

# SOME NEW POINTS OF SECURITIES LAW 2019

PHUONG UYEN

After nearly 10 years of implementation, the Securities Law 2006 which was amended and supplemented in 2010 (**Securities Law 2006 amended in 2010**) has revealed shortcomings and it is now no longer suitable with the development of the economy as well as compatible with the changes of relevant legal documents. Therefore, on November 26, 2019, the National Assembly passed the Securities Law 2019 to replace the Securities Law 2006 amended in 2010 and officially came into effect on January 1, 2021. Some notable new points in the Securities Law 2019 include:

*Changing the conditions to become a public company:* Accordingly, a joint stock company is a public company if it is subject to one of the following two cases: (i) Having at least VND30 billion of charter capital contributed and at least 10% of the voting shares held by at least 100 non-major shareholders; or (ii) Having successfully conducted an initial public offering (**IPO**) in accordance with the law.

*Supplementing the conditions applicable to public offering:* The new law separates the conditions for initial offering of joint stock companies and those for follow-on



public offering (**FPO**) of public companies in terms of business operations, issued shares, contributed charter capital level and the percentage of shares offered. For instance, under the conditions of business operations, in the case of IPO, an enterprise must be profitable for 2 consecutive years preceding the year when it registers the offering and must not have accumulated losses up to the year of offering registration; meanwhile, in the case of FPO, the enterprise only needs to be profitable for the year immediately preceding the year of offering registration and not have accumulated losses up to the year in question.

*Adding a number of prohibited acts* such as using one or more trading accounts of oneself or others to buy or sell securities in order to create artificial demand or supply; combining spreading fake rumors and providing misinformation to the public to manipulate securities prices;

using clients' accounts or assets without their authorization or against the law or abusing clients' trust to appropriate their assets.

*Renewing the mechanism of establishing securities companies and securities investment fund management companies:* The Securities Law 2019 has separated the registration of securities trading and enterprise registration into 2 steps. Accordingly, after being licensed by the State Securities Commission to establish and operate securities trading, securities companies and securities investment fund management companies must register their business at the business registration agency under Enterprise Law. Previously, the License for establishment and operation of securities companies, securities investment fund management companies was also the Business Registration Certificate.

## Some comments and recommendations

*Firstly*, raising the conditions for public offering of securities, such as raising the minimum level of charter capital contributed to VND30 billion at the time of offering registration, opening an escrow account to receive payments for the offered shares are the changes made in line with international practices, as well as the size of the securities market. Amendment and supplementation of the above conditions will contribute to improving the quality, stability, and transparency of public companies' information.

*Secondly*, at present, the nature and extent of violations in the field of securities are increasingly complex and sophisticated, greatly affecting the operation of the securities market, seriously threatening the interests of investors. Therefore, the addition of prohibited acts in securities trading activities will contribute to preventing and deterring violations, while ensuring compatibility with regulations of the Criminal Code on criminal acts in the field of securities.

*Thirdly*, the separation between the mechanism for enterprise establishment and for registration of securities trading will overcome the limitations of the Securities Law 2006 amended in 2010, creating the legal framework that enables regulatory authorities to terminate securities trading activities in the case that securities trading enterprises violate the conditions for maintaining professional operations; meanwhile, they still have a legal status to handle outstanding obligations with related parties. At the same time, this regulation helps to integrate the information related to establishment and changes in operations of securities trading enterprises on the national information system on business registration, thereby assisting in seeking public information about such enterprises.

In general, the new points in the Securities Law 2019 aim to protect rights and interests of the investors (including minority shareholders), improve the quality of securities offered and enterprises' responsibilities to investors and communities. Enterprises need to update new regulations to ensure their business is consistent with the law. For securities trading enterprises that have been licensed to establish and operate securities trading before the effective date of the Securities Law 2019, it is necessary to ensure that they meet the licensing conditions specified in the transition clause in order to maintain their normal operation.

NHQuang&Associates will continue our update and analysis when the guiding documents for implementation of the Securities Law are issued in the coming time.