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# **LAW ON SECURITIES**

**- Updates and Key Consideration –  
OCTOBER 2020**



On 26 November 2019, the National Assembly promulgated Law No. 54/2019/QH14 on Securities (the “**New Securities Law**”) with the aim at improving the current legal framework governing securities trading activities in Vietnam. The New Securities Law will officially replace current Law No. 70/2006/QH11 on Securities (the “**Current Securities Law**”) and its guiding instruments as from 1 January 2020.

This Newsletter highlights certain key changes and new provisions of the New Securities Law.

### **1. Expanding Definition of “related person”**

The definition of related person is broadened under the New Securities Law to cover following new persons:

- insiders of an enterprise, public fund, public securities and investment company;
- father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law of an individual;
- securities investment funds/companies managed by a securities investment fund management company; and
- those defined as related person under the Law on Enterprises.

This change will expand the applicability of the provisions which refer to related persons under the New Securities Law, including, among others, triggering events of public offer to acquire and obligations to prevent conflicts of interest and disclose information.

### **2. Foreign Shareholding Limitations in Public Companies**

Under Decree No. 58/2012/ND-CP dated 20 July 2012 (as amended) guiding the implementation of the Current Securities Law, the foreign shareholding is capped at 49% in respect of public companies conducting conditional business lines applied to foreign investors. This ratio under the Current Securities Law does not apply where there are no specific provisions on the foreign shareholding limitation.

The New Securities Law does not set out a specific limit for the foreign

shareholding and grants the Government power to provide further detailed guidance. We would need to await official guidance from the Government to know whether there is any change to or removal of the limitation on foreign shareholding.

### **3. Public Offering**

#### **a) Stricter conditions for public offering**

The New Securities Law provides for stricter conditions on public offering of (i) shares, (ii) bonds and (iii) fund certificates. The New Securities Law also separates the public offering of shares into initial public offering (the “**IPO**”) and subsequent public offering and sets out different conditions for each case.

Below are outstanding new conditions on public offering as set out in the New Securities Law:

#### **(i) In case of IPO**

- minimum paid-up capital of the issuer is VND30 billion (instead of VND10 billion under the Current Securities Law);
- the issuer must have profit in two consecutive years (instead of one year under the Current Securities Law) immediately preceding the year of IPO;
- at least 15% (or 10% in case of companies having charter capital of VND1,000 billion or more) of the issuer’s voting shares must be sold to at least 100 investors not being major shareholders;
- the issuer’s major shareholders must undertake to collectively hold at least 20% charter capital for at least one year after completion of IPO; and

- the issuer is not criminally prosecuted and does not have an un-expunged criminal record on violations of economic management orders.

(ii) In case of subsequent public offering of shares

- minimum paid-up capital of the issuer is VND30 billion (instead of VND10 billion under the Current Securities Law);
- total par value of additional issued shares must not be higher than the total par value of the currently circulating shares, except where (a) the shares are issued using the owner's equity, or (b) the shares are issued for conversion, consolidation or merger of companies, or (c) the issuer has an underwriter that commits to purchase all of its shares for resale or purchase its undistributed shares; and
- at least 70% of offered shares must be sold if the offering is to raise capital for a project of the public company; and
- the issuer is not criminally prosecuted and does not have an un-expunged criminal record on violations of economic management orders.

(iii) In case of public offering of bonds

- the issuer's paid-up capital is at least VND30 billion (instead of VND10 billion under the Current Securities Law); and
- the issuer is not criminally prosecuted and does not have an un-expunged criminal record on

violations of economic management orders.

(iv) In case of public offering of fund certificates

- the public offer must be under supervision of a bank; and
- the fund certificates must be listed on the securities trading system after the public offering.



b) Offering securities below face value

The New Securities Law allows the issuer to offer securities at the price lower than its face value if the price of that issuer's securities on the securities trading system is lower than its face value.

With this new provision, the issuers can timely mobilize its capital to catch up with the changing market demand.

**4. New Conditions for Public Company Status**

Under the New Securities Law, a company qualifies as a public company if falling within one of the following circumstances:

- a company having successfully conducted an IPO in accordance with the laws; or
- a company having its paid-up capital of at least VND30 billion (as compared to VND10 billion under the Current Securities Law) and having at least 10% of its voting shares held by at least 100

investors not being major shareholders.

The State Securities Commission (the “SSC”) may consider canceling the public company status of any company that no longer satisfies the condition under item (ii) above for a period of one year or more.

## 5. New Conditions for Private Placement

The New Securities Law limits the private placement of shares, convertible bonds and bonds with warrants by public companies to professional securities investors (the “PSIs”) and strategic investors only. Such securities are subject to transfer-lock-up period of one year and three years for PSIs and strategic investors respectively. The transfer-lock-up shall be calculated from the date of completion of the placement tranche and is not applicable to the following cases:

- (i) assignment among the PSIs; or
- (ii) implementation pursuant to a legally effective verdict or decision of a court or a decision of an arbitrator; or
- (iii) inheritance in accordance with law.

These amendments are made to be in line with the international rules on public companies, the 2020 Law on Enterprises in terms of private placement. On top of that, the restrictions on entities entitled to participate in the private placement and on transfer of privately placed securities under the New Securities Law will restrain companies from abusing this capital mobilization method as well as protect the unprofessional investors who have limited access to information and ability to evaluate risks in securities trading market.



Further, in addition to commercial banks, finance companies and insurance business organizations as provided by the Current Securities Law, the notion of the PSI is broadened to comprise:

- branches of foreign banks, securities companies, securities investment fund management companies, securities investment companies/funds, international financial organizations, off-budget State financial funds and State financial institution to purchase securities in accordance with relevant law;
- companies with paid-up charter capital of more than VND100 billion or listing organization or registered trading organizations;
- individuals holding securities practicing licenses;
- individuals holding portfolios of securities listed or registered for trading with a value of at least VND2 billion; and
- individuals with a taxable income of at least VND1 billion in the most recent year as at the time when the individual is identified to be a professional securities investor.

## 6. Public Offer to Acquire

The New Securities Law makes changes to the events in which a proposed purchase will trigger a public offer to acquire as follows:

- (i) An investor and its related persons intend to acquire voting shares of a public company, following which they directly or indirectly hold at least 25% of the total voting shares of such company;
- (ii) An investor and its related persons holding at least 25% of voting shares of a public company intends to make an acquisition of shares the result of which is that their direct or indirect shareholding shall reach or exceed 35%, 45%, 55%, 65% and 75% of the voting shares of such company.



The provisions as above show some notable changes of the New Securities Law as compared to the Current Securities Law.

In particular, in the case of triggering event for public offer in paragraph (i) above, the shareholding of the related persons are counted to calculate the 25% threshold. Under the Current Securities Law, the shareholding of related persons is not counted to determine the triggering event. The triggering event in paragraph (ii) above shall be solely based on whether shareholding of the investor and its related persons following the public offer to acquire exceeds the regulatory thresholds. Under the Current Securities Law, the percentage of shares to be acquired is the basis for the triggering event.

Another change is the mentioning of *indirect shareholding* in cases being subject to public offer to acquire. The New Securities Law however provides for no definition on *indirect shareholding*. Further guidance from the Government therefore is required.

Final new modification of the New Securities Law is that as from the effectiveness of this law, the acquisition of capital owned by the State or by a State-owned company shall be exempted from public offer to acquire.

**7. Concentrated Stock Exchange and Securities Depository Centre**

The New Securities Law sets the foundation for establishment of one concentrated stock exchange and depository centre in Vietnam - Vietnam Stock Exchange and Vietnam Securities Depository and Clearing Corporation -

with the idea of consolidating the current stock exchanges into one sole stock exchange and consolidating depository centres into one sole corporation.

The State will hold more than 50% of the charter capital or voting shares of Vietnam Stock Exchange and Vietnam Securities Depository and Clearing Corporation. Both Vietnam Stock Exchange and Vietnam Securities Depository and Clearing Corporation will operate under the management and supervision of the SSC.

**8. New Required License for Securities Companies and Securities Investment Fund Management Companies**

Pursuant to the Current Securities Law, securities companies and securities-investment fund management companies shall need to obtain the establishment and operation license granted by the SSC. However, in addition to such license, the New Securities Law requires these entities to apply for the enterprise registration certificates from the local Department of Planning and Investment. Though this new requirement is set out in conformity with the 2020 Law on Enterprises, it shall create more burdens in terms of licensing procedure for the concerned companies.

The New Securities Law also sets out a time period for the existing securities companies and securities-investment fund management companies which are currently operating under establishment and operation license to obtain its respective enterprise registration certificate. This period is two years from 1 January 2020.

**9. Higher Monetary Administrative Fine**

Under the Current Securities Law and Decree No. 183/2013/ND-CP on Administrative Penalties in Securities Sectors and Securities Market (as amended), the maximum monetary administrative fine in securities sector is 5 times of the illegal revenue or VND2 billion for organizations or VND1 billion for individuals, as the case may be. This new fine levels under the New Securities Law are much higher than those of the Current Securities Law.

## Contributors

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### **Benjamin Yap (Mr.)**

Senior Partner  
Ho Chi Minh City Office  
Tel. (+84) 28 3820 6448  
[benjamin.yap@rhtlaw.com.vn](mailto:benjamin.yap@rhtlaw.com.vn)



### **Le Thi Kim Quy (Ms.)**

Partner  
Ho Chi Minh City Office  
Tel. (+84) 28 3820 6448  
[quy.le@rhtlaw.com.vn](mailto:quy.le@rhtlaw.com.vn)

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## Office details

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RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central Plaza  
17 Le Duan Boulevard, District 1,  
Ho Chi Minh City, Vietnam

Tel: +84 28 38206 448

HCMC > Hanoi > Singapore > Phnom Penh

>

RHTLaw Vietnam – Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower  
117 Tran Duy Hung Street, Cau Giay District  
Hanoi, Vietnam

Tel: + 84 24 3974 8881

HCMC > Hanoi > Singapore > Phnom Penh

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