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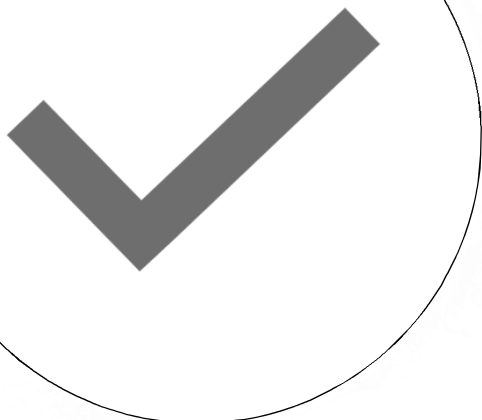
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The purpose of revising the
Securities Law from the perspectives
of the Capital Markets Working
Group

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Key highlights in the amendments
to the Securities Law

PURPOSE OF REVISING SECURITIES LAW FROM PERSPECTIVES OF CAPITAL MARKETS WG



- MSCI Emerging Market
- Resolving the discrepancies between the Securities Law and other relevant laws
- Perfecting the regulatory framework for stock markets and securities trading guidelines

KEY RECOMMENDED AMENDMENTS TO THE SECURITIES LAW



- SCOPE
- FOREIGN EQUITY ON LOCAL STOCK
MARKETS
- SECURITIES TRADING
- REGULATING STOCK MARKET
TRADING

SCOPE

A. EXISTING RULES

- The Investment Law regulates investment and trading activities in Vietnam and requires that any activities relating to “acquisition of equity and equity participation” that may result in a foreign equity ratio of 51% or more must be registered, whether the subject company is a publicly traded company or not.
- Also according to the Investment Law, any companies with foreign equity of 51% or more must meet the same investment eligibility criteria and procedures as “Foreign investors”.
- The Securities Law governs stock offering; securities listing, trading and investing; stock-related services and stock markets.

B. PROBLEMS WITH THE EXISTING RULES

Overlap and inconsistency exist between the Investment Law and Securities Law regarding the legal status of public companies (both listed and unlisted companies) with foreign equity of over 51%. The question here is that the foreign equity ratio in these companies may change daily. It may be more than 51% today and less than 49% the next day. As such, the law mandating any activities relating to “acquisition of equity and equity participation” resulting in a foreign equity ratio of 51% or more to be registered is both extremely unreasonable and impossible.

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SCOPE

C. RECOMMENDATIONS ON SCOPE

- i. Clearly articulating the scope of the Securities Law by adding to the current scope of the law “foreign equity in public companies, stock trading institutions and investment funds; eligibility and procedure for equity financing, acquisition of equity and equity participation in public companies, stock trading institutions and investment funds.”
- ii. To be specific:
“*This Law provides regulations on activities relating to securities and stock markets, including offering, listing, trading, doing business and investing in securities, securities-related service provision; organizational and operational setup of stock markets; rights and obligations of entities and individuals operating in the securities business; public governance of securities and stock markets; foreign equity in public companies, stock trading institutions and investment funds; eligibility and procedure for equity financing, acquisition of equity and equity participation in public companies, stock trading institutions and investment funds.*”

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SCOPE

D. RECOMMENDATIONS ON LEGAL CONFLICTS

- i. When legal conflicts associated with (a) foreign equity in public companies, stock trading institutions and investment funds, and (b) eligibility and procedure for investing in securities, equity financing, acquisition of equity and participation in public companies, stock trading institutions and investment funds, the Securities Law should be the prevailing law. To be specific:

“Where discrepancies exist between the provisions of this Law and those of other laws on a same matter pertaining to activities relating to securities and stock markets, foreign equity in public companies, stock trading institutions and investment funds; eligibility and procedure for investing in securities, equity financing, acquisition of equity and participation in public companies, stock trading institutions and investment funds, the provisions of this Law shall prevail.”

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SCOPE

E. RECOMMENDED CHANGES TO ARTICLE 23, INVESTMENT LAW OF 2014

Recommended changes to the Investment Law include enunciating in Article 23 of this Law that Article 23 does not apply to public companies, stock trading institutions and investment funds (which are specifically subject to the Securities Law).

[Article 22.3 of the existing Investment Law has provided very clear exceptions on foreign equity in public companies, stock trading institutions and investment funds, Article 23, Investment Law, need to be revised to include similar exceptions.]

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FOREIGN EQUITY ON LOCAL STOCK MARKETS

A. EXISTING RULES ON FOREIGN EQUITY IN PUBLIC COMPANIES

- Foreign equity is the ownership ratio of voting shares and equity participations of all foreign investors and business entities with 51% or more of foreign investors' shareholding.
- 49% for conditional business lines, but no specific rules on foreign equity
- 100%, unless otherwise restricted by an international treaty or specialist law or company's charter.

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FOREIGN EQUITY ON LOCAL STOCK MARKETS

B. PROBLEMS WITH THE EXISTING RULES AND POLICIES

- i. While the Securities Law regulates the foreign equity ratio in public companies, the Investment Law governs the legal status of these companies when the foreign equity ratio reaches 51% or more.
- ii. A consequence of the Investment Law regulating the legal status is that the legal status of a public company may change daily when the foreign equity ratio drops below or rises above 51%. This means that a public company may be considered as a domestic investor today (when its foreign equity is less than 51%), and become a foreign investor (when its foreign equity is higher than 51%) the next day, and the other way around.

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FOREIGN EQUITY ON LOCAL STOCK MARKETS (NVDR)

C1. RECOMMENDATIONS

i. Normalizing into law offerings of non-voting depository receipts (NVDRs)

- NVDRs may help resolve two issues: (a) The government can still keep check on the foreign equity in line with existing laws and international treaties; and (b) the legal status (either domestic or foreign investors) of a company does not change when the foreign equity ratio passes 51%.
- This will allow foreign investors to invest in public companies and listed companies when the foreign equity reaches the cap.
- The Securities Law need to build into law the voting rights of entities holding NVDRs, and offerings, management and organization of trading markets for NVDRs.

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FOREIGN EQUITY ON LOCAL STOCK MARKETS (NVDR)

C2. RECOMMENDATIONS

ii. Exercising NVDR-related voting rights

- Regarding NVDR voting rights, we suggest the following alternatives:

- **Alternative 1:** Non-voting NVDR;
- **Alternative 2:** the entire NVDR votes are accounted for as domestic investors' votes for matters that are approved by at least 75% of all domestic investors.
- **Alternative 3:** NVDR votes are evenly distributed among domestic investors according to the For and Against ratio of domestic investors on the voted matters.
- **Alternative 4:** a combination of Alternatives 2 and 3, where matters approved by at least 75% of all domestic investors will take up the voting ratio from Alternative 2, and other matters under the 75% threshold are subject to Alternative 3.

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FOREIGN EQUITY ON LOCAL STOCK MARKETS (NVDR)

C3. RECOMMENDATIONS

ii. Exercising NVDR-related voting rights

- Examples:

Public company ABC is a listed company and has 20% of domestic equity, 49% of foreign equity, and is expected to have 31% of equity in NDVRs.

Voting mode	Domestic vote ratio	Foreign vote ratio	NVDR vote ratio	Domestic/ Foreign vote ratio	Resulting control of the company
Alternative 1	20%	49%	0% (31% of NVDR abstention)	20%/ 49%	Foreign investors may veto
Alternative 2	20%	49%	31% (if the matter is approved by at least 75% of the 20% domestic equity holders)	51%/ 49%	Domestic investors may veto
Alternative 3	20%	49%	20.15% (for example, this matter has only 65% of the 20% domestic equity holder approval, and 35% of the 20% domestic equity holder objection)	33.15%/ 49%	Domestic equity holders cannot veto but they can obstruct the passing of decisions in specific cases.
Alternative 4	A combination of the above Alternatives 2 and 3. Depending on the domestic vote ratio, the voting result will be as in Alternative 2 of Alternative 3.				

This example is built on the assumption that there is a consensus of votes among the domestic investors and foreign investors on a same matter.

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Revising regulation requiring availability of funds and securities before transactions (pre- funding) for investors

A. EXISTING RULES ON MONEY AND SECURITIES IN ORDER MATCHING TRANSACTIONS: Investors must have sufficient funds and securities readily available before placing orders for stock trading.

B. PROBLEMS:

- **Over-regulation:** The purpose of this regulation is to keep check on and prevent trading risks. However, current applicability includes both investors and brokerage firms.
- **This is out of touch with international best practices:** In international and regional best practices, this requirement only applies to brokerage firms. Imposing this rule on investors is a step too far and too minute tampering with the commercial agreement between a brokerage firm and investors.
- **Diminished market liquidity and roles of depository participants:** The existing rule undercuts market liquidity, while also diminishes the roles and dynamics of brokerage firms.
- **Higher transaction cost:** investors, especially foreign investors, will bear sizable costs for currency exchange to be able to trade.

C. RECOMMENDATIONS: The draft Securities Law needs to provide the normative references, solutions and pathway for the removal of the requirement on investor pre-funding, while maintaining the safety for market trading.

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FORMING A SETTLEMENT BANK FOR SECURITY AND DERIVATIVE SECURITY TRADING

A. CURRENT STOCK TRADING PRACTICE:

- *Settlement bank for stock trading: BIDV.*
- *Settlement bank for derivative security trading: Vietinbank.*
- *Settlement bank for government bond trading: The State Bank*

B. PROBLEMS WITH THE CURRENT STOCK TRADING PRACTICE: inability to ensure payment safety; the government has no fiscal revenue from these activities.

C. BENEFITS OF HAVING A STATE-RUN UNIQUE SETTLEMENT BANK FOR SECURITY TRADING:

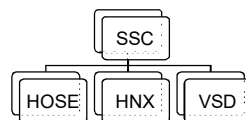
- Mitigating risks for stock markets;
- Higher revenue for the government coffers (through trading fees);
- Higher transparency and fairness in the market.

D. RECOMMENDATIONS: Adding rules on the formation of a settlement bank for security and derivative security trading affiliated to the government.

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REGULATING STOCK MARKET TRADING

EXISTING STOCK MARKET TRADING REGULATORY PRACTICE

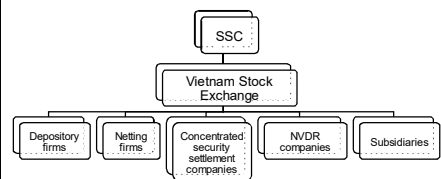


PROBLEMS:

- The merger of HOSE and HNX is not yet complete.
- VSD concurrently assuming both a depository and netting role involves substantial risks for payment safety.

In case VSD's equity is insufficient to offset transaction values, VSD may risk falling into insolvency and there will be no more a stock depository institution.

NEW STOCK MARKET TRADING REGULATORY PRACTICE



SOLUTION:

- Setting up the Vietnam Stock Exchange – a national concentrated stock market;
- The Vietnam Stock Exchange may be formed as a joint-stock company with equity held by market participants and investors, while working toward becoming a listed company in the future.
- Setting up independent subsidiaries to take on the depository and netting roles;
- Forming a settlement center for security and derivative security trading;
- Creating an NVDR issuing firm affiliated to the Stock Exchange (SE) to manage and hold NVDRs;
- Setting up subsidiaries under the SE to provide supporting services (technology, engineering services, etc.)

**Investment funds’
assets should be
deposited in an
account held by the
respective fund and
independent of the
asset management
company.**

A. EXISTING RULES: Circulars 23/2014/TT-NHNN and 32/2016/TT-NHNN of the State Bank mandate that entities without a legal entity classification (including all investment funds created under Vietnamese laws) must switch to personal account payment or a general payment account.

B. PROBLEMS:

This requirement is unenforceable and in breach of the Securities Law: According to the Securities Law, assets whose ownership is registered to an institutional investor, corresponding to the stock trading identification number issued to them by the Stock Depository Center, and a stock depository account is also set up accordingly under the name of such institutional investor. As such, setting a cash account in the form of a personal account, or a general transactional account, or a parent company’s account is impractical, and recording cash ownership will not match recording security ownership. This will also lead to the inability to execute settlement transactions for cash and securities on stock markets because the cash account holder and security account holder are not a same person.

C. RECOMMENDATIONS: The Securities Law has been explicit that “Assets of investment funds deposited in an account under the fund’s name and independent of the asset management company’s assets”

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**Protecting
investors’
assets**

A. PROBLEMS: There are still no rules on the following:

1. Regulations on insolvency and insolvency resolution procedures relating to investors’ assets in entities operating in the market (custodian banks, settlement banks and stock depository centers)
2. Regulations on having in place a Contingency plan to deal with force majeure events for stock exchanges, depository centers, custodian banks, settlement banks, brokerage firms and asset management companies.

These are issues of special interest to foreign investors who may be considering to invest in Vietnamese stock markets.

B. RECOMMENDATIONS: The Securities Law needs to be very clear on assets that belong to investors (both money and securities in the settlement pipeline) to safeguard investors’ assets.

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Comprehensive solutions for the problems of foreign investors

We suggest that SSC cooperate with relevant ministries and line agencies (e.g. Ministry of Planning and Investment and State Bank) to take a comprehensive review of existing challenges, setbacks and concerns with the current rules on foreign equity, investment procedures and processes applicable foreign investors, regulations on capital flow management and accounts for foreign investors, in order to have in place coherent and consistent rules between different ministries and line agencies on the aforementioned issues, ensuring coordinated and timely implementation.

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THANK YOU

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