

Securities Decree Amendments

On 2 August 2010, the Vietnam Government issued Decree No. 84/2010/CP (Decree 84) amending and supplementing a number of articles of Decree No. 14/2007/ND-CP (Decree 14). Decree 14 was issued on 17 January 2007 to give detailed provisions on the implementation of the Law on Securities.

Decree 84 amends and/or supplements provisions on public companies, credit institutions, fund management companies and foreign organisations issuing securities in Vietnam.

Decree 84 is significant in that it better protects securities investors and opens up the possibility for offshore companies to list on Vietnam's stock exchange.

We discuss these amendments below.

1. Widening the governing scope

"Public companies" are added to the list of applicable entities in Decree 14 and a new chapter on this type of company is inserted.

2. Additions to the provisions on public offers of securities

Decree 84 supplements the following provisions to Decree 14:

- Organisations and individuals are not permitted to make a public offer of securities in the following cases:
 - » The enterprise does not satisfy the conditions specified in the Law on Securities for a public offer of securities;
 - » The establishment of an enterprise, except in the infrastructure and high-tech sectors.
- A public offer of securities must be registered by an issuer, except in the following cases:
 - » The State, being a shareholder, offers its capital portion to the public;
 - » A major shareholder offers its capital portion to the public.
- The issuer is required to open an escrow account with a commercial bank to receive exclusively the proceeds of a public offering. If the issuer is a commercial bank, it must select another commercial bank to freeze such proceeds. The proceeds may only be released to the issuer on:
 - » Completion of the public offering; and
 - » Submission of a report to the State Securities Commission (SSC) within 10 days after the offer period expires.
- Every six months from completion of the offer tranche until completing disbursement of proceeds, the issuer must disclose information about the use of such proceeds. If there is a change in the purpose of capital utilisation, the issuer must disclose information about the reason for such change together with the resolution of the board of management on the change or approval from the investment certificate-issuing

authority in the case of a foreign issuer.

- A shareholding company formed after an enterprise merger or consolidation which wishes to make a public offer of shares must have been operating for at least one year and its business operational results must be profitable up to the time of registering the offer.
- The file, sequence and procedures for a public offer of shares in order to swap shares and execute an enterprise merger, consolidation or acquisition will be implemented under guidelines of the Ministry of Finance (MOF).
- Sellers of convertible bonds must clarify all risks for potential buyers, as well as propose a risk-provision plan to protect the interests of existing bond holders whenever additional shares or bonds are issued. Where an issuer has a plan for issuing additional shares or bonds during the term of convertible bonds, the offer file must specify risks to the interests of bond purchasers accompanied by a plan for paying compensation to investors.

3. New provisions on public companies

As mentioned above, Decree 84 adds a new chapter comprising of two articles:

- Securities trading by public companies
 - » Securities of public companies which satisfy the conditions for listing are permitted for trading on the Stock Exchange.
 - » Securities of public companies which have not been listed on the Stock Exchange will be permitted for trading under guidelines of the MOF.
- Termination of public company status
 - » Except for a public company which has offered securities to the public or listed its shares on the Stock Exchange, a public company must notify the SSC in writing and disclose information to the public about termination of its status as a public company within 30 days from the date it no longer has at least 100

shareholders who are not professional securities investors or from the date it has adjusted its charter capital to less than VND10 billion (USD0.5 million).

- » The SSC will make a public announcement on its website of a termination of public company status within seven days from the date of receipt of a company's notice that its status as a public company has terminated.

4. Amendments on listing of securities

- At least 20 percent of the voting shares in the company must be owned by at least 100 shareholders who are not professional securities investors and major shareholders (previously, the 100 shareholders were not qualified in this manner), except for State enterprises converted into shareholding companies under regulations of the Prime Minister.
- The conditions for a public company to list on a securities trading centre are now the same as for listing on Hanoi Stock Exchange (i.e. the business operation in the year immediately preceding the year of registration for listing must have been profitable; there must not be debts overdue for more than one year; all financial obligations to the State must have been discharged) plus the condition that "financial status must be healthy up until the time of registration for listing".
- Government bonds, bonds guaranteed by the Government, and local authority bonds must be listed on Hanoi Stock Exchange at the request of the bond issuer.
- A shareholding credit organisation wishing to list its securities must have approval from the State Bank of Vietnam (SBV).
For information about this provision, see Mayer Brown JSM's Legal Update on "[Draft Circular on Bank Listings](#)" of 8 November 2010.
- A listed company may be de-listed if it has incurred losses for three consecutive years or its

total accumulated losses exceed the equity of the company (previously, both these conditions had to be met).

5. Offers and listing of securities by foreign issuers in Vietnam

These provisions are added to Decree 14:

- Conditions for a foreign issuer to make a public offer of securities in Vietnam:
 - » Having an investment project in Vietnam having been approved by the competent body; having an issue plan and a plan for utilising proceeds earned from the public offer tranche by investing them in such project;
 - » There must be an undertaking from the foreign organisation to implement such project;
 - » There must be an undertaking not to transfer the mobilised capital abroad and not to withdraw reciprocal equity within the approved project duration;
 - » There must be an undertaking from the issuer to discharge obligations under Vietnamese law;
 - » The issuance must be underwritten by at least one securities company established and operating in Vietnam;
 - » Compliance with the regulations on foreign exchange control when issuing the securities in Vietnam.
- Conditions for a foreign issuer to list on a Stock Exchange of Vietnam:
 - » The securities were issued in Vietnam as mentioned above;
 - » The volume of securities registered for listing corresponds to the volume of securities permitted for offer in Vietnam;
 - » There must be an undertaking from the listing organisation to discharge obligations under Vietnamese law;

- » There must be at least one securities company established and operating in Vietnam which advises on the securities listing.

Files, order and procedures for approval for registration of offers and listing of securities in Vietnam by foreign organisations will be implemented in accordance with guidelines of the MOF.

6. Amendment of the provisions on listing of securities on foreign stock exchange

A local company may list its shares on a stock exchange of a foreign country if the foreign country's stock exchange has a cooperation agreement with either the SSC, Ho Chi Minh City or Hanoi Stock Exchange. Previously, under Decree 14, the listing was only possible if such cooperation agreement was entered into between the foreign exchange or the securities regulator and the SSC.

7. Amendment of the provision on fund management companies

The legal capital of either a fund management company (with or without foreign owned capital) or a branch of a foreign fund management company in Vietnam is VND25 billion (USD1.25 million).

8. Amendment of the provisions on securities investment companies

- A securities investment company conducting private share placements is permitted to manage its own investment capital or engage a fund management company to do so.
- A public securities investment company is not permitted to manage its own investment capital. It must engage a fund management company to manage such investment capital.

Decree 84 took effect as from 20 September 2010.

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