



# Special Alert

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## New decree elaborating the 2019 Securities Law

On 31 December 2020, the Government issued Decree No.155/2020/ND-CP (“**Decree 155**”) elaborating the Law on Securities 2019, which came into effect on 1 January 2021. Most of the provisions in Decree 155 follow Decree No. 58/2012/ND-CP, Decree No. 60/2015/ND-CP, and Circular No. 162/2015/TT-BTC, though some provisions are revised and supplemented to constitute a stricter legal framework. This Special Alert will discuss the changes with significant impact to the securities market of Vietnam.

### Offering and Issuance of Securities

#### *Offering of shares at a price lower than par value by public companies*

Although the offering of shares at a price lower than the par value has precedents, the lack of consistent and specific regulations has rendered this type of offering nearly impossible for public companies even when their valuation is lower than their shares’ par value. Decree 155 specifically provides a clearer legal framework for such an offering.

For public offerings, in addition to meeting regular conditions for an additional public offering of shares, companies must set the market price as the average reference price of 60 consecutive trading days immediately preceding the date of finalization of the list of shareholders used for obtaining approval from the General Meeting of Shareholders for the issuance plan; and have sufficient capital surplus, based on the audited financial statement of the most recent year, as to offset the negative surplus resulting from issuance of shares below par value. The last condition is apparently added to protect the interests of existing shareholders by avoiding exploitation of this kind of offering, which may lead to situations where contributed capital is lower than charter capital.

For private placement of shares the company must satisfy regular conditions for private placement of

shares, the same price and capital surplus conditions as required for a public offering, and limit participants of private placement to strategic investors.

#### *Public offering by credit institutions placed under special control*

Previously, it was impossible for credit institutions placed under special control (for financial reasons) to issue shares to raise capital as they could not meet the condition of being profitable and having no accumulated losses in the year immediately preceding the registration of issuance.

Under Decree 155 credit institutions placed under special control may now conduct a public offering of shares if the conditions for an additional public offering of shares, except for those of interest and accumulated losses, are met. Such exception is necessary for the regulations to be practicable as credit institutions placed under special control are obviously loss-making businesses. However, a proposal to increase charter capital must be approved by the State Bank of Vietnam (the “**SBV**”), and requirements to obtain that approval are not yet prescribed.

#### *Public offering by shareholders of public companies*

Pursuant to Decree 155, persons entitled to make a public offering have been expanded to all shareholders of a public company.

#### *Offering of shares by limited liability companies for conversion into joint stock companies*

The right to issue securities of a limited liability company has been significantly limited as they have previously only been permitted to issue bonds. This was amended slightly by the Law on Enterprise 2020 that allows limited liability companies to issue shares when undergoing a conversion process into a joint stock company.

Decree 155 further provides regulations guiding the implementation of such a conversion offering. The application process and conditions are similar to those for initial public offerings as specified in the Law on Securities 2019, except that the financial statements used to determine the conditions for the offering are financial statements of a limited liability company.

#### *Public offering by companies formed after re-organization*

Decree 155 provides various noteworthy changes and new regulations governing the public offer of shares of a company that becomes a joint stock company as a result of specific forms of corporate reorganization, specifically mergers, consolidations, and sales of corporate assets (the “**Restructuring Activities**”) that change or have the value of 35% or more of the total asset value of the original enterprise. Companies conducting the Restructuring Activities formerly were required to wait a full year before making a public offer, but under Decree 155 a company is now permitted to make such an offer in the year of the Restructuring Activities so long as that company has a duly audited Pro forma general report on financial information (Báo cáo tổng hợp thông tin tài chính theo

quy ước) for assessment of the conditions for such offering. The form of the Pro forma general report on financial information has yet to be promulgated.

### *Public offering of secured bonds*

The method for offering purchase guarantees is now amended to be provided by banks and foreign bank branches instead of all organizations that are financially capable, and guarantees of bond settlements by issuer's revenue is now allowed.

## Organization of the Securities Market

### *Listing securities of companies formed after re-organization*

Decree 155 allows for the listing of companies formed after corporate re-organization immediately after completion of Restructuring Activities so long as the new entity can issue a Pro forma general report on financial information.

### *Conditions for listing of securities*

Instead of setting forth separate conditions for each stock exchange (i.e. HNX and HOSE), Decree 155 provides general conditions for domestic securities listings, as well as unifying and supplementing several fundamental conditions for a company to be listed on HNX or HOSE, including:

- ✓ The minimum paid-up charter capital must be at least VND30 billion;
- ✓ The market capitalization must be at least VND30 billion;
- ✓ Prospective companies must be listed on UpCOM for at least two (2) years prior to being listed on HOSE & HNX, unless otherwise having made a public offering, or having been equitized; and
- ✓ Have at least 15% of the voting shares in the company held by at least 100 shareholders who are non-major shareholders. (In case the charter capital is at least VND1000 billion, 10% of voting shares must be held by non-major shareholders).

### *Investment conditions for foreign investors, foreign-invested organizations on Vietnam's stock market*

Decree 155 makes several changes to the treatment of foreign investors and foreign-invested organizations on Vietnam's stock market.

The foreign ownership ratio of listed companies will now be determined by the total ownership ratio of all shares and capital contribution portions of all foreign investors and foreign invested enterprises over the total amount of charter capital instead of being calculated by "the total ratio of ownership of shares and capital contribution portions with voting rights". This regulation will limit the abusive

issuance of non-voting shares to foreign investors that had previously allowed for the circumvention of regulations on foreign ownership limits.

The foreign ownership ratio of public companies operating in businesses and industries falling under the list of industries and trades for which market approach applicable to foreign investors is restricted shall be in accordance with regulations on foreign ownership prescribed by such list.

The maximum foreign ownership ratio of public companies operating in businesses and industries having conditions applicable to foreign investors that do not yet have any specific provisions on foreign ownership ratio, shall be raised from 49% to 50%.

## Registration of Encumbrances over Registered Securities

Decree 155 provides a completely new regulation for the registration of encumbrances over securities centrally registered at the Vietnam Securities Depository and Clearing Corporation (the “**VSDCC**”).

Previously, the registration of encumbrances over securities was conducted at the National Registration Agency for Secured Transactions of the Ministry of Justice (the “**NRAST**”). From now on registration shall be conducted as follows:

- ✓ For securities that are centrally registered at the VSDCC, registration of encumbrances shall be conducted at the VSDCC pursuant to applicable regulations on securities; and
- ✓ For other securities, registration of encumbrances shall be conducted at the NRAST pursuant to applicable regulations on registration of encumbrances.

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