2(a) of the Securities Law 2019.

⁴¹ Article 77.2(b) of the Securities Law 2019.

⁴² Article 77.2(c) of the Securities Law 2019.

⁴³ Article 80.2 of the Securities Law 2019.

⁴⁴ Article 95.1(a) of the Securities Law 2019.

⁴⁵ Article 76.1(a) of the Securities Law 2019.

⁴⁶ Article 76.2(c) of the Securities Law 2019.