

THE PRESIDENT

Order No. 20/2010/L-CTN of December 6, 2010, on the promulgation of law

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Articles 103 and 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

Pursuant to Article 91 of the Law on Organization of the National Assembly;

Pursuant to Article 57 of the Law on Promulgation of Legal Documents,

PROMULGATES:

the Law Amending and Supplementing a Number of Articles of the Law on Securities,

which was passed on November 24, 2010, by the XIIth National Assembly of the Socialist Republic of Vietnam at its 8th session.

President of the Socialist Republic of Vietnam
NGUYEN MINH TRIET

Law Amending and Supplementing a Number of Articles of the Law on Securities

(No. 62/2010/QH12)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

The National Assembly promulgates the Law Amending and Supplementing a Number of Articles of Law No. 70/2006/QH11 on Securities.

Article 1. To amend and supplement a number of articles of the Law on Securities.

1. To amend and supplement Article 1 as follows:

“**Article 1.** Scope of regulation

This Law provides for securities offering, listing, trading, business and investment, and securities and securities market services.”

2. To amend and supplement Clause 1, Article 3 as follows:

“1. Securities offering, listing, trading, business and investment, and securities and securities market services comply with this Law and other relevant laws.”

3. To amend and supplement Clauses 1, 5, 13, 20, 22, 23 and 26 of, and add Clauses 8a, 12a and 27a to, Article 6 as follows:

“1. Securities means instruments evidencing their holders’ rights and legitimate benefits to assets or equity shares of issuing organizations. Securities take the form of certificates, book entries or electronic data, including the following types:

a/ Stocks, bonds or fund certificates;

b/ Rights, warrants, call option, put option, futures, securities classes or indexes;

c/ Investment capital contribution contracts;

d/ Other types of securities stipulated by the Ministry of Finance.”

“5. Right means a type of securities issued by a joint-stock company to provide its existing shareholders with the right to buy new stocks under specified conditions.”

“8a. Investment capital contribution contract means a contract on contribution of capital in cash or asset between investors and an issuing organization for the profit-making purpose and allowed to be converted into other securities.”

“12a. Private placement means offering of securities to less than 100 investors, except professional securities investors, without using the mass media or the Internet.”

“13. Issuing organization means an organization which conducts the offering of securities.”

“20. Securities brokerage means acting as an intermediary to buy or sell securities for customers.”

“22. Securities issuance underwriting means a commitment made by an underwriter with an issuing organization to carry out procedures before securities are offered, undertaking to buy part or whole of the securities amount of this issuing organization for resale or to buy its undistributed securities or to assist it in distributing its securities to the public.”

“23. Securities investment consultancy means provision of analysis results, disclosure of analysis reports and giving of securities-related recommendations to investors.”

“26. Securities portfolio management means the management of the purchase, sale or holding of securities and other assets under each investor’s entrustment.”

“27a. Real estate investment fund means a securities investment fund which mainly invests in real estate.”

4. To add the following Clause 5 to Article 9:

“5. Performing securities trading operations without license or approval of the State Securities Commission.”

5. To amend the title of Chapter II into the following:

“Chapter II

OFFERING OF SECURITIES”

6. To add the following Article 10a to Article 10:

“**Article 10a.** Private placement

1. Private placement of securities of issuing organizations other than public companies complies with the Enterprise Law and other relevant laws.

2. Conditions on private placement of securities of a public company include:

a/ There is a decision of the Shareholders’ General Meeting or the Board of Directors adopting a plan on private placement and use of proceeds from private placement, and clearly identifying eligible investors and the number thereof;

b/ Transfer of privately placed shares or convertible bonds is banned for at least one year after the completion of the private placement, except cases of private placement under selective programs to the company’s employees, transfer of placed securities of individuals to professional securities investors, transfer of securities among professional securities investors, or under a court ruling or in cases of inheritance under law;

c/ There must be an interval of at least 6 months between two consecutive private placements of shares or convertible bonds.

3. The Government shall specify dossiers and procedures for private placement.”

7. To add the following Point d to Clause 1, Article 12:

“d/ The public company registering for public offering of securities shall commit to put its securities into trading in an organized market within one year after the completion of the offering adopted by the Shareholders’ General Meeting.”

8. To amend and supplement Point d, Clause 1, Article 14 as follows:

“d/ The decision of the Shareholders’ General Meeting adopting the issuance plan, the plan on use of raised capital and the commitment to put securities into trading in an organized market;”

9. To amend and supplement Clause 1, Article 24 as follows:

“1. An issuing organization that has completed the public offering of stocks becomes a public company and has to fulfill the obligations of a public company specified in Clause 2, Article 27 of this Law. Dossiers for registration of public offering of securities shall be regarded as public company dossiers and issuing organizations are not required to submit public company dossiers specified in Clause 1, Article 26 of this Law to the State Securities Commission.

Issuing organizations being public companies shall fulfill their commitment to put their offered securities into trading in an organized securities trading market as specified at Point d, Clause 1, Article 12 of this Law.”

10. To amend and supplement Article 28 as follows:

“**Article 28.** Administration of public companies

1. The administration of public companies complies with this Law, the Enterprise Law and other relevant laws.

2. Principles of public company administration include:

a/ Assuring a rational administration structure and effectiveness of operations of the Board of Directors and the Control Board;

b/ Guaranteeing benefits of shareholders and affiliated persons;

c/ Assuring that all shareholders are equally treated;

d/ Assuring publicity and transparency of all operations of the company.

3. The Ministry of Finance shall specify this Article.”

11. To amend and supplement Article 32 as follows:

“**Article 32.** Public bid

1. The following cases are subject to public bid:

a/ Bids for voting stocks or certificates of closed funds which lead to the ownership of twenty-five per cent or more of outstanding stocks or fund certificates of a public company or a closed fund;

b/ Organizations, individuals and affiliated persons that hold twenty-five per cent or more of voting stocks or fund certificates of a public company or a closed fund continue to buy ten per cent or more of outstanding voting stocks or fund certificates of such public company or closed fund;

c/ Organizations, individuals and affiliated persons that hold twenty-five per cent or more of voting stocks or fund certificates of a public company or a closed fund continue to buy between five and under ten per cent of voting stocks or fund certificates of such public company or closed fund within less than one year after the completion of the last public offering.

2. The following cases are not subject to public bid:

a/ Purchase of newly issued stocks or fund certificates which leads to the ownership of twenty-five per cent or more of voting stocks or fund certificates of a public company or a closed fund under an issuance plan adopted by the Share-holders' General Meeting of the public company or the Representative Board of the closed fund;

b/ Receipt of transferred voting stocks or fund certificates which leads to the ownership of twenty-five per cent or more of voting stocks or fund certificates of a public company or a closed fund as adopted by the Shareholders' General Meeting of the public company or the Representative Board of the closed fund;

c/ Transfer of stocks among companies within an enterprise which is organized after the parent-subsidiary company model;

d/ Giving as gifts, donation or inheritance of stocks;

e/ Capital transfer under court rulings;

f/ Other cases decided by the Ministry of Finance.

3. The Government shall specify the public bid for stocks of public companies and fund certificates of closed funds.”

12. To amend and supplement Clause 1 of and add Clause 4 to Article 33 as follows:

“1. A stock exchange shall organize a securities trading market for securities qualified for listing at stock exchanges. The organization of trading markets for other types of securities complies with the Government’s regulations.”

“4. A stock exchange may enter into partnerships with stock exchanges of foreign countries under the Prime Minister’s decisions.”

13. To amend and supplement Clause 3, Article 40 as follows:

“3. The Government shall specify conditions, dossiers and procedures for listing securities of Vietnamese and foreign issuing organizations at Vietnamese stock exchanges and securities trading centers; conditions, dossiers and procedures for listing securities of Vietnamese issuing organizations at foreign stock exchanges.”

14. To amend and supplement Clause 3, Article 60 as follows:

“3. In addition to securities business operations specified in Clause 1 of this Article, securities companies may be entrusted to manage securities trading accounts of individual investors, provide financial consultancy services and other financial services under the Ministry of Finance’s regulations.”

15. To amend and supplement Clause 1, Article 61 as follows:

“1. Fund management companies may conduct the following business operations:

- a/ Management of securities investment funds;
- b/ Management of securities portfolios;
- c/ Provision of securities investment consultancy.”

16. To amend and supplement Article 74 as follows:

“**Article 74.** Financial prudence and warning

Securities companies and fund management companies shall assure their prudential ratios under the Ministry of Finance’s regulations. If failing to assure their prudential ratios, they shall be subjected to warning or application of measures to assure prudence.”

17. To amend and supplement Point d, Clause 1, Article 92 as follows:

“d/ Investing more than ten per cent of the total asset value of a closed fund in real estate, except real estate investment funds; investing capital of an open-end fund in real estate;”

18. To amend and supplement Clauses 1 and 3, Article 100 as follows:

“1. Issuing organizations, public companies, securities companies, fund management companies, securities investment companies, stock exchanges, securities trading centers, securities depository centers and affiliated persons are obliged to disclose information in a sufficient, accurate and timely manner.”

“3. The disclosure of information shall be conducted by at-law representatives or their authorized persons and affiliated persons.”

19. To amend and supplement Article 101 as follows:

“**Article 101.** Disclosure of information of public companies

1. Public companies shall disclose periodical information on one or several of the following contents:

- a/ Annual financial statements audited and biannual financial statements examined by independent audit companies or accredited audit organizations, quarterly financial statements;

b/ Resolutions of annual Shareholders' General Meetings.

2. A public company shall disclose extraordinary information upon the occurrence of any of the following events:

a/ Its bank account is frozen or is permitted to resume after a freezing period;

b/ It suspends its business operation, or has its business registration certificate or establishment and operation license or operation license revoked;

c/ Its Shareholders' General Meeting's decisions are adopted under the Enterprise Law;

d/ Its Board of Directors makes decisions on redemption or resale of its stocks or on the date of exercise of the right to buy stocks by owners of warranted bonds or the date of conversion of convertible bonds into stocks and decisions related to the offering under Clause 2, Article 108 of the Enterprise Law; mid-term development strategy and plan and annual business plans of the company; establishment of subsidiary companies or associated companies; closing or opening of branches, representative offices; renaming or change of the address of the company's head office; contribution of a capital amount valued at ten per cent or more of the total asset of the company to another institution; contribution of a capital amount valued at fifty per cent or more of the total contributed capital of the company receiving capital contributions;

e/ There are decisions on change of the applicable accounting method; exceptional opinions or refusals to give opinions of audit organizations on financial statements or change of audit companies;

f/ There is a change of a member of the Board of Directors or Control Board, the Director General, a Deputy Director General or Director, a Deputy Director, or Chief Accountant; there is a decision on institution of a lawsuit against a member of the Board of Directors or Control Board, the Director General, a Deputy Director General or Director, a Deputy Director, or Chief Accountant of the company; there is a court judgment or ruling concerning the company's operation; there is a conclusion of a tax office on the company's violation of the tax law;

g/ An asset valued at over fifteen percent of the total asset of the company according to the latest audited accounting balance sheet is purchased or sold;

h/ There is a decision to borrow a loan or issue bonds valued at thirty per cent or more of the equity capital by the time of the latest statement;

- i/ The company receives a court notice of acceptance of an application for opening business bankruptcy procedures;
- j/ The company suffers an asset loss valued at ten per cent or more of its equity capital;
- k/ There happens an event which greatly impacts the production or business operation or administration of the listed organization;
- l/ There happens any event which seriously affects legitimate benefits of investors, leads to a continuous rise or fall of securities prices within a given period, or impacts the sustainable development of the securities market, on which disclosure of information is requested by the State Securities Commission.

3. The Ministry of Finance shall specify contents of and time limit for information disclosure applicable to each type of public companies.”

20. To amend and supplement Clause 3, Article 104 as follows:

“3. A securities company shall disclose at its head office and branches information on changes related to the address of its head office or branches; contents relevant to methods of trading, placing orders and paying deposits for trading, time for payment, trading fee and services provided and a list of its securities practitioners.”

21. To amend and supplement Article 136 as follows:

“**Article 136.** Implementation detailing and guidance

The Government shall detail and guide the implementation of articles and clauses of this Law as assigned; and guide other necessary contents of this Law to meet state management requirements.”

Article 2. To annul Article 103 and Clause 2, Article 106 of Law No. 70/2006/QH11 on Securities.

Article 3. This Law takes effect on July 1, 2011.

This Law was passed on November 24, 2010, by the XIIth National Assembly of the Socialist Republic of Vietnam at its 8th session.-

Chairman of the National Assembly
NGUYEN PHU TRONG