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LEGAL DOCUMENTS

**- AMENDMENTS TO SOME CIRCULARS ON THE
IMPLEMENTATION OF THE SECURITIES LAW –
FEBRUARY 2021**

1. Notable Regulations on Operation of Securities Company under New Circular No. 121/2020/TT-BTC

On 31 December 2020, the Ministry of Finance promulgated new Circular No. 121/2020/TT-BTC (“**Circular 121**”) to replace Circular No. 210/2012/TT-BTC (“**Circular 210**”) from 15 February 2021. In comparison with the Circular 210, Circular 121 no longer provides for terms and conditions for establishment of the securities company (the “**Securities Companies**”) but only those applicable for operation of the Securities Company.

We shall discuss here significant changes to the operational requirements of the Securities Companies under Circular 121, particularly, in terms of the requirements for governance, business and professional activities.



Governance

Most of the requirements for the internal control and governance remain unchanged, as compared to Circular 210. Circular 121 allows the Securities Companies to decide the form of its charter. However, regardless of its charter form, the contents of the charter must not contravene the provisions of the laws on securities and enterprises. The change under Circular 121 on non-requirement of independent inspection committee in the organizational structure of a joint stock company or a limited liability company makes this new regulation align with the general rules of the new Law on Enterprises.

Additionally, Circular 121 requires that (i) the power and authority of Board of Management or Members’ Council of the Securities Companies must be clearly set out in its charter and (ii) there must be at least one compliance staff in its internal control department.

The terms and conditions under Circular 121 for the risk management are adapted from the guidance of the State Securities Commission of Vietnam. In addition to the obligation of making biannual report for risk management on 31 January and 31 July of each year, most changes in relation to risk management are made clearer for implementation.

Business

Circular 121 clarifies further the securities trading via online platform. Accordingly, the requirements on securities trading for the Securities Companies include significant requirements of (i) ensuring transactions to be continuous and smooth; (ii) ensuring securities, safety, client’s data confidentiality; (iii) having back-up system, alternative plans in case of incidents; (iv) separating online trading platform from other electrical information of the company; (v) issuing procedure for operating, managing, using the securities trading online platform; and (vi) informing client of the risks during operation, and liabilities of both company and client in relation to information confidentiality. Those additional requirements aim at improving the productivity of securities trading via online platform.

Professional Activities

Aside to the updates due to new laws on enterprises and securities, a Security Company is now prohibited from providing following consultancy service for a company 10% of charter capital of which is held by that Security Company: (i) security investment; (ii) securities offering; (iii) securities listing; (iv) equitization of enterprises; and (v) valuation of enterprises.

Those new rules under Circular 121 provide better opportunities for the Securities Companies’ development and adaption with dynamic changes of the securities markets which, at the end, hopefully create safe and sound environment for investment.

2. New Directive on Offer for Sale and Issuance of Securities, Public Offering, Redemption of Shares, Registration, and Rescission of Public Companies Status

On 31 December 2020, the Ministry of Finance (the “**MOF**”) promulgated new Circular No. 118/2020/TT-BTC (“**Circular 118**”) to replace Circular No. 162/2015/TT-BTC dated 26 October 2015 on guidelines for public offer for sale of securities, offer for sale of shares for swap, issuance of additional shares, redemption of shares, sale of treasury shares and public offer to acquire shares (“**Circular 162**”) with effectiveness from 15 February 2021.



New Evolvement in Circular 118

Keeping up with new regulations issued in Law on Securities No. 54/2019/QH14 dated 26 November 2019 (the “**2019 Law on Securities**”), Circular 118 fulfils Circular 162 with more comprehensive, improved sample forms of (i) prospectus; (ii) notice of public offering; (iii) reports on results of public offer; (iv) disclosures of information of public companies.

Additionally, following up with the 2019 Law on Securities and Decree No. 155/2020/ND-CP dated 31 December 2020 guiding the 2019 Law on Securities, Circular 118 contains supplements on (i) registration dossiers for public companies which are established from enterprise division, separation, consolidation or merger; (ii) the rescission of public company status; and (iii) redemption of shares.

Rescission of Public Company Status

In addition to regulations of the 2019 Law on Securities regarding the mandatory provisions to rescind the status of a public company where (i) the contributed charter capital is lower than VND30 billion; or (ii) the company’s shareholder structure does not meet requirement on the holding by at least 100 investors not being major shareholders of at least 10% of the shares with voting rights, new Circular 118 provides for more situations when the rescission of the public company status occurs and also relevant procedures.

In details, Circular 118 sets out four situations when the public company status is rescinded, including: (i) in case of failure to satisfy the conditions of a public company after the division, consolidation, merger, dissolution, or bankruptcy of the enterprise, or after the split or merger of that company, or due to the conversion from a joint stock company into a limited liability company;, (ii) in case the public company has its enterprise registration certificate revoked.

Circular 118 supplements more situations where public company status is rescinded and the procedures that those companies need to follow in order to comply with the newly enacted securities legislation from 2021.

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