

**SUMMARY OF CONSULTATION
BETWEEN THE STATE SECURITIES COMMISSION AND
CAPITAL MARKET WORKING GROUP - VIETNAM BUSINESS FORUM**

Date and time: 14:00 – 17:00, Feb. 24, 2016

Venue: Securities Commission headquarters, 164 Tran Quang Khai St, Hanoi

Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- The State Securities Commission (SSC) has actively worked on the development of a decree providing specific requirements for securities investment and trading since early 2016. It expects the draft to be finished within this week, submitted to the Ministry of Justice for review next week and to the government for approval this year.
- In this draft, the SSC has attempted to resolve remaining concerns that exist regarding Article 45.5 from Decree No. 118/2015/ND-CP.

Mr. Kien Nguyen, Capital Market Working Group

- As explained in the group's recommendations in October 2015 and 2014 proposals and comments on Investment Law, the Capital Market Working Group (CMWG) argued that if Article 23, Investment Law, applied to public companies and investment funds, the entire Vietnamese stock market would cease to operate.
- While Article 3.3. of this draft decree is a positive step forward, the CMWG believes it will only benefit brokerage firms and not public companies.
- The key question is to which extent in percentage terms will an investor own a public company to activate Decree 60's provisions and when investor(s) start owning a public company, how will the legal status of that public company be affected. If Article 23, Investment Law applies, 51% will be the threshold for foreign investors. As a result, many publicly traded companies will not want to be further exposed to foreign ownership as they risk losing core lines of business and be unable to penetrate the market.
- The CMWG suggested removing the first segments of Article 3.3 of the draft decree to be replaced by: "~~When investing or trading in the stock market,~~ (L)listed companies and public companies registered for trading on the stock exchange, ~~securities trading institutions,~~ and investment funds with foreign equity shall follow investment and trading procedures as defined by current securities laws and applicable to domestic investors."

Mr. Do Van Su, head of Foreign Investment Division, Foreign Investment Administration, Ministry of Planning and Investment

- From the beginning of the Investment Law drafting process, the guiding position of the Minister of Planning and Investment and National Assembly members was the Securities Law and Investment Law had different scopes. This is why there would be four laws not governed by the Investment Law, including the laws on petroleum and oil, securities, insurance and credit archives.
- The scope of the Securities Law rules on stock offerings, securities listings, trading and investing, stock-related services and stock markets. In my opinion, Article 3.3 is consistent with the Investment Law and Securities Law. Adoption of the CMWG's recommendation will distort the market, compromise the intended scopes of the Securities and Investment laws and result in failure to correctly reflect the National Assembly's intent when it passed the revised the Securities Law and 2014 Investment Law.

Response by Mr. Vu Quang Viet, head of Legal Department, State Securities Commission

- As this decree on stock investment and trading is expected to come into effect from July 1, 2016, all requirements for investment and trading or conditional trading will be governed by provisions of this decree rather than by circulars. Utilizing the CMWG's input to make the

best out of foreign investors' involvement has been a priority. However, from the SSC's perspective and the scope of the decree itself, there are certain lines that cannot be crossed.

Mr. Kien Nguyen, Capital Market Working Group

- The CMWG's understanding is the decree was made to itemize the Securities Law and elaborate upon the relationship between the Securities and Investment laws. From a business' perspective, if this part of the regulation is retained, the underlying issue will still not be resolved. From a legal perspective, these two laws have different intents and scopes. As public companies and collective investment schemes are governed by the Securities Law, there is no reason to implement and itemize documents of the same law when there is no authority to do so.

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- Inbound and outbound investment into the stock market must be clarified. Inbound stock market investment will be subject to the Securities Law, i.e. trading of securities and listed shares. To this effect, the group's recommendation is "the draft implementing document of the Investment Law needs to clearly specify: a) investment activities and procedures into public companies and mutual funds in Vietnam by domestic and foreign institutions and individuals shall be subject to the provisions of securities laws" is well noted and will be reflected in the draft decree.
- There is a concern outbound investment cannot be ruled by the Securities Law. Therefore, we have narrowed the scope since securities laws only rule what the Securities Law refers to.

Mr. Kien Nguyen, Capital Market Working Group

- The CMWG believes the draft decree represents a potential opportunity to revise Decree 60. Article 2a, Decree 60, rules that: "For public companies doing business in conditional business lines where the related preconditions apply to foreign investors but there are no specific ruling on foreign ownership, the foreign ownership ratio shall be no more than 49%." The CMWG respectfully urges the SSC to consider expanding the maximum foreign ownership ratio to 100% if specific rules are unavailable and no bans are imposed.
- A second CMWG proposal is related to Paragraph 4, Article 2a: "With the exception of open-ended funds and securities investment funds with foreign ownership of 51% or more shall be subject to investment preconditions and procedures applied to foreign investors when engaging in equity financing or purchasing stock or equity of business entities." The CMWG considers the provision to be contradictory to Paragraph 3.

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- The CMWG's recommendation to revise Decree 60 is well heard by the SSC and will take it up with other relevant ministries and line agencies.
- As for the CMWG's proposal related to Paragraph 4, Article 2a, changes have been made and the Ministry of Justice and MPI informed that these funds were not institutions that underwent constant changes, hence the need to exclude open-ended funds. Paragraph 3 will revise part of Article 23, Investment Law.

Ms. Tran Thi Huong Giang, Citibank

- From the perspective of custodian banks, Citibank believes that of the activities allowed for banks (those for custodian, settlement and supervising banks), there could be another for "account handling solutions".
- Article 19.3 regarding application as a supervising bank requires "at least two operators with all the following credentials..." Can the SSC clarify whether these two people must have three credentials collectively or individually?

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- As it is a first recommendation, this point will be reflected in the following regulatory documents. But as this decree is about investment and trading requirements, while the recommendation is about operating guides, it is not at decree level.
- The SSC agrees to remove the term “all” in the draft decree.

Ms. Nguyen Thi Hang Nga, Vietcombank Asset Management Company

- As for staffing requirements in Article 10.3, does the “at least 05 operators” requirement apply across the business or only headquarters? It is recommended that this requirement applies to a company as a whole and branches, as fund management company activities have no delineation between branches and headquarters.
- Regarding requirements for addition of securities advisory services in Article 11.1, investor's consulting services at Vietcombank Asset Management Company still rely on analyses by the investment analyzing and asset management teams. There is no need to have different securities advisory service teams. The SSC is urged to consider removing this requirement.

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- The recommendation is noted and will be followed up in upcoming changes to Article 10.3 of the draft.
- Regarding the suggested removal of the staffing requirement for securities advisory services, the nature of such advisory and asset management services is different. Thus, when it comes to fund management, portfolio and fund management can be complementary. However, advisory services would require disentanglement and different staffing needs.

Mr. Do Van Su, head of Foreign Investment Division, Foreign Investment Administration, MPI**Article 4 – Requirements for incorporation and operation licensing of securities firms**

- **Paragraph 3a, Article 4** requires that related personnel must “not be someone who have or is under criminal charges, prison terms or court’s revocation of practitioner’s status in line with applicable laws”. Legally speaking, what about a person charged for criminal offences but whose records had been expunged?
- **Paragraph 3b, Article 4**, requires “having at least three-years work experience in finance, banking or securities, and at least three-years work experience in a management position”. Can the SSC elaborate on this as finance is a much wider domain than banking or securities. For example, is an accounting credential considered part of the finance sector? Regarding “experience in a management position”, if a general manager candidate was once a division manager or assistant manager, will it be considered experience for a management position? According to the Enterprise Law, management personnel only include senior management, boards of directors and other positions as indicated in a company’s charter.
- Article 4.4 must be carefully considered with regards to requirements for equity financing shareholders, as there is a risk of tampering with the Enterprise Law. **Article 4.4a** is about financial substantiation. While many laws and regulations have attempted to provide rulings, they have failed as management purposes were unclear and unrealistic. The SSC is urged to remove this part as requiring shareholders and equity financing partners to prove their equity financing ability is not meaningful to the government. In **Article 4.4a**, the SSC is encouraged to further elaborate upon the definition of the latest “reviewed” semi-annual financial statement, given the common concept of audited financial statements and those filed to revenue services.
- Additionally, **Article 4.4c** notes “...foreign entities currently not under monitoring or special monitoring...”. The SSC is urged to explain why only foreign entities.

Article 9 – Requirements for establishment of offshore branches or representative offices of securities firms

- The SSC is urged to consider amending the draft as follows: “Securities firms that want to set up offshore branches or representative offices shall, apart from complying with laws on outbound investment, meet the following requirements ...”.
- Adding “other requirements of laws and regulations on offshore investment and foreign exchange control” to Paragraph 5 is also recommended.

Article 10 – Requirements for incorporation and operation licensing of asset management companies

- Article 10.3.dd requires “Not working concurrently as employees of other business entities, and complying with applicable rules on the responsibilities of securities practitioners as specified in Article 81, Securities Law.” We suggest the SSC changes this to “not working concurrently as full-time employees of other business entities ...”

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- Article 4.4b, the requirement for the latest 'reviewed' semi-annual financial statement, has actually been addressed in existing laws on applicable accounting standards. This is a matter of terminology in current accounting laws.
- The recommendation on Article 4.4c is noted and will be revised as its phrasing is inaccurate.
- There is agreement with the recommendation to change Article 10.3.dd to “not working concurrently as FULL-TIME employees of other business entities...”

Mr. Kien Nguyen, Capital Market Working Group**Article 9 – Requirements for establishment of offshore branches or representative offices of securities firms**

- Article 9.2 requires “meeting capital requirements, net financing for offshore branches and the costs of setting up offshore representative offices”. The SSC is requested to elaborate on the current ruling on “capital requirements”.
- Article 9.3 – “keeping owner's equity intact ...”. How is “owner's equity” defined and net finances allocated to branches. Again, can the SSC further elaborate.

Response by Mr. Nguyen Thanh Long, Vice Chairman, State Securities Commission

- The comment on Article 9.2 is noted by SSC. There is agreement to to use a consistent term for this decree, which is “available funds”.
- Regarding the comment on Article 9.3, the SSC will find ways to make it more presentable.

PARTICIPANTS

State Securities Commission		
No.	Name	Division/Function
1	Mr. Nguyen Thanh Long	Vice Chairman
2	Mr. Vu Quang Viet	Vice Director, Legal
3	Mr. Nguyen Son	Head of Market Development Department
Representatives of relevant functions		
Ministry of Planning and Investment		
4	Mr. Do Van Su	Head of Foreign Investment Division, Foreign Investment Administration
Ministry of Finance		
Capital Markets Working Group, Vietnam Business Forum		
No.	Name	Company
5	Mr. Nguyen Kien	Dragon Capital
6	Ms. Tran Thi Huong Giang	Citibank
7	Ms. Vu Thanh Minh	LNT & Partners
8	Mr. Nguyen Hong Huy	Baker & McKenzie
9	Ms. Nguyen Thi Hang Nga	Vietcombank Asset Management Company
10	Ms. Dang Thi Van Anh	VBF Secretariat
11	Ms. Nguyen Ngoc Anh	VBF Secretariat