



## VIETNAM



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## Administrative sanctions in the securities market

On November 1, 2016 the Vietnamese government issued a new decree on sanctions against administrative violations in the securities market, which is considered a necessary step to ensure that sanctions cover new violations on the market and to ensure the deterrence as well as the prevention of violations.

Decree No. 145/2016/ND-CP (Decree 145), which is effective as of December 15, 2016, amends and supplements Decree No. 108/2013/ND-CP (Decree 108). Following are three important elements of the new decree:

### **Failure to register for trading or listing securities and registering outside the prescribed deadline**

Such acts are not sanctioned under Decree 108. However, the opinion of lawmakers has changed as they realise that such failures or delays more seriously affect the rights of shareholders and transparency in the operation and governance of enterprises, especially state-owned companies. Under Decree 145, those registering transactions and putting their shares on the stock exchange one month beyond the deadline will be fined VND10-30 million. The penalty will be progressively increased depending on the length of delay, with VND400 million to be imposed on enterprises whose transaction registration and listing are completed 12 months or more later than the required deadline.

### **Forging or falsifying data in an application file for a private placement of shares**

These acts are considered to seriously affect the legitimate interests of investors, the safety

and transparency of the stock market and the quality of shares on the stock market. For the first time, Article 212 of the Penal Code prescribes severe penalties for this type of violation. For example, offences committed in any of the following cases shall carry a penalty of up to seven years in prison:

- (i) illegal profit earned is VND2 billion or more;
- (ii) loss incurred by investors of VND3 billion or more;
- (iii) the offence is committed by an organised group;
- (iv) dangerous recidivism.

However, with the conduct of forging or falsifying data in an application file for a private placement of shares that is not at the level constituting a criminal offence, before Decree 145, there were no administrative sanctions imposed. To remedy this problem, Decree 145 provides a fine of VND400-700 million. In addition, the organisation in breach must recover the securities that it offered and refund investors, plus interest.

### **Breach of regulations on operations of fund management companies and of branches of foreign fund management companies in Vietnam**

Sanctions for the breach of regulations on operations of any fund management company or branch of a foreign fund management company in Vietnam are prescribed in Article 22 of Decree 108. Beside amended items, there are five new groups of acts that are subject to penalties according to the new decree, including:

- (i) Opening more than one securities trading account at one securities company to conduct self-trading; opening more than

two securities trading accounts to manage an investment portfolio for an entrusting client and failing to open separate accounts to trade securities for domestic clients and foreign clients;

- (ii) Trading assets for an investment trust client at a trading volume and price within any one year via a securities company in excess of the limits in the same year on ratio of total transaction volume and price of such client;
- (iii) Failure to archive all files, databases, data and source vouchers relating to the operation of the foreign securities company or its branch in Vietnam; or archiving files, databases, data and source vouchers that do not correctly reflect the transactions of clients and of the foreign securities company or its branch in Vietnam; or a branch in Vietnam of a foreign securities company directly manages securities trading deposits of domestic investors or opens securities trading accounts for domestic investors;
- (iv) Placing the assets of entrusting clients in the name of the fund management company itself without written authority from the clients, or conducting trading on behalf of such clients in the name of the fund management company itself without approval from such clients.
- (v) Investing in derivative securities from trust capital or capital of an investment fund or securities investment company when the contract for management of the investment portfolio, fund charter or fund of the securities investment company does not contain provisions permitting use of such trust capital or capital to invest in derivative securities; or investing in derivative securities from the fund management company's own capital, from loan capital or from other lawfully raised capital.