

Legal news

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SECURITIES LAW

Amending Decree 14 to support the local securities market development

By Luu Tien Ngoc

The development of the local securities market requires an updated legal and regulatory framework on securities and securities market. In that attempt, the amendment to the Law on Securities of 2006 (“LoS”) has been finalized and planned to be submitted to the National Assembly by the end of this year, for its final approval. In parallel with this amendment, the same of a number of under-law regulations is now under process. Some such regulations have been issued, with a view to keeping a closer pace with the market development.

This article will discuss Decree 84/2010/ND-CP (“Decree 84”), dated 2 August 2010, of the Government of Vietnam (“GoV”), amending a number of articles of Decree 14/2007/ND-CP (“Decree 14”), dated 19 January 2007, of the GoV, providing the detailed guidelines for implementation of a number of articles of the LoS. Decree 84 shall be effective from 20 September 2010, and together with the effective part of Decree 14, constitutes the most updated guidance for the implementation of the LoS in the coming time.

Overall, it can be seen that Decree 84 cancels a number of points (i.e. six (06) articles), clarifies some articles that are unclear in Decree 14 (i.e. twelve (12) articles), and extends the scope of application by introducing a number of new articles (i.e. thirteen (13)). In total, there are thirty one (31) changes in Decree 84 in comparison with Decree 14.

Particularly, set out below are the details of the changes:

Cancellation

Six (06) cancelled articles are designed to remove the ones that are out of date or may hinder the development of the local market. Among those, the most notable point is that, according to Decree 84, a foreign securities investment company or foreign securities investment fund shall not be required *either* to assign the management of its investment capital to a local securities investment company *or* to set up its local branch for the purpose of management of its investment capital, as it has been so under Decree 14. This appears to be more practical in the context of Vietnam and the common practices as it has been so far, from the beginning of the securities market in Vietnam.

Amendments

Twelve (12) amendments aim at clarifying the points unclear in Decree 14, mostly regarding IPO and listing by local and foreign companies in Vietnam (i.e. on HoSE

and HNX), and the same (i.e. IPO and listing) by local companies in a stock exchanges outside Vietnam. Below is a summary of the amendments:

No.	Article reference	Content	Comment
1	Article 1	This extends the scope of application of Decree 84 to the public companies.	Decree 14 is silent on this.
2	Article 6, clause 2 (point b)	In case of an issuance outside Vietnam, this requires that the public disclosures by the issuer, as included in the dossier to be submitted to the State Securities Commission ("SSC"), must be in due form as provided by the Ministry of Finance ("MoF").	Decree 14 is silent on this.
3	Article 8	Ho Chi Minh City Stock Exchanges ("HoSE") is specifically included in the heading of the article.	In Decree 14, it is mentioned only as general stock exchanges.
4	Article 8, clause 1 (point d)	It clarifies a condition for a listing on HoSE, that is, at least 20% of shares with voting rights must be held by at least 100 shareholders who are not professional investors ¹ and major shareholders ² .	Decree 14 simply requires at least 100 ordinary shareholders generally.
5	Article 9	Hanoi Stock Exchanges ("HNX") is specifically included in the heading of the article.	In Decree 14, it is mentioned only as a securities trading center ³ .
6	Article 9, clause 1 (point b)	It clarifies a condition for a listing on HNX, that is, apart from the fact that the issuer has been being profitable, has no over year overdue debts, and fulfilled all financial obligations to the State, it must have a healthy financial situation as of the date of listing.	Decree 14 simply requires the profitability, no over year overdue debts-status, and fulfilment of all financial obligations to the State.
7	Article 9, clauses 3 and 6	This simply combines clauses 3 and 6 together into a new clause 3, in which central government bonds, central government guaranteed bonds, and local government bonds shall be listed on HNX, at the request of the bond issuer, and at the same time; and removes the reference to a guideline made by MoF for the listing of other securities on the securities trading center.	In Decree 14, it refers to a guideline made by MoF for the listing of other securities on the securities trading center.
8	Article 14, clause 1 (point dd)	This clarifies the events in which a listed company is required to delist. Amongst others, delisting must be made in one of the following events: <i>either</i> loss suffered for a consecutive 3 year period <i>or</i> total accumulative losses greater than the shareholder capital as shown in the financial statement of which the date is	In Decree 14, both events constitute one single event of delisting.

¹ They include commercial banks, financial companies, financial leasing companies, insurance companies, and securities companies.

² It means holding 5% or more of the share capital of a company.

³ Previously HNX was a securities trading center at the time of Decree 14.

		the closest to the date of delisting.	
9	Article 15, clause 3	According to this article, a local company can list its shares in a foreign country, which cooperates with <i>not only</i> SSC, <i>but also</i> a stock exchange of Vietnam (i.e. HoSE or HNX).	In Decree 14, listing can only be permitted in a country, which cooperates with SSC only.
10	Article 18, clause 3	This fixes the legal capital of a fund management company (with local or foreign capital) and branch of a foreign fund management company to be VND25 billion only.	Decree 14 states that VND25 billion is a minimum requirement, and MoF will set out specific requirements of legal capital differently applicable to each different type of company.
11	Article 21, clause 4	This clarifies the regulation on operation and management of private issuance and public securities investment companies. According to this regulation, unlike private issuance securities investment companies, a public securities investment company is not permitted to manage its investment capital, but entrust the management to a fund management company.	Decree 14 just provides the general regulation, without differentiation between the two types of securities investment companies.
12	Article 24, clause 1 (point g)	This clarifies the last requirement on other documents in the application dossier for setting up a private issuance securities investment company.	This is a combination of the old article 22 and article 23.

Additions

Thirteen (13) new additions aim at extending scope of application and providing a better support for the development of the local market. Out of those, the most significant are the whole new chapter IIa covering the public companies, and the whole new section 3 of the chapter III covering the IPO and listing in Vietnam by foreign issuing organizations. It is interesting to note that thirteen (13) new additions refer to eleven (11) guidelines of MoF, we guess, most of which would soon be issued by MoF. Below is a summary of these new additions:

No.	Article reference	Content	Comment
1	Article 3a (new article)	This new article provides the general principles for conducting an initial public offer ("IPO"), namely, (a) one of the disqualified conditions as set forth in Article 12 of the LoS, and (b) an IPO for the purpose of setting up a new legal entity, shall not be permitted.	This new article requires an IPO registration to be made by issuing company, except for the cases where (a) the State representative bodies sell the State capital in State owned enterprises ("SoE") or (b) major shareholders sell their shares in public companies, to the publics. However, the details shall be subject to the guidelines [to be] made by MoF – [Guideline 1]

2	Article 4 (new clauses 7, 8 and 9)	The new clauses provides for the dossier, procedures and conditions for an IPO in some special cases, including (a) the IPO for setting up a credit organization, and (b) the IPO for swap of shares in cases of merger, acquisition, and amalgamation.	However, the details of both of the cases (i.e. (a) and (b)) shall be subject to the guidelines [to be] made by MoF – [Guideline 2] and [Guideline 3]
3	Article 5, clause 1 (new point c)	This is to protect the holders of convertible bonds, during the tenor (prior to the conversion date), in case of share dilution by new offer of shares or other types of the issuing company.	
4	Article 5, clause 1 (new point d)	This requires the issuing company's compliance with the foreign exchange regulations.	
5	Chapter IIa (new chapter)	This provides for the general rules on the public companies, while on which Decree 14 is silent.	However, the trading of securities of a public company, but not a listed company, shall be subject to the guideline [to be] made by MoF – [Guideline 4]
6	Article 8, clause 1 (point g)	This provides for the general conditions for listing of shares of a company that is formed as a result of the merger and acquisition, on HoSE.	However, the detailed conditions shall be subject to the guideline [to be] made by MoF – [Guideline 5]
7	Article 8, clause 2 (point dd)	This provides for the general conditions for listing of securities of a company that is formed as a result of the merger and acquisition, on HoSE.	However, the detailed conditions shall be subject to the guideline [to be] issued by MoF – [Guideline 6]
8	Article 8, clause 5	This provides for the general conditions for listing of other types of securities on HoSE.	However, the detailed conditions shall be subject to the guideline [to be] issued by MoF – [Guideline 7]
9	Article 9, clause 1 (point g)	This provides the general conditions for listing of shares of a company that is formed as a result of the merger and acquisition, on HNX.	However, the detailed conditions shall be subject to the guideline [to be] issued by MoF – [Guideline 8]
10	Article 9a (new article)	In case where a credit institution lists its shares on stock exchanges, its compliance with the securities regulations and the prior acceptance by the State Bank of Vietnam ("SBV") shall be required.	Decree 14 is silent on this matter.
11	Chapter III, Section 3 (new section)	This new section provides for the general provisions on IPO and listing in Vietnam by foreign issuing organizations.	However, the dossier, procedures and acceptance thereof shall be subject to the guideline [to be] issued by MoF – [Guideline 9]

12	Article 20a (new article)	This refers to the financial advisory services ⁴ and other financial services to be provided by securities companies, and the conditions for such service provisions thereof.	However, the detailed conditions shall be subject to the guideline [to be] issued by MoF – [Guideline 10]
13	Article 22 (new article)	This provides for the general requirements on the dossier and procedures for an IPO registration and licensing for the purpose of establishment and operation of a public securities investment company.	However, the detailed provisions shall be subject to the guideline [to be] issued by MoF – [Guideline 11]

Conclusion

In order to put Decree 84 into practice soon, this in turn will support the development of the local securities market, we do hope that MoF shall early issue the guidelines for the new additions in Decree 84.

⁴ In the regulations attached to Decision 27/2007/QD-BTC, dated 24 April 2007, of MoF, on the organization and operation of securities companies, in Article 42, the types of financial advisory services to be provided by securities companies have been itemized, including (a) corporate financial restructure, (b) IPO and listing, (c) equitization and corporate valuation, and (d) other financial advisory services. In addition to those, Article 42 also provides for the conditions of the provision thereof by a securities company.

Other Sectors

Finance

- On 12 August 2010, the Prime Minister stipulated Decision No. 1451/QD-TTg issuing the National Action Plan on Anti-money Laundering and Anti-Terrorism Financing.
- Circular No. 126/2010/TT-BTC dated 24 August 2010 of the Ministry of Finance providing guidelines for the financial management mechanism for the National programme on tourism promotion for period from 2009 to 2010.
- On 10 August 2010, the Ministry of Finance issued Circular No. 118/2010/TT-BTC providing guidelines for the financial and tax regime regarding establishments doing business in bottled liquefied petroleum gas.
- Circular No. 117/2010/TT-BTC dated 5 August 2010 of the Ministry of Finance providing guidelines for the financial mechanism of one member limited liability companies owned by the State.
- On 4 August 2010, the Ministry of Finance stipulated Circular No. 116/2010/TT-BTC amending and supplementing Circular No. 137/2009/TT-BTC dated 3 July 2009 of the Ministry of Finance providing guidelines for the implementation of a number of articles of Decision No. 33/2009/QD-TTg dated 2 March 2009 of the Prime Minister promulgating the financial mechanism and policy applicable to border-gate economic zones.

Securities

- Decree No. 85/2010/ND-CP dated 2 August 2010 on sanctioning administrative violations in the fields of securities and stock markets.
- On 2 August 2010, the Government issued Decree No. 84/2010/ND-CP amending and supplementing a number of articles of Decree No. 14/2007/ND-CP dated 19 January 2007 detailing the implementation of a number of articles of Law on Securities.

Taxation

- Decree No. 87/2010/ND-CP dated 13 August, 2010 detailing the implementation of a number of articles of Law on Export Tax and Import Tax.
- On 26 August 2010, the Ministry of Finance stipulated Circular No.128/2010/TT-BTC on temporary adjustment of the time limit for value-added tax payments with respect to raw materials for production of animal feed, animal feed, fertilizer and pesticides.

- Circular No. 120/2010/TT-BTC dated 11 August 2010 of the Ministry of Finance providing guidelines for adjustment of preferential import tax rates applicable to a number of fertilizer items in the List of Rates of the Preferential Import Tariff.
- On 4 August 2010, the Ministry of Finance issued Circular No. 115/2010/TT-BTC amending the preferential import tax rates applicable to a number of items under Group 7606 in the List of Rates of the Preferential Import Tariff according to the list of taxable commodities issued together with Circular No.216/2009/TT-BTC dated 12 November 2009.
- Circular No. 111/2010/TT-BTC dated 30 July 2010 of the Ministry of Finance amending the preferential import tax rates applicable to a number of items under Group 9503 in the Preferential Import Tariff.

Trade

- On 18 August 2010, the Ministry of Industry and Trade stipulated Decision No.4361/QD-BCT announcing the list of goods allowed to be traded through Commodities Exchange.
- Circular No. 122/2010/TT-BTC dated 12 August 2010 amending and supplementing Circular No. 104/2008/TT-BTC dated 13 November 2008 of the Ministry of Finance providing guidelines for the implementation of Decree No.170/2003/ND-CP dated 25 December 2003 detailing the implementation of a number of articles of Ordinance on Pricing and Decree No.75/2008/ND-CP dated 9 June 2008 on the amendment and supplement to a number of articles of Decree No. 170/2003/ND-CP dated 25 December 2003 of the Government detailing the implementation of a number of articles of the Ordinance on Pricing.
- On 30 July 2010, the Ministry of Industry and Trade issued Circular No.32/2010/TT-BCT providing for the distributed electricity system.

Labour

- Decree No. 91/2010/ND-CP dated 20 August 2010 providing for policies applicable to redundant employees in case of rearrangement of one member limited liability companies owned by the State.
- On 13 August 2010, the Government stipulated Decree No. 86/2010/ND-CP dated 13 August 2010 on sanctioning administrative violations in the social insurance field.

Health

- Decree No. 92/2010/ND-CP dated 30 August 2010 detailing the implementation of Law on Prevention and Control of Infectious Diseases to ensure biosecurity in laboratories.

- On 9 August 2010, the Ministry of Public Security and the Ministry of Health jointly issued Inter-ministerial Circular No. 04/2010/TTLT-BCA-BYT providing guidelines for the medical examination and treatment in the State owned hospitals for persons held in custody, detention camp inmates, and detention center inmates.

Transport

- Decision No. 1587/QD-TTg dated 25 August 2010 of the Prime Minister approving the duty on transport planning for Hanoi capital until 2030 with orientation to 2050.
- On 9 August 2010, the Prime Minister stipulated Decision No. 1386/QD-TTg supplementing Decision 1082/QD-TTg dated 14 July 2010 of the Prime Minister on the amendment of price valuation authority regarding public use products and services in the field of national railway, land road and inland waterway management and maintenance carried out in the form of State-ordering and planning.
- Circular No. 24/2010/TT-BGTVT dated 31 August 2010 of the Ministry of Transport providing for bus stations, parking lots, service areas and support services for land transport.
- On 27 August 2010, the Ministry of Finance and the Ministry of Transport jointly issued Inter-ministerial Circular No. 129/2010/TTLT-BTC-BGTVT providing guidelines for the implementation of charges of land transport and support services for land transport.
- Circular No. 119/2010/TT-BTC dated 10 August 2010 of the Ministry of Finance providing guidelines for the collection, management and use of the revenue from maritime security fees and the financial regime in the field of supplying public use service for maritime security.
- On 30 July 2010, the Ministry of Transport stipulated Circular No. 20/2010/TT-BGTVT providing for the grant, change and revocation of registration and license plates for specialized vehicles participating in land road traffic.
- Circular No. 19/2010/TT-BGTVT dated 30 August 2010 of the Ministry of Transport amending and supplementing a number of articles of Circular No.23/2009/TT-BGTVT dated 15 October 2009 of the Minister of Transport.

Construction

- On 18 August 2010, the Government issued Decree No. 90/2010/ND-CP providing for the National database on population.
- Decision No. 34/2010/QD-UBND dated 16 August 2010 of the People's Committee of Hanoi promulgating regulations on the sale, lease, lease-purchase

and use management of residential housing for low-income people in urban areas.

- On 4 August 2010, the People's Committee of Hanoi stipulated Decision No.32/2010/QD-UBND promulgating costs of new construction of residential housing, temporary housing and structures taken as basis for determining compensation and assistance values when the State recovers land in the city area.
- Circular No. 15/2010/TT-BXD dated 27 August 2010 of the Ministry of Construction providing for the landmark planting and management.
- On 20 August 2010, the Ministry of Construction issued Circular No.14/2010/TT-BXD providing for the products, goods and construction materials - quality management for tiles.
- Circular No. 13/2010/TT-BXD dated 20 August 2010 of the Ministry of Construction promulgating standard forms for contracts for management and operation of public lighting systems in urban areas.
- Circular No. 11/2010/TT-BXD dated 17 August 2010 of the Ministry of Construction providing guidelines for the administration of database on urban underground works.
- On 11 August 2010, the Ministry of Construction stipulated Circular No.10/2010/TT-BXD providing for the dossier of each kind of urban planning.
- Circular No. 09/2010/TT-BXD dated 4 August 2010 of the Ministry of Construction providing for the setting up of planning tasks and plans and construction planning management of new rural communes.
- On 29 July 2010, the Ministry of Construction issued Circular No. 08/2010/TT-BXD providing guidelines for the method for adjusting the construction contract prices.

Land

- Decision No. 39/2010/QD-UBND dated 24 August 2010 of the People's Committee of Hanoi on the adjustment of classification table of streets, issued together with Decision No. 31/2010/QD-UBND dated 3 August 2010 of the People's Committee of Hanoi.
- On 26 August 2010, the Ministry of Natural Resources and Environment stipulated Circular No. 16/2010/TT-BTNMT providing for the order and procedures for enforcement of decisions on sanctioning administrative violations in the field of land.

Natural Resources - Environment

- Decree No. 89/2010/ND-CP dated 16 August 2010 amending and supplementing Article 3 of Decree No. 25/2008/ND-CP dated 4 March 2008 on functions,

duties, powers and organizational structure of the Ministry of Natural Resources and Environment.

- On 31 August 2010, the Prime Minister issued Decision No. 1636/QD-TTg approving the "Planning on the national network of the environmental radioactivity monitoring and alert until 2020".
- Decision No. 58/2010/QD-UBND dated 31 August 2010 of the People's Committee of Ho Chi Minh City on the repeal of the documents of the People's Committee of Ho Chi Minh City providing for administrative procedures applicable in the People's Committees of district, commune, ward and town in the field of land and water resources.
- On 23 August 2010, the People's Committee of Hanoi stipulated Decision No.38/2010/QD-UBND promulgating the Regulation on organization and operation of the Fund for Hanoi Environmental Protection.
- Decision No. 4380/QD-BCT dated 19 August 2010 of the Ministry of Industry and Trade on the addition to the planning on zones for exploration, exploitation, processing and use of mineral group of white limestone (marble), feldspar, kaolin and magnesite until 2015, with orientation to 2025.
- On 17 August 2010, the Ministry of Industry and Trade issued Decision No.4346/QD-BCT on the addition to the planning on zones for exploration, exploitation, processing and use of chromite and manganese ores for the period from 2007 to 2015, with orientations to 2025.
- Decision No. 36/2010/QD-UBND dated 16 August 2010 of the People's Committee of Hanoi providing for the functions, duties, powers, organizational structure, and staff of the Department of Natural Resources and Environment of Hanoi.

Science - Technology

- On 24 August 2010, the People's Committee of Hanoi stipulated Decision No.40/2010/QD-UBND promulgating the Regulation on the management of industrial explosives in the area of Hanoi.
- Circular No. 13/2010/TT-BKHHCN dated 30 July 2010 of the Ministry of Science and Technology on the amendment and supplement to a number of provisions of Circular No. 17/2009/TT-BKHHCN dated 18 June 2009 and Circular No.01/2007/TT-BKHHCN dated 14 February 2007.
- On 30 July 2010, the Ministry of Science and Technology issued Circular No.12/2010/TT-BKHHCN providing guidelines for the quality and metrology management for business in liquefied petroleum gas.
- Circular No. 11/2010/TT-BKHHCN dated 30 July 2010 of the Ministry of Science and Technology providing for the quality and metrology management for the

business in gasoline under Decree No. 84/2009/ND-CP dated 15 October 2009 on business in gasoline.

Administration - Judiciary

- On 17 August 2010, the People's Committee of Ho Chi Minh City stipulated Decision No. 57/2010/QD-UBND on the repeal of documents.
- Decision No. 56/2010/QD-UBND dated 17 August 2010 of the People's Committee of Ho Chi Minh City on announcement of the legal documents that are no longer valid;
- On 16 August 2010, the People's Committee of Ho Chi Minh City issued Decision No. 55/2010/QD-UBND on the abrogation of administrative procedures applicable in the People's Committees of district, ward, commune and town in the area of Ho Chi Minh City in the fields of labour, wages and remunerations, employment, health insurance, child protection and care, and social protection.
- Joint Circular No. 01/2010/TTLT-VKSNDTC-BCA-TANDTC dated 27 August 2010 of the Supreme People's Procuracy; the Ministry of Public Security and the Supreme People's Court providing guidelines for the implementation of provisions of the Criminal Procedures Code with respect to return of the case files for further investigation.
- On 26 August 2010, the Government Inspectorate stipulated Circular No.04/2010/TT-TTCP providing for the process of handling complaints, denunciations, feedbacks and recommendations in relation to complaints and denunciations.
- Joint Circular No. 14/2010/TTLT-BTP-TANDTC-VKSNDTC dated 26 July 2010 of the Ministry of Justice, the Supreme People's Court and the Supreme People's Procuracy providing guidelines for a number of issues on procedures for enforcement of civil judgments and inter-branch coordination in the enforcement of civil judgments.

Agriculture

- On 16 August 2010, the Government issued Decree No. 88/2010/ND-CP detailing and providing guidelines for the implementation of a number of articles of Law on Intellectual Property and Law amending and supplementing a number of articles of Law on Intellectual Property with respect to rights over plant varieties.
- Decision No. 33/2010/QD-UBND dated 12 August 2010 of the People's Committee of Hanoi promulgating regulations on the dissolution and name removal of cooperatives in the area of Hanoi.

- On 30 August 2010, the Ministry of Agriculture and Rural Development stipulated Circular No. 50/2010/TT-BNNPTNT amending and supplementing the list of products and goods under Group 2 issued together with Circular No.50/2009/TT-BNNPTNT dated 18 August 2009 of the Minister of Agriculture and Rural Development.
- Circular No. 48/2010/TT-BNNPTNT dated 11 August 2010 of the Ministry of Agriculture and Rural Development detailing the implementation of a number of articles of Decree No. 33/2010/ND-CP dated 31 March 2010 on the management of aquatic exploitation activities of Vietnamese organizations and individuals in sea areas.

Investment

- On 24 August 2010, the Prime Minister issued Decision No. 54/2010/QD-TTg providing for the functions, duties, powers and organizational structure of the General Department of Statistics under the Ministry of Planning and Investment.
- Decision No. 37/2010/QD-UBND dated 20 August 2010 of the People's Committee of Hanoi promulgating regulations on a number of contents on the management of investment projects in the area of Hanoi.

Miscellaneous

- On 31 August 2010, the Government stipulated Decree No. 93/2010/ND-CP amending a number of articles of Decree No. 24/2010/ND-CP dated 15 March 2010 of the Government providing for the recruitment, use and management of public officials.
- Circular No. 09/2010/TT-BVHTTDL dated 24 August 2010 of the Ministry of Culture, Sport and Tourism detailing the implementation of a number of provisions of Decree No. 75/2010/ND-CP dated 12 July 2010 of the Government on sanctioning administrative violations in cultural activities.
- On 11 August 2010, the Ministry of Information and Communications issued Circular No. 19/2010/TT-BTTTT on the additional areas to be provided with public use telecommunication services until 2010.

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