

## **Chapter 3: Development of the law on securities settlement**

### **1. Outline of this Chapter**

A WG was formed by officials from SSC and of HASTC in the FY2004 TA to review and discuss the bill on securities settlement, issue by issue, with the TA team. The TA team exchanged ideas and gave advice based on the Japanese experience. The results were fed back to relevant government officials including the VMOF in a seminar on March 11 2005.

This fiscal year, the TA team conducted hearing on the process for implementation of the securities law. The TA team also compared the 7<sup>th</sup> draft of Securities Law which was submitted to the Standing Committee in January 2006, with 4<sup>th</sup> draft which the TA team reviewed last fiscal year. The results of the comparison were fed back to the SSC in middle of February 2006.

Before making comments and recommendations on the 7th draft of Vietnam Securities Law, the TA team made an observation on the draft from the perspectives and the criteria described below.

(Perspective and criteria to review the draft)

- 1) We focus only on Chapter V “Securities Registration, Depository, Clearing and Settlement”
- 2) We compare this 7th draft with the 4th draft which we examined in the project of last fiscal year, and
- 3) We evaluate how far the discussion we made in last fiscal year was reflected in the 7th draft

### **2. Process for enacting the securities law**

The TA team conducted hearing with Legal Dept. of the SSC on the regal structure in Vietnam and the process to the implementation of the securities law. The results are as follows.

The Securities Law described in this report correspond to the 2) Law below.

(Regal structure in Vietnam)

- 1) Constitution (“Hien Phap” to be approved by National Assembly)
- 2) Law (“Luat” to be approved by National Assembly)
- 3) Ordinance (“Phap Lenh” to be approved by Standing Committee of National Assembly but not

applicable for securities market activities)

- 4) Decree (“ Nghi Dinh” to be approved by Prime Minister = Government)
- 5) Regulation/Circular (“Quyche”/”Thong Tu” to be approved by Minister of Finance in the case of Securities Law)
- 6) Guideline/Rule (“Huong Dan”/”Quy dinh” to be approved by Chairman of SSC in the case of Securities Law)

(Process for enacting the securities law)

1. Official documents with regard to the securities market activities to be promulgated are the Securities Law, Decree, Regulation and Guideline which are drafted by representatives from SSC and other relevant organizations and approved by the competent ministers.
2. In 2002, the proposal to start drafting Securities Law and the relevant concept paper were drafted and submitted to the Standing Committee by the VMOF and the SSC, which was approved in early 2003.
3. Each competent department is responsible for drafting the relating chapter of concept paper of the Securities Law.
4. After obtaining the approval from the Standing Committee, a drafting team was formed, which consists of 21 officials representing the SSC (Personnel Dept., Issuance Dept., Market Development Dept., Securities Management Dept. and Surveillance Dept.), the VMOF (Legal Dept. and Financing Banking Dept), the MPI, the HASTC and the HOSTC.
5. In April and July 2005, workshops of the Securities Law were held for market participants and 4<sup>th</sup> and 5<sup>th</sup> drafts were distributed to them. The drafts were also published on the SSC’s website in Vietnamese. A survey was also conducted to find the needs of the law among market participants.
6. In January 2006, the 7<sup>th</sup> draft which is considered to be the final version at SSC’s level was submitted to the Standing Committee to be approved, though still subject to modification.
7. From March to May 2006, three workshops are going to be held in Hanoi, the middle part, and HCMC for the Provincial National Assemblies for explaining the contents of the law.
8. In May 2006, The final draft of the Securities Law is going to be approved at the general meeting of the National Assembly, together with decree.
9. From January 2007, the law is going to be implemented. By that time, regulations and rule are also going to be prepared.

### **3. The results of review on 4<sup>th</sup> draft of the securities law chapter 5 in last fiscal year**

In FY2004, the TA team reviewed 4<sup>th</sup> draft of the securities law, focusing on Chapter 5 which describes securities depository. The problems were pointed out through the perspective of the Japanese Corporate Bond Transfer Law. The problems that we saw from the overall review were as follows.

- <1> There are numerous regulations on depository members but not enough on the VSD itself.  
( Rules and regulations might be necessary in case the operation mistakes happen in the VSD. )
- <2> Is it not preferable to apply details regulations following international standards for articles that directly and tremendously affect the interests of the participants such as ownership, transfer and finality of securities, about which the participants are most interested as the VSD conducts its operation?
- <3> The VSD's structural entity is as yet undecided. There will be contradictions concerning whether it aims for profit if it is a joint stock company or a limited liability company and yet at the same time a non-profit organization. This contradiction should be resolved.
- <4> Should the VSD not have the obligation to write a business plan and a report?
- <5> In case the VSD brings loss to the participants that leads to insolvency (though this is very unlikely), should there not be a rule on the protection of investors?
- <6> There have been discussions on whether to have a single-stage structure where the users open their account only at the VSD or to have a multi-layer structure where only the depository members and major financial institutions open their account at the VSD and the other users open theirs at a depository member or a financial institution that has an account at a depository member. The SSC has suggested a mixed model where all users can choose between opening an account at the VSD or at a depository member. Should the law not be revised to clear the problems, for example whether it would be affected by the existence of a trust law, which legally protects the profits of the consignor?

### **4. The results of comparison of 7<sup>th</sup> draft of the securities law with 4<sup>th</sup> draft in this fiscal year**

In FY2005, TA team compared the 7<sup>th</sup> draft of Securities Law which was submitted to the Standing Committee in January 2006, with 4<sup>th</sup> draft which the TA team reviewed last fiscal year. The results of comparison were fed back to the SSC.

<The Articles newly added>

**Article 38. An application file for a license for securities depository operations**

An application file for a license for securities depository operations shall include:

1. an application for a license to carry out securities depository operations ;
2. legitimate supporting documents that the securities company or the commercial bank has fully met those requirements set out in Article 37 hereof.

**Article 41. Transfer of securities ownership**

1. The transfer of securities ownership with respect to those securities which have been registered at the Securities Depository Center shall be undertaken via Securities Depository Center;
2. The transfer of securities ownership of companies having its securities registered at a Securities Depository Center shall be valid on the date of making book-entries in the securities registration accounts of the Securities Depository Center.

**Article 43. Protection of depositor property**

1. Any securities, whether tangible or intangible, and other assets of customers held by a Securities Depository Center or relevant depository members shall be the property of the depositor and shall not be considered as a part of the assets of the Securities Depository Center, or depository members authorized by customers.
2. If a Securities Depository Center or depository members are declared bankrupt or insolvent in accordance with the law, such securities of the Securities Depository Center or the depository members may not be used to repay any debts to each other or to the creditors of the others. This provision shall not apply where securities have been pledged or mortgaged under another specific agreement.

**Article 44. Secret-keeping**

Securities Depository Center, depository members shall take the responsibility to keep secret the information regarding securities ownership of customers, except the cases of information disclosure upon the requirement of authorities in compliance with regulations of the laws.

<The Article eliminated>

**Article 45. License revocation**

A depository license shall be revoked in the following cases:

- a. The depository member does not operate after 12 months from the date of the depository license.
- b. Ceasing its operation at its own discretion;
- c. Due to the depository member's dissolvent, bankruptcy, annex, mergence, separation, acquisition...
- d. A branch of foreign banks being depository member may cease its securities depository due to the dissolvent, bankruptcy, annex, mergence, separation, acquisition...of its own or of its mother bank.

**Article 46. Deposited securities**

The VSD undertakes depository and custody of the following classes of securities:

Listed securities and trading registered securities on Stocks Exchange or Securities Trading Centers

Other securities if required by the issuer.

These are the articles which are newly added and eliminated we understand in comparison with 4<sup>th</sup> draft and 7<sup>th</sup> draft.

As for the problem <1> mentioned above, the TA team again suggested the SSC the consideration of contingency plans against erroneous records made by the VSD or depository members.

Legal Dept. of the SSC commented that they would take this suggestion into account as one of the issues to be discussed.

As for <2>, the definitions of ownership, transfer and finality of securities are clarified in the Article 41.

As for <3> VSD's structural entity, the contradiction was solved by eliminating the statement "non-profit organization". In the 7<sup>th</sup> draft, the Article for the rights of VSD and the duties of VSD are stipulated separately.

As for <4> VSD's obligation to write a business plan and a report, it is clearly defined to some extend by stating "To comply with accounting, statistic reporting and information disclosure requirements in accordance with the law" in Article 35 Duties of a Securities Depository Center.

As for <5> a rule on the protection of investors in insolvency, the statements for the protection of depository property and the treatment of the property in insolvency are newly added. However, the TA team recommended a formation of specific framework for the protection of investors. The Legal Dept. of SSC is considering the establishment of another fund, which is different from Joint Compensation Fund (JCF), regarding the specific framework for the protection of investors.

As for <6> layered system, the choice by the government is not yet made as described in Chapter 2-3, and the issue is not stipulated in the Securities Law. It is going to be stipulated in the Regulation in the future, according to SSC.

The reason that the statement of the limitation of deposited securities at the VSD has been eliminated could be that the VSD is going to take OTC market into account for the future. There is a possibility that the service by the VSD could include not only the listed securities but also unlisted ones.

The TA team pointed out that DVP in line with international standard is not introduced in Vietnam although it is stated in Article 45 “The settlement of securities shall be conducted via Securities Depository Center, the cash payment shall be conducted via settlement banks, and pursuant to the delivery-versus-payment principle.” The fund settlement and securities settlement are conducted at different institutions currently and these are no electronic connection between those. As regards this point, SSC understands that it is one of the issues to be considered for further development.

The TA team recommends that the spirit of the coming Securities Law should be shared among market participants. In this regard, since its is difficult to stipulate all the activities and the relevant regulations, which could come out in the future, in the law at this moment, it would be necessary that Vietnam Securities Law will be reviewed periodically to respond to any changes and development of securities market in the future.