

**Baker
McKenzie.**

**New Law on Securities and
Supporting framework for pension fund in
Vietnam**

■ 1 June 2020





Agenda

- | | |
|-------------------------------------------------------------|----------|
| 1. New Law on Securities | 2 |
| 2. Supporting framework for pension funds in Vietnam | 5 |



New Law on Securities

New Law on Securities

	New Law on Securities (“ New Law ”) was passed by the National Assembly on 26 November 2019
	The New Law takes effect from 1 January 2021
	The New Law comprises 135 articles divided into 10 chapters
	4 decrees and 10 circulars guiding the New Law are expected to be issued in 2020

New Law on Securities

Foreign ownership limitations in public companies

- The Government will be responsible for:
 - issuing detailed regulations on foreign ownership limitations and conditions
 - issuing procedures for investment and participation in the securities market by foreign investors and organizations with foreign capital
- Align with proposed amendments to the Law on Investment*

New Law on Securities

Public company status

- **Scenario 1:**
 - has a paid-up charter capital of VND 30 billion or more; and
 - has at least 10% of its voting shares owned by 100 or more investors (who are not major shareholders)
- **Scenario 2:**

Company has successfully conducted an initial public offering (“**IPO**”)

Cancelling the public company status

SSC considers and cancels public company status, if a company, for a period of 1 year or more, fails to:

- maintain its charter capital at the minimum of VND 30 billion, or
- have at least 10% of its voting shares owned by 100 or more investors who are not major shareholders

New Law on Securities

New conditions for IPO

An IPO is subject to the following conditions, *inter alia*:

- having a paid-up charter capital of at least VND 30 billion
- being profitable for 2 consecutive years preceding the year of the IPO
- at least 15% (or 10% in case the company has a charter capital of VND 1,000 billion or more) of the company's voting shares must be sold to 100 or more investors who would not become major shareholders following the IPO
- shareholders (classified as major shareholders of the company before the IPO) must undertake to collectively hold at least 20% charter capital for at least 1 year
- company's shares must be listed or placed for trading on UPCoM following the end of the IPO
- Not being criminally prosecuted and have an un-expunged criminal record on violations of economic management orders

New Law on Securities

Private placement

- Private placement of securities: an offering not conducted via mass media to (i) less than 100 investors, exclusive of professional securities investors (“**PSIs**”), or (ii) to PSIs only
- Private placement by a public company: shares can only be offered to:
 - Strategic investors: investors selected by the GMS, based on their financial capacity and technological expertise, who undertake to cooperate with the company for a period of at least 3 years
 - PSIs
- Lockup period:
 - Strategic investors: 3 years
 - PSIs: 1 year

New Law on Securities

Trigger events of tender offer (“TO”)

- An investor and their related persons intend to acquire voting shares to, directly or indirectly, hold in **aggregate 25% or more** of the total voting shares in a public company
- An investor and their related persons, holding in aggregate 25% or more of the total voting shares in a public company, intend to acquire more shares and such acquisition will result in their direct or indirect shareholding **reaching or exceeding each threshold of 35%, 45%, 55%, 65% and 75%** of the total voting shares in such public company
- Except for where the TO has been made for all voting shares in a public company, if an investor and their related persons collectively hold 80% or more of the total voting shares in a public company after a TO, then they **must** continue to offer to acquire shares from the remaining shareholders for 30 days, with conditions on purchase price and payment methods remaining similar to those of the preceding TO

2

Supporting framework for pension fund in Vietnam

- Statistics
- Regulatory framework and challenges
- Regulatory trends and what to do

Multi-column pension system in Vietnam



Column 2

Voluntary additional pension fund

Life insurers/fund management companies upon obtaining **Certificate of Eligibility** to provide the service of managing voluntary additional pension fund



Column 3

Voluntary pension fund

Life insurers establish the funds. Fund management companies must **partner with life insurers** in the form of **entrustment/hiring agreement**

Column 1

Pension fund in social insurance fund

Voluntary pension insurance market 2013-2017

Year	Number of insurance contracts		Value of insurance contracts (VND billions)		Insurance premium (VND billions)	
	Pension insurance	Total market	Pension insurance	Total market	Pension insurance	Total market
2013	74	1,178,437	7	31,381	0,334	7,216
2014	10,912	1,064,614	1,089	219,900	208	8,155
2015	8,121	1,293,951	844	307,922	206	12,175
2016	5,571	1,538,896	564	428,588	98	17,498
2017	8,294	1,964,262	836	579,687	120	22,552
Total	32,972	7,040,160	3,340	1,349,777	632,334	67,596
%	0.47%	100%	0.21%	100%	0.94%	100%

Source: ISA-MOF, 2017, 2018

Regulatory framework and challenges

	Voluntary additional pension fund	Voluntary pension fund
Key legislation	Decree No. 88/2016/ND-CP, Circular No. 19/2018/TT-BTC	Circular No. 115/2013/TT-BTC, Circular No. 130/2015/TT-BTC
Insurance	Voluntary additional pension insurance program	Pension insurance product
Participants	<ul style="list-style-type: none"> • Individuals \geq 15 years old not working under employment contract (direct contribution) • Employees (direct contribution/via employers) 	<ul style="list-style-type: none"> • Individuals (direct contribution) • Group of employees (contribution via the employers)
Assets	<ul style="list-style-type: none"> • sum of the balance of the individual pension accounts of the employees participating in the same program • generated from contributions by the employees and the employers 	<ul style="list-style-type: none"> • include insurance premium + pension insurance accounts of the insured persons • generated from (i) insurance premium, (ii) contribution by the life insurer, and (iii) profit from investment
Investment	Restrictions on investment portfolio and value	Restrictions on investment portfolio and value
Deductible income	Employer: \leq VND 3 million/month/employee Employee: \leq VND 1 million/month	

Regulatory trends

Decision No. 242/QD-TTg dated 28 Feb 2019 on the Scheme for Restructuring the securities market and insurance market by 2020, with vision towards 2025, targets:

- a regulatory framework to promote the establishment and operation of the voluntary additional pension fund, and
- guidance on employer-employee agreement regarding the participation in the voluntary additional pension fund program



**obtain the
Certificate of
Eligibility to provide
the service of
managing voluntary
additional pension
fund**



**partner with
life insurers**



**promote the benefits of
the program/product to
more people (both the
employed and
unemployed)**



Questions

Speakers



Yee Chung Seck

Partner

+84 28 3520 2633

yeechung.seck@bakermckenzie.com

Yee Chung leads the M&A, IT/C, and pharmaceutical and healthcare practices in Vietnam.

He has dealt with a wide range of investment projects and M&A deals, and advised and assisted on corporate, commercial and regulatory compliance matters.



Oanh Nguyen

Partner

+84 28 3520 2629

Oanh.Nguyen@bakermckenzie.com

Oanh leads our Vietnam Office's Finance & Project/Capital Market Practice.

Oanh specializes in securities, IPO, banking and finance, capital market, project/project finance and M&A. She is recommended as a Leading Lawyer for Banking & Finance and M&A in Vietnam IFLR 1000.



Linh Chi Dang

Special Counsel

+84 24 3 936 9350

LinhChi.Dang@bakermckenzie.com

Ms Dang focuses her practice in banking and financial services, and has been involved in numerous foreign investment projects in Vietnam. She has deep experience in both providing legal advice and performing transactional work.

Baker McKenzie.

This presentation has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this presentation is not an exhaustive treatment of the area of law discussed and no responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this presentation is accepted by Baker & McKenzie.

Baker & McKenzie (Vietnam) Ltd., a limited liability company, is a member firm of Baker & McKenzie International, a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2020 Baker & McKenzie (Vietnam) Ltd.

[bakermckenzie.com](https://www.bakermckenzie.com)