

NEW LAW ON SECURITIES EXPECTED TO REFORM VIETNAM'S SECURITIES MARKET

Nguyen Thi Thuy, Senior Associate
Russin & Vecchi

Tel: +84 28 3824 3026

Email: ntthuy@russinvecchi.com.vn

The new Law on Securities¹ (“**New Law**”) will go into effect on January 1, 2021 and will have a significant and positive impact on Vietnam’s securities market. We discuss some key changes.

What’s new and what’s important?

The New Law decentralizes authority and vests more rights and powers in the State Securities Commission (“**SSC**”) (at the expense of the Ministry of Finance). The SSC now has direct, clear authority itself to inspect, supervise, monitor and enforce market regulations. Its mandate is to improve fairness and transparency in all aspects of the securities market. It has the authority to standardize conditions and procedures for public offerings and to tailor the rules to each type of security. Significantly, the New Law establishes a single centralized Vietnam Stock Exchange (“**VSE**”) to replace Ho Chi Minh City Stock Exchange (“**HOSE**”) and Hanoi Stock Exchange (“**HNX**”).

1. VSE to replace the existing HOSE and HNX

Currently, the securities trading market is decentralized into two separate, poorly coordinated stock exchanges and is subject to different rules. The SSC is mandated to replace HOSE and HNX² and to create a new centralized VSE within two years. More than 50% of VSE’s charter capital or voting shares will held by the State. The VSE’s authority is enlarged to cover supervision, inspection and the handling of violations (of securities investors, trading organizations, and listing organizations).

2. The VSDC will replace the current VSD

A new majority State owned Vietnam Securities Depository and Clearance Corporation (“**VSDC**”) will be established and supervised by the SSC. It will have broader and more specific authority than the current Vietnam Securities Depository Center (“**VSD**”) and will be responsible for

¹ Law on Securities No. 54/2019/QH14 dated November 26, 2019 of the Vietnam National Assembly, with 10 chapters and 135 articles. It replaces the Law on Securities No. 70/2006/QH11 dated June 29, 2006, as amended by Law No. 62/2010/QH12 dated November 24, 2010 of the Vietnam National Assembly which amends some articles of the Law on Securities 2006 (together, the “**Current Law**”).

² HOSE and HNX will continue to operate until the VSE is inaugurated. The New Law is silent on what will happen to them.

securities registration, depository, clearance and payment. VSDC will be comprised of depository members and clearance members (securities companies and commercial banks). VSDC will ensure limitations on foreign investors' ownership ratios, and will monitor performance of VSDC's members' obligations. It will cooperate with the VSE on disciplinary matters.

3. More prohibited activities

The New Law addresses some current abuses. It prohibits the use of accounts for trading securities in a manner that creates artificial supply and demand in the market. It forbids allowing a person to borrow from another person's account to trade or hold securities which may lead to manipulation of securities prices. It prohibits securities companies from using the accounts or assets of clients, to abuse a trust or to misappropriate clients' assets.

4. Newly added and more specific definitions

The New Law clarifies definitions of securities-related activities, making compliance easier. For example:

- *Related persons* now include in-laws, family members, securities investment funds/companies which are part of a fund management company, and related-persons specified in the Law on Enterprises (“**LOE**”).
- *Professional securities investors* are more broadly defined and now include not only financial institutions, but also companies with paid-up charter capital of VND100 billion or more, listed companies and organizations registered for trading, individuals having a securities practice license, and individuals holding securities portfolios with a value of at least VND2 billion or having taxable income in the previous year of at least VND1 billion.
- *The securities trading system* will include a system for trading listed securities and a system for trading unlisted securities. It will be organized and run by the VSE.

5. Changes in circumstances that will either require or exempt tender offers³

The New Law has a larger focus on tender offers. It has tightened circumstances in which a tender offer must be made. The following table summarizes when it is compulsory:

| No. | Under Current Law | Under New Law |
|------------|---|--|
| 1 | An offer to purchase voting shares or closed fund certificates which will result in | Organizations, individuals and their related |

³ The New Law does not have a definition of “tender offer”. The Government will issue guidance. But Decree 58/2012/ND-CP of the Government dated July 20, 2012 does describe a “tender offer” as the situation in which an organization or individual publicly carries out the purchase of a part or the whole amount of the voting shares of a public company or the fund certificates of a closed fund to take over control of such public company or closed fund, in order to ensure equality among the ownership of the target.

| No. | Under Current Law | Under New Law |
|-----|--|--|
| | the ownership of 25% or more of the outstanding voting shares or closed fund certificates of a public company or a closed fund | persons ⁴ who <u>intend</u> to purchase voting shares or closed fund certificates which would result in the direct or indirect ownership of 25% or more of the voting shares of a public company, or 25% or more of the outstanding fund certificates of a closed fund |
| 2 | Organizations, individuals and their related persons ⁵ that hold 25% or more of the voting shares or fund certificates of a public company or a closed fund intending to purchase a further 10% or more | Organizations, individuals and their related persons that hold at least 25% of the voting shares of a public company, or at least 25% of the outstanding fund certificates of a closed fund who <u>intend</u> to purchase additional voting shares or fund certificates which would result in direct or indirect ownership of 35% or more of voting shares of a public company or outstanding fund certificates of a closed fund |
| 3 | Organizations, individuals and their related persons holding 25% or more of the voting shares or fund certificates of a public company or a closed fund wishing to purchase a further 5% to less than 10% of the outstanding voting shares in a public company or closed fund within one year from the completion of the previous tender offer | Unless the tender offer has been implemented with respect to <u>all</u> voting shares of a public company or outstanding fund certificates of a closed fund, after implementation of the tender offer, the organization or individual and its related persons who hold 80% or more of the voting shares of a public company or outstanding fund certificates of a closed fund <u>must</u> continue to offer to purchase additional shares or fund certificates being held by the remaining shareholders or investors and do so within 30 days at the same price and by the payment method in the previous tender offer |

Cases in which investors, including organizations or individuals and their related persons, are not required to make a tender offer when purchasing shares or fund certificates of a public company or a closed fund:

| No. | Exemptions under Current Law | Exemptions under New Law |
|-----|--|--|
| 1 | Purchase of newly issued shares or closed fund certificates, which results in ownership of 25% or more of voting shares or fund certificates, following the issuance plan which has been approved by the | Purchase of newly issued shares or closed fund certificates, which results in ownership reaching the same thresholds of the tender offer requirement (as stated in the table above), following the issuance plan which has |

⁴ Related persons as defined in Clause 4.46 of the New Law, but excluding securities investment fund management companies and securities investment funds.

⁵ Related persons as defined in Clause 6.34 of the Current Law.

| No. | Exemptions under Current Law | Exemptions under New Law |
|-----|--|---|
| | General Shareholders' Meeting ("GSM") of a public company or the representative board of a closed fund | been approved by the GSM of a public company or the representative board of a closed fund |
| 2 | Receive the transfer of voting shares or fund certificates which results in ownership of 25% or more of voting shares or fund certificates as approved by the GSM of a public company or representative board of a closed fund | Receipt of transfer of the outstanding voting shares or closed fund certificates, by which ownership reaches the same thresholds of the tender offer requirement (as stated in the table above) and as approved by the GSM of the public company or the representative board of the closed fund. In such cases, the GSM must clearly identify the transferor and the transferee |
| 3 | The transfer of shares between companies within a group of companies operating in the form of a parent-subsidary | The transfer of shares among companies operating within a group of companies including economic groups, corporations, parent companies, subsidiaries which does not result in cross ownership under the LOE |
| 4 | Gifting, giving or inheriting shares | Organizations, individuals who become owners of shares through a public offer of shares, an offer of the transfer of State capital or of the capital invested in other enterprises by State-owned-enterprises |
| 5 | Transfer of capital according to a decision of the Courts | Organizations, individuals who become owners of shares resulting from division, separation, consolidation, or merger of enterprises |
| 6 | Other cases which are decided by the Ministry of Finance | Gifting, giving or inheriting shares or closed fund certificates |
| 7 | | The transfer of shares or closed fund certificates by judgment, decision of a Court or by arbitral award |

6. New criteria to determine what is a public company

There are now more conditions for a joint stock company ("JSC") to register as a public company. For example, under the Current Law, a JSC with only VND10 billion paid-up charter capital divided among at least one hundred investors can register as a public company. This relatively low threshold increased the number of public companies but did not guarantee their quality. Under the New Law, there are only two alternatives for a JSC to register as a public company.

| Categories | Under Current Law | Under New Law |
|---------------------------------|----------------------------------|------------------------------------|
| <i>Cases in which a JSC can</i> | (a) Has had a public offering of | (a) Has paid-up charter capital of |

| Categories | Under Current Law | Under New Law |
|---|---|---|
| <i>become a public company</i> | <p>its shares; or</p> <p>(b) Its shares are listed on the Stock Exchange or the Securities Trading Center; or</p> <p>(c) Its shares are owned by at least one hundred investors, excluding professional securities investors, and it has a contributed charter capital of at least VND10 billion.</p> | <p>at least VND30 billion and at least 10% of its voting shares are held by at least 100 non-major shareholders; or</p> <p>(b) Has successfully made an initial public offering (“IPO”) after registering with the SSC</p> |
| <i>Requirements for filing public company dossier</i> | A JSC in item (c) above must file a public company dossier with the SSC within 90 days after it becomes a public company. | A JSC which fully satisfies requirements mentioned in item (a) above must file an application with the SSC to register as a public company, within 90 days from the date on which it has fully satisfied all requirements |
| <i>Subsequent conditions for listing</i> | None | <p>(i) A JSC qualified under item (a) above must register to trade securities in the trading system of unlisted securities, within 30 days from the date on which the SSC confirms its public company registration. Two years after the first trading date, it is entitled to list its securities with the VSE’s securities trading system upon satisfaction of certain conditions</p> <p>(ii) A JSC qualified under item (b) above must list securities or must register to trade on the securities trading system within 30 days from the date the public offering ends</p> |

7. More specific conditions to make a public offering

The New Law specifies conditions for an IPO and also separates an IPO from a follow-on public

offering⁶. It has also made major changes in the conditions to make a public offering. The New Law is clearer than the Current Law.

IPO conditions for a JSC:

| No. | Conditions | Current Law | New Law |
|------------|---|--|--|
| 1 | <i>Contributed charter capital on the offering date</i> | VND10 billion or more | VND30 billion or more |
| 2 | <i>Profitability during the preceding year(s)</i> | Has a profit in the year preceding the public offering and has no accumulated losses up to the offering date | Has profit in the two years preceding the public offering, and has no accumulated losses up to the offering date |
| 3 | <i>Issuance and use of capital generated by the offering</i> | Must be ratified by the GSM | Must be ratified by the GSM |
| 4 | <i>Threshold of voting shares to be sold</i> | None | At least 15% of voting shares must be sold to at least 100 non-major shareholders (this threshold is 10% if the issuer's charter capital is VND1,000 billion or more) |
| 5 | <i>Major shareholders' commitment</i> | None | Before the offering date, the major shareholders must have committed to hold at least 20% of the issuer's charter capital for at least one year from the end of the offering |
| 6 | <i>Criminal records of the issuer</i> | None | Issuer is not undergoing criminal prosecution and does not have any undischarged conviction for an economic crime |
| 7 | <i>Consultancy by a securities company</i> | None | Issuer has consulted a securities company on registration of its public offering (unless issuer is a securities company) |
| 8 | <i>Commitment of listing securities after ending the offering</i> | None | Issuer has a commitment and must have its shares listed or registered in the securities trading system after the end of the offering |
| 9 | <i>Opening an escrow</i> | None | Issuer must open an escrow |

⁶ We do not discuss the conditions for a follow-on public offering.

| No. | Conditions | Current Law | New Law |
|------------|-------------------|--------------------|---|
| | <i>account</i> | | account to receive payment for the offered shares |

Conditions for public offering of bonds by a JSC:

| No. | Conditions | Under Current Law | Under New Law |
|------------|--|--|---|
| 1 | <i>Contributed charter capital on the offering date</i> | VND10 billion or more | VND30 billion or more |
| 2 | <i>Profitability of the preceding year</i> | Must have had a profit in the preceding year and no accumulated losses up to the offering date, and no overdue debt of more than one year | Remains the same |
| 3 | <i>Plan for issuance, use and repayment of capital generated by the offering</i> | Must be ratified by the GSM, board of directors, members' council or the enterprise's owner | Remains the same |
| 4 | <i>Issuer's commitment</i> | Issuer has a commitment to fulfill its obligations to investors as they relate to conditions for issuance, payment, assurance of lawful rights and interests of investors and other conditions | Remains the same |
| 5 | <i>Consultancy by a securities company</i> | None | Issuer must consult a securities company on registration of its public offering (unless the issuer is already a securities company) |
| 6 | <i>Criminal records of the issuer</i> | None | Issuer is not undergoing criminal prosecution and does not have any undischarged conviction for an economic crime |
| 7 | <i>Credit rating (applicable to an issuer in cases in which a credit rating is required)</i> | None | Issuer must have a credit rating if required by the Government |
| 8 | <i>Opening an escrow account</i> | None | Issuer must open an escrow account to receive payment for the offered shares |
| 9 | <i>Commitment to list securities after the offering</i> | None | Issuer must have listed or registered its shares on the |

| No. | Conditions | Under Current Law | Under New Law |
|-----|-------------|-------------------|---|
| | <i>ends</i> | | securities trading system after the public offering ends (no specific timeline) |

The issuers and shareholders of a public company must register a public offering with the SSC before the offering can be made.

8. New regulations on listing and registration for trading securities

Under the New Law, *listing* securities means putting securities which are qualified-for-listing onto a specific system for trading listed securities.

The New Law specifies three different categories of securities or instruments for which listing is required: (i) publicly offered securities, shares of public companies, closed-end fund certificates, exchange traded fund certificates, secured warrants, futures contracts and options approved by the SSC; (ii) Government debt instruments, Government-backed bonds and municipal bonds; and (iii) other securities regulated by the Government.

9. Regulations on private placement

The New Law has indeed expanded some restrictions for private placement of shares, convertible bonds and warrant-linked bonds conducted by public companies, securities companies, and fund management companies. Below are the main conditions for private placement by public companies.

- Decision by GSM to ratify a plan to issue and use capital which is generated from a private placement (together with the specific criteria and number of investors to participate in the private placement plan);
- Private placement of shares, convertible bonds and warrant-linked bonds of a public company may only be made to strategic investors and professional investors;
- Privately placed shares, convertible bonds and warrant-linked bonds of a public company may not be transferred for at least three years in the case of strategic investors, and one year in the case of professional investors. The period is counted from the ending date of the private placement. (There are exceptions for transfers between professional investors, transfers under an effective court judgment or arbitral award, and transfers due to inheritance);
- The interval between two private placements of shares, convertible bonds and warrant-linked bonds must be at least 6 months from the final date of the latest placement; and
- The ownership ratio of foreign investors in the placement of shares, conversion of bonds into shares and execution of warrants of a public company must, of course, comply with the law.

Generally, by tightening conditions for private placement and by imposing more restrictions in the transfer of privately placed shares after placement, the New Law aims to prevent the issuer from making simple private placements instead of requiring the more rigorous public offer.

10. Licensing requirements to set up and operate securities companies and fund management companies (“FMCs”)

Currently, securities companies and FMCs only require a license issued by the SSC to establish and trade securities (“**Securities Trading License**”). Under the New Law, the licensing requirements for securities companies and FMCs have two steps. First, they still require a Securities Trading License issued by the SSC as before. But they must also obtain an enterprise registration certificate (“**ERC**”) under the LOE. There are transitional rules for existing companies.

In a new development, foreign securities companies and foreign FMCs which satisfy certain conditions are allowed to set up branches in Vietnam.

11. Room for foreign ownership in the securities market

The Current Law is silent on foreign investors’ activities and participation in the securities market, but there are some decrees and circulars which regulate various conditions. But the New Law clearly requires that foreign investors, when they invest in or carry out securities activities, must adhere to the limits on ownership and comply with conditions to invest in the market. However, there are no numerical limits on foreign ownership in the New Law. The Government will issue guidelines.

If a group of related foreign investors holds 5% or more of the voting shares of an issuer, or 5% or more of the fund certificates of a closed fund, the group must disclose this information. The Minister of Finance will specify the mechanism for disclosure. The rules of disclosure are, among others, that the discloser must simultaneously report its disclosure to the SSC and the board on which its securities are listed or registered for trading.

Effects of the New Law on the securities market

Below are some intended results of the New Law:

1. Joinder of the HOSE and HNX databases and functions into an enlarged VSE. All securities will be listed and traded on one stock exchange. This should create greater operational efficiencies, greater choice, increased supply and most importantly, greater liquidity.
2. By January 1, 2023, securities companies, FMCs, branches of foreign securities companies and foreign FMCs which were licensed before January 1, 2021 must satisfy all of the new licensing requirements prescribed in the New Law or face suspension or cancellation of their license.

3. With a new expanded but more restrictive definition of “professional securities investors”, the New Law will exclude a large number of individual investors who are not qualified as professional securities investors, from participating in certain segments of the market. An important example is bonds. For private placements, which are restricted to professional securities investors, the expanded definition is expected to lead to a significant increase in the quality of investors.
4. The New Law gives the SSC more power and authority to inspect, investigate, handle violations, apply sanctions. Thus, it is expected that, with better detection, verification, and handling, abuses (such as, manipulation, internal transactions, etc.) can be stopped.

* * *

The Government will, of course, issue implementing and guiding decrees and guidance on management of public companies, guidance on derivative securities and the derivatives market, sanctioning of administrative violations, and more.