



LEGAL UPDATE

2019 LAW ON SECURITIES EXPECTED TO SUPPORT THE DEVELOPMENT OF VIETNAM'S SECURITIES MARKET

On 26 November 2019 the 2019 Law on Securities (**2019 LoS**) was approved. The 2019 LoS is expected to help improve the quality of products in the securities market and increase the supervision of management agencies.

The 2019 LoS shall take effect on 1 January 2021 and replaces the current Law on Securities (**Current Law**) first adopted in 2006 and amended in 2010.

In this update, we will present the most remarkable changes.

1. Definitions

1.1. New

There are many terms that are commonly used in the securities market, e.g. derivative securities, covered warrant, strategic investors and securities practitioners. However, these had not been defined clearly in legal documents; and the 2019 LoS now sets out official definitions for such terms for the first time.

1.2. Amended

Some other definitions have been amended to better reflect the current practice.

▪ *Securities*

According to the Current Law, securities are not deemed assets themselves, but instruments evidencing their holder's legitimate rights and benefits to the assets or capital shares of issuing organisations. It is the *asset or capital share of the issuing organisation* that is an asset, and securities are just the form to contain the asset. Under the 2019 LoS these are now recognised as a type of asset.

▪ *Professional Securities Investor*

The definition of *professional securities investor* is revised to clarify the existing subjects and cover additional subjects, in particular, including commercial banks, foreign bank branches, financial companies, insurance business

organisations, securities companies, securities fund management companies, securities investment companies, securities funds, international financial organisations, etc. In addition, the definition also covers other additional subjects such as companies with a contributed charter capital exceeding VND 100 billion (~USD 4,291,845), listed organisations, organisations registered for transactions, individuals granted a securities practice certificate, individuals holding listed securities or securities registered for transactions amounting to at least VND 2 billion (~USD 85,837), and individuals who have a taxable income of at least VND 1 billion (~USD 42,918) in the preceding year.

▪ *Member Fund*

The cap of the number of members contributing capital to a *member fund* is increased from 30 to 99. However, it is clarified in the 2019 LoS that the minimum number of members of a member fund shall not be less than 2 and all of such members must be professional securities investors, regardless of whether they are legal entities or not.

2. Public Offering of Securities

2.1 Initial Public Offering and Additional Public Offering

Under the Current Law, the conditions for public offering of securities are applicable to both initial public offering (**IPO**) and additional public offering (**APO**). However, considering that the 2 types of offering are of a different nature, the conditions are listed separately in the 2019 LoS.

2.2 Tightened Conditions

The conditions for public offering of securities under the Current Law were first adopted in 2006 and supplemented in 2010. After nearly 10 years it is time to follow the general development of the size of enterprises in Vietnam. For instance, the minimum paid-up charter capital of an enterprise when registering the offering of stock is VND 10 billion (~USD 429,185). This is quite low compared to the current size of Vietnamese enterprises. In addition,



in order to improve the quality and stability of the securities to be traded on the market and to limit potential risks to investors and small enterprises, and to be compatible with international practice, the 2019 LoS tightens the conditions for public offering of securities. Below some noteworthy changed conditions are set out:

▪ *IPO*

- Minimum paid-up charter capital of the issuing organisation at the time of registering for public offering increases from VND 10 to 30 billion (~USD 429,185 to 1,287,554);
- In the 2 years preceding the year of the offering registration the company needs to be profitable, while this was 1 year only;
- At least 15% of the voting stock of the issuing organisation must be sold to at least 100 investors who are not majority shareholders; and in case the charter capital is VND 1,000 billion (~USD 42,918,455) or more, this ratio is 10%; and
- The majority shareholders of the issuing organisation before the IPO shall undertake to collectively hold at least 20% of the charter capital of the issuing organisation within 1 year as of the end of the offering.

▪ *APO*

- The total par value of additionally issued stock shall not exceed the total par value of outstanding stock (except for certain cases as prescribed by the law such as where there is a guarantee for offering securities, when offering securities to increase owners' capital, or when offering securities for the purpose of consolidation or merger); and
- In case the objective is to mobilise capital for investment implementation, at least 70% of the stock planned to offer must be sold, and the issuing organisation must have a plan for making up for the insufficient amount to implement the investment project.

2.3 Offering Stock below Par Value

According to the Current Law, the par value of stock to be offered for sale for the first time to the public is VND 10 thousand (~USD 0.43). However, in practice there is a lot of stock that has a market price lower than the par

value. The Current Law has not set out a mechanism for enterprises to offer stock at price lower than the par value. As a result, it is impossible for such enterprises to mobilise capital for their business operation, while one of the most important objectives of an enterprise when registering for listing on a stock exchange is the possibility to access a long-term capital mobilisation channel.

The 2019 LoS will allow the issuing organisation to offer stock at a price lower than the par value if the market price is lower than the par value.

3. Tightened Conditions for Non-public Offering

In accordance with the Current Law, the conditions for non-public offering of securities are quite light and the offering of securities, regardless of which type of securities, shall meet the same conditions. Many companies have intentionally carried out non-public offering of securities to avoid the strict conditions of public offering of securities. To address this issue, conditions have been amended and the 2019 LoS now restricts the transfer of stock offered for non-public sale for at least 3 years for a strategic investor and 1 year for a professional securities investor counting from the completion date of the offering. Currently the restriction exists for just 1 year.

Furthermore, the 2019 LoS sets out conditions for non-public offering of securities into groups equivalent to each type of securities and each type of the issuing organisations.

4. Identification of a Public Company

To make it consistent with the changed conditions for public offering of securities, the 2019 LoS also adjusts relevant criteria to identify a public company. Accordingly, a public company shall have a minimum paid-up charter capital of VND 30 billion (~USD 1,287,554), instead of VND 10 billion (~USD 429,185). Furthermore, at least 10% of the voting stock of such a company must be held by at least 100 investors who are not majority shareholders.

5. Foreign Investors' Participation

The Current Law is silent on foreign investment activities in the Vietnamese securities market. Several conditions are prescribed in some by-law documents, including Decree No. 58/2012/ND-CP and Circular No. 123/2015/TT-BTC.

In the 2019 LoS, it is the first time ever that an article is included about foreign investors' participation in the



Vietnamese securities market. Though more details shall be provided in Decrees and Circulars, this shows the intention to gradually open the Vietnamese securities market to foreign investors.

6. Securities Business Operation and Establishment License and Enterprise Registration Certificate

According to the Current Law, the securities business operation and establishment license (**SBOEL**) of a securities company or fund management company is concurrently its enterprise registration certificate (**ERC**). The 2019 LoS splits this license and certificate to bring it in line with the Law on Enterprises. Accordingly, after being granted an SBOEL, a securities company or fund management company shall carry out the procedure to obtain an ERC.

7. Increased Maximum Fine

According to the Current Law and Decree No. 108/2013/ND-CP (amended by Decree No. 145/2016/ND-CP), the maximum fine level for violations in the domain of securities can be up to 5 times the illegal revenue or 5% of the illegally mobilised amount or VND 2 billion (~USD 85,837) for an organisation and VND 1 billion (~USD 42,918) for an individual, as the case may be. In the 2019 LoS, the maximum fine is increased to 10 times the illegal revenue or VND 3 billion (~USD 128,755) for an organisation and VND 1.5 billion (~USD 64,378) for an individual.

8. Transitional Clauses

8.1 Professional Securities Investor

The 2019 LoS provides for a transitional period of 2 years from the effective date for the existing securities companies, securities fund management companies, branches of foreign securities companies and of foreign securities fund management companies to (i) satisfy the relevant conditions prescribed by this law, and (ii) upon satisfaction of such conditions, carry out the procedures for registration of enterprises under the laws.

On the expiry of this period, any aforesaid entity which fails to satisfy the relevant conditions shall be suspended from operation or the granted license shall be withdrawn.

8.2 Legal Capacity, Listing and Registration

For a public company with stock listed or registered for transaction on stock exchanges prior to the effective date

of the 2019 LoS and that still satisfies all conditions set out in the Current Law and guiding documents, the legal capacity as a public company and the listing or registration of its stock *shall remain in effect*.

However, for a public company with stock not listed or registered for transaction prior to the effective date of the 2019 LoS and that fails to satisfy the conditions set out in section 4 above, the legal capacity of a public company *shall be cancelled*.

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