NEWSLETTER

Vietnam: Investing in Public Companies - Points to Note in the New Regulations

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1. Introduction

Law No. 54/2019/QH14 on Securities dated 26 November 2019 ("**Law on Securities**") has been amended by Law No. 56/2024/QH15 dated 29 November 2024, which came into effect on 1 January 2025 ("**Amendment**"). The Amendment contains several new provisions; however, in this article, we will focus on a few important points of which foreign investors should take note when investing in Vietnamese public companies.

2. Foreign Investors No Longer Need to Satisfy Vietnam's Professional Investor Criteria

Previously, foreign investors needed to satisfy certain criteria to qualify as professional investors. In particular, institutional foreign investors were required to be financial institutions (specifically, banks, branches of foreign banks, finance companies, insurance companies, securities companies, or securities investment funds), companies with contributed charter capital equal to VND 100 billion or more, or companies whose securities are listed or registered for trading on a stock exchange. Individual foreign investors were required to hold certificates evidencing their eligibility to engage in the securities business, or to hold a portfolio of securities listed or registered for trading on a stock exchange and valued at VND 2 billion or more, or have taxable income of at least VND 1 billion during the most recent year.[1]

The Amendment states that foreign investors, whether individuals of foreign nationalities or organizations established under the law of a foreign country, are considered professional investors in Vietnam without needing to meet any requirements, meaning that foreign investors no longer are required to satisfy the criteria above.[2]

This should be an advantage for foreign investors, because professional investors have expanded investment opportunities in Vietnam. By law, only investors classified as "professional" or "strategic" are entitled to subscribe for shares in a private placement. While strategic investors are required to agree to a minimum three-year lock-up period, professional investors are only required to have a one-year lock-up period.[3] This generally makes "professional investor" status more appealing to those who prefer greater flexibility.

3. Timing for Closing Private Placements for Shares

Under the previous regulations, after completing collection of payment for a private placement offering from investors, the relevant public company was required to (i) report the results of the private placement to the State

[1] Law on Securities, Article 11.1.

[2] Amendment, Article 1.3(a).

[3] Law on Securities, Article 31.1(c); Amendment, Article 1.9(a).

Securities Commission of Vietnam ("**SSC**"),[4] (ii) register the newly issued shares with Vietnam Securities Depository and Clearing Corporation ("**VSDC**") and, finally, (iii) list or register the shares for trading on the relevant stock exchange.[5] Unlike the rules that apply to a public offer tranche, the law did not permit the authorities to cancel a private placement of shares without going through a procedure to scrutinize and address a legal violation. Since the SSC took a final look at the private placement before confirming receipt of the report on the results of the private placement, generally the SSC did not investigate and impose sanctions (including the remedial measure of compelling a withdrawal of issued shares and returning the purchase price to the investors) thereafter. Therefore, previously, the closing of a private placement (i.e., the release of the purchase price from the escrow account) usually occurred immediately after the SSC confirmed receipt of the public company's report on the results of the relevant private placement.[6] However, changes introduced by the Amendment could result in cancellation of a share issuance even *after* the SSC confirms receipt of the report on the results of the private placement.

The Amendment states in relevant part that after the end of a private placement, if it is found that (a) the application for registration of that private placement contains inaccurate information or does not contain adequate important information that might affect investors' decisions and cause damage to investors, or (b) the shares were not allotted according to regulations, the SSC is entitled to cancel the private placement.

These regulatory changes create uncertainty because no further guidance is provided with regard to the criteria by which the aforementioned findings will be evaluated and made, so it may not be easy for relevant parties to identify potential issues, which may be subject to the discretion of the SSC on a case-by case basis. Meanwhile, the SSC is entitled to cancel a private placement even after confirming receipt of the report on the results of the private placement, unless the shares are successfully listed or registered for trading.[7] Therefore, considering the uncertainty mentioned above and the time gap between (i) the SSC's confirmation of the results of the placement and (iii) completion of the procedure for the issued shares to be listed or registered for trading, the common past practices with regard to the timing of closing may need to be revisited to address the changes in the law.

4. Compulsory Deregistration of Status as a Public Company When Relevant Conditions Are No Longer Satisfied

The Law on Securities allowed public companies whose shares were listed or registered for trading on UPCOM before the Law on Securities came into effect (i.e., before 1 January 2021) to keep their public status even if they did not meet the new conditions set forth in the Law on Securities, as long as the companies could satisfied the conditions set forth in the previous law, which was replaced by the Law on Securities.[8] However, the lawmakers' view seems to have become more strict, because the Amendment requires those public companies to meet the new conditions for public companies in the Law on Securities in order to maintain their status as public companies. The conditions to be satisfied include: (i) having paid-up charter capital of VND 30 billion or more, (ii) having equity capital of VND 30 billion or more, and (iii) at least 10% of their voting shares being held by at least 100 non-major shareholders.[9] Companies that do not meet any of the aforementioned conditions

[4] Decree 155/2020/ND-CP dated 31 December 2020, Articles 3.11 and 48.4.

[5] Law on Securities, Article 61.1; Decree 155/2020/ND-CP dated 31 December 2020, Article 117.

[6] Decree 155/2020/ND-CP dated 31 December 2020, Article 48.6.

[7] Amendment, Article 1.10.

[8] Law on Securities, Article 135.4.

[9] Amendment, Article 1.11(a).

as of 1 January 2026 will be deregistered and lose their status as public companies, on a compulsory basis.[10]

We note that, in practice, aside from the requirements relating to paid-up charter capital and equity capital, the requirement to maintain a minimum number of non-major shareholders who hold 10% of the voting shares is remarkable, as this requirement may not be easy for all impacted companies to satisfy.

At the end of the day, investors should remain aware of the situation because, failure to meet the requirements is no longer tolerated and may lead to compulsory deregistration of a public company that does not or cannot comply.

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[10] Amendment, Article 11.1(d).