

Client Alert

August 2010

Amendments & Supplements to Securities Trading

On 2 August 2010, the Government issued Decree No. 84/2010/ND-CP ("**Decree No. 84**") amending and supplementing some provisions of Decree No. 14/2007/ND-CP ("**Decree No. 14**") dated 19 January 2007 guiding in detail some provisions of the Securities Law.

Key amendments and supplements

As the securities market in Vietnam has been steadily developing, the relevant regulations have to be improved accordingly. One of these improvements is the amendment and supplement to Decree No. 14, which was issued right after the issuance of Securities Law, and does not meet the requirements of development and diversification of securities trading in Vietnam since its issuance.

Decree No. 84 will take effect on 20 September 2010, and addresses a number of key points, including:

- Details of public offers of securities;
- Public companies; and
- Offering and listing foreign securities on stock exchanges of Vietnam.

Public offers of securities

Decree No. 84 supplements the regulations of cases in which institutions or individuals are not entitled to offer securities publicly, such as:

- The enterprise does not meet the conditions of public offer as stipulated in Article 12 of the Securities Law; or
- Conducting a public offer in order to establish an enterprise, except for enterprises in the infrastructure or high-tech sectors.

In addition, the issuing company must conduct the registration of public offer by itself, except for State owners selling publicly their capital held by the group or corporation in order to execute their representative rights of ownership of State capital contribution in the enterprises; or major shareholders selling publicly their capital in public companies.

Concurrently, the issuing company must open a separate account at a commercial bank to receive the capital raised from the offer. In case the issuing company is a commercial bank, it must open this account at a different commercial bank. The issuing company must send a report on

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the offer to the State Securities Commission of Vietnam (SSC), to which is attached a bank statement of such capital by the bank where it has opened the separate account, within ten days from the completion date of the offer. The company may only receive the funds from this account after making the report. Additionally, the issuing company must also disclose information of disbursement of the capital from the offer every six months from the completion date to the date of finishing the disbursement. In case the purpose of the disbursement is changed compared with the initial purpose, the issuing company must disclose information of the changes and the resolution of its Management Board or the approval from the competent authority issuing the investment certificate (if the issuing company is foreign invested).

Another new point is that those shareholding companies formed after a merger and acquisition must operate for at least one year and their business operation during such period must be profitable in case such companies desire to make a public offer.

Public companies

According to Decree No. 84, the Ministry of Finance (MOF) will issue regulations on trading securities of public companies not yet listed on a stock exchange. When these regulations are issued, the transactions of securities of unlisted public companies but which have registered their shares at the Depository Securities Centre of Vietnam (VSD) should be smoother. Currently, investors are experiencing difficulties in trading such securities due to a lack of relevant regulations.

Under Decree No. 14, a shareholding company that becomes a public company with at least one hundred investors, excluding professional securities investors, and its charter capital contributed over VND10 billion, must submit the relevant dossier to the SSC; however, it did not mention what such public companies should do when they no longer meet the required conditions. Decree No. 84 newly requires such public companies to notify in writing the SSC and disclose the relevant information within thirty days from the date when it no longer has one hundred investors, excluding professional securities investors and/or its charter capital reduces below VND10 billion.

Foreign securities on stock exchanges of Vietnam

The regulations on offering and listing foreign securities on stock exchanges in Vietnam are a significant new development and have not been stipulated at any relevant legal documents before. Decree No. 84 provides the conditions to offer and list foreign securities in Vietnam as follows:

- (i) Conditions to publicly offer foreign securities in Vietnam are:
 - To have an investment project in Vietnam that is licensed by a competent authority; to have a plan of issuance and

disbursement the capital from the public offer in order to invest in the project in Vietnam;

- To have commitments from the foreign institution to execute the project in Vietnam;
- To pledge not to transfer overseas the capital mobilized in Vietnam or withdraw the corresponding contributed capital during the licensed period of the project;
- To pledge to fully execute obligations applied for issuing organizations in accordance with relevant regulations of Vietnam;
- To have acceptance of at least one securities company established and operating in Vietnam to underwrite the offer; and
- To comply with regulations of Vietnam on controlling foreign exchange in issuing securities in Vietnam.

(ii) Conditions to list foreign securities on stock exchanges in Vietnam are that :

- The securities issued in Vietnam are securities as above stipulated;
- The number of securities listed in Vietnam must be equal to the number permitted to offer in Vietnam;
- The listed company must commit to execute fully obligations applied for a listed company in accordance with relevant laws of Vietnam; and
- At least one securities company established and operating in Vietnam accepts to consult in listing.

Other minor amendments and supplements

Decree No. 84 amends the regulation on managing investment capital of securities investment companies, as follows:

- Securities investment companies formed by way of private offer are entitled to manage their investment capital by themselves or mandate a fund management company to manage their investment capital; and
- Public securities investment companies are not permitted to manage their investment capital by themselves. They must mandate a fund management company to manage their investment capital.

In addition, Decree No. 84 annuls the regulation that foreign securities investment companies or funds in the form of legal entities, when

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investing in Vietnam, must mandate a domestic fund management company or establish a branch in Vietnam to manage their investment capital.

Following the above amendments applied for securities investment companies, we are still looking forward to specific regulations by the MOF on organization and operation of securities investment.

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