

NOTABLE AMENDMENTS AND SUPPLEMENTS OF THE LAW ON SECURITIES

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On November 29, 2024, the National Assembly promulgated Law No. 56/2024/QH15, amending nine finance-related laws, including the Securities Law (the “**Amended Securities Law**”). These amendments aim to enhance the current legal framework governing securities trading activities in Vietnam. The Amended Securities Law introduces several key changes to the current Law No. 54/2019/QH14 on Securities (the “**Securities Law 2019**”), effective from January 1, 2025.

1. Professional Securities Investors

1.1. Expanding Definition of Professional Securities Investors

Under the previous framework, sophisticated investors (“**SIs**”) were generally limited to individuals and organizations with financial capacity or professional qualifications in securities. Foreign investors are not unconditionally recognized as SIs, except for foreign bank branches and international financial institutions, as specified in Article 11.1(a).

The Amended Securities Law broadens the definition of SIs to include foreign investors. This change allows foreign individuals and organizations established under foreign laws to be recognized as SIs when engaging in investment and business activities in Vietnam.

1.2. New Conditions for Sophisticated Investors in Purchasing Privately Placed Bonds

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The Amended Securities Law introduces additional requirements for SIs to engage in the purchase, trading, and transfer of privately placed bonds, as specified in Article 11. These conditions vary between organizational and individual investors:

For organizational investors, SIs are permitted to purchase, trade, and transfer privately placed corporate bonds without any restrictions.

For individual investors, participation in private bond transactions is subject to stricter conditions. Individual SIs may only engage in such transactions if one of the following criteria is met:

- The bonds are corporate bonds rated by a credit rating agency and have collaterals; or
- The bonds are corporate bonds rated by a credit rating agency and guaranteed by credit institutions. However, whether foreign credit institutions guarantee privately placed bonds satisfies this condition.

This change will expand the applicability of the provisions which refer to SIs under the Securities Law 2019.

The Amended Securities Law introduces enhanced protection for bondholders in case of default, offering greater security for investors. The expanded use of credit ratings will allow investors to better understand the risks associated with their investments, leading to more informed decision-making. However, issuers may incur additional costs due to the need for credit enhancements and ratings, as required by the updated regulations.

2. Securities-related offences

The Amended Securities Law enhances the regulatory framework by clearly outlining prohibited practices in securities. Article 12.3 has been amended to explicitly include market manipulation as a prohibited act in the securities sector. To provide further clarity, Article 4.49 has been supplemented to define six specific acts that constitute market manipulation, as follows:

- (a) Using one's own or another person's trading accounts, or colluding to repeatedly buy and sell securities to create artificial supply and demand;
- (b) Placing buy and sell orders for the same type of securities on the same trading day, or colluding to trade securities without transferring ownership or with ownership merely rotating among group members to create artificial supply, demand, and prices;
- (c) Continuously buying or selling securities in large quantities at market opening or closing times to manipulate prices;
- (d) Engaging in securities trading through collusion, involving others to continuously place buy and sell orders that heavily influence supply, demand, and prices, thereby manipulating security prices;
- (e) Expressing opinions directly or indirectly via media channels about a particular securities or its issuer to influence its price after executing trades and holding positions in the securities;
- (f) Using other methods or engaging in activities like spreading false rumors or providing misleading information to the public to create artificial supply and demand, thus manipulating prices.

Therefore, any organization or individual involved in the actions described above will be engaging in prohibited securities activities, potentially leading to invalid transactions.

3. Conditions for Public Offering of Bonds

3.1. Supplement Exceptions to the Percentage of Shares offered to Investors

According to Article 15.2(d), in a public offering aimed at raising capital for a project by the issuing organization, at least 70% of the shares to be offered must be sold to investors. The Amended Securities Law introduces an exception for offerings made to existing shareholders based on their ownership percentages. In such cases, the percentage of shares sold to investors does not have to meet the minimum 70% requirement.

3.2. Additional Conditions for Public Offering of Bonds

In addition to the requirement for public offering of bonds to comply with government regulations on credit ratings as stated in Article 15.3(g), the Amended Securities Law supplements further conditions. Specifically, public offering of bonds must also comply with government regulations on:

- Representation of bondholders;
- Debt ratio;
- The value of bonds issued relative to the issuer's equity.

This change in the Amended Securities Law aims to limit the use of high debt leverage by issuers when issuing public bonds, thereby reducing financial risk. It also aims to increase market risk awareness among individual investors by emphasizing the use of credit ratings, helping them better understand the risks associated with their investments and make more informed decisions.

4. Supplement Provision regarding the Securities Public Offering Registration Dossier

For the Initial Public Offering Registration Dossier, in addition to the documents stipulated under the Securities Law 2019, joint stock companies submitting registration dossier for an initial public offering (“**IPO**”) must also include a report on the charter capital contributed up to the date of the IPO registration. This report must be audited by an independent audit organization as required by the Ministry of Finance.

For the Public Offering of Bonds Registration Dossier, in addition to the materials required by the Securities Law 2019, companies must also include the contract between the issuer and the bondholders' representative.

5. Supplement Provision Regarding the Cancellation of Public Offerings

The Amended Securities Law supplements two circumstances under Article 28.1 in which a public offering can be canceled, including:

- Public offerings of shares that have not been listed or registered;
- Public offerings of bonds or secured warrants.

In addition to these general cases for canceling public offerings, the Amended Securities Law also provides an exception. A public offering will not be canceled if, after the offering, the shares (or shares converted from convertible bonds or purchased through warrants) are listed or registered.

6. Private Placement by Public Companies, Securities Companies, Fund Management Companies

Firstly, the Amended Securities Law further specifies that this plan must include additional details, such as the number of shares to be issued, the offering price, and the principles for determining the offering price.

Secondly, the Amended Securities Law modifies the eligibility criteria for participants in private offerings. Under Article 31.1(b) of the Securities Law 2019, both strategic investors and PSIs were permitted to participate. However, the Amended Securities Law restricts participation exclusively to SIs.

Thirdly, the Amended Securities Law changes the transfer restriction conditions for strategic investors and SIs under Article 37.7. The new regulations no longer apply transfer restrictions to transactions or transfers between SIs, whether organizational or individual, as defined above.

7. Supplement provisions regarding the Suspension and Cancellation of Private Offering of Securities

The Amended Securities Law introduces two additional provisions concerning the suspension and cancellation of private offering of securities as follows:

Suspension

The State Securities Commission is authorized to suspend a registered private securities offering for up to 60 days in the following cases:

- If the offering registration documents contain false or incomplete information that could affect investment decisions and cause harm to investors;

- If the distribution of the securities does not comply with legal requirements.

Within 7 working days of the suspension, the issuer must publicly announce the suspension. The issuer must also retrieve any issued securities upon the investor's request and refund the investor within 15 days from the date of receiving the request.

If the deficiencies that led to the suspension are rectified, the State Securities Commission will issue a written notice lifting the suspension, allowing the offering to continue.

Within 7 working days from the notice lifting the suspension, the issuer must publicly announce the lifting of such suspension.

Cancellation

The State Securities Commission may cancel a registered private securities offering in the following cases:

- If the issuer fails to rectify the deficiencies leading to the suspension within the suspension period;
- After a private offering of shares has concluded, and the shares are not yet listed or registered for trading, it is discovered that the offering violated the law;
- After a private offering of bonds was concluded, it was found that the offering violated the law.

In addition to the above cases, a private securities offering may be canceled by a final court ruling, an arbitral award, or a decision from another competent authority under the law.

If, after a private offering, the shares or shares converted from convertible bonds or shares purchased from warrants are listed or registered for trading, the offering will not be canceled.

Within 7 working days from the date of cancellation, the issuer must publicly announce the cancellation. The issuer must retrieve the issued securities and refund investors within 15 days from the cancellation date. After this period, the issuer must compensate investors for any damages in accordance with the terms agreed upon with the investors.

8. Public Companies

8.1. Supplement Provision regarding the Conditions for Public Company Registration

The Amended Securities Law introduces an additional condition for registering a public company, which is having "equity capital of at least VND30 billion" alongside the existing requirements of (i) a paid-up charter capital of at least VND30 billion, and (ii) at least 10% of the voting shares held by a minimum of 100 non-majority investors, as stipulated in Article 32.1(a) of the Amended Securities Law.

8.2. Amendment Provision regarding the Repurchase of ESOP Shares by Employees

The Amended Securities Law eliminates the requirement to reduce charter capital for shares repurchased by the company under its ESOP, as stipulated in the Securities Law 2019. Instead, the company is now only obligated to report the total number of employee shares repurchased at the most recent annual general meeting of shareholders.

8.3. Amendments Provision regarding the Exemption from the Share Offering Restriction for Capital Increase

The Amended Securities Law revises Article 37.7 of the Securities Law 2019 to allow companies to issue shares for a capital increase without being subject to the six-month restriction following the repurchase of ESOP shares from employees who have left the company or when a securities company repurchases its own shares to correct a transaction error.