

**COMMENTS ON THE DRAFT CIRCULAR ON  
AMENDMENT AND SUPPLEMENTATION OF  
CIRCULAR NO. 18/2007/TT-BTC ON MARCH 13, 2007**

*Presented by  
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On the occasion of the issuance of a new circular by the Ministry of Finance to amend and supplement “Circular No. 18/2007/TT-BTC of March 13, 2007, guiding the purchase and resale of securities and some cases of additional issuance of securities of public companies”, the Vietnam Association of Financial Investors (VAFI) would like to contribute the following ideas:

1/ The regulation on controlling the minimum price of securities sold to workers should be removed:

- Point c, clause 1 of the Draft about issuance of securities subject to optional program applied to workers: “*Price of securities sold to employees must not be lower than 40% market price at time of issuance...*”
- The above regulation is not reasonable, neither is it legally based (it runs contrary to Enterprise Law) nor subject to corporate governance principles, because:
  - Experience has shown that share prices on security markets change regularly, and at certain times change rapidly; some securities have been reduced by 30 – 60 percent within several months. If the selling price is set as not lower than 40 percent of market price at time of issuance, provided that these shares are not transferred within 1 year, then “preferential” securities bought by workers will be at risk of loss. Thus the policy of selling securities to workers as incentives for attracting high quality human resources, to protect against employee turnover, and to provide workers with material incentives, will fail and not achieve its desired utility, as many workers may refuse to participate. Members of draft team should put themselves in the positions of workers to decide whether they would, under such conditions, buy preferential securities.
  - What legal base does the regulation rely on? Could the draft team please clarify?
  - It is also unreasonable for the regulation to attempt to protect minority shareholders. The policy of selling preferential securities to workers (a preferential and reasonable policy) is a promotion to develop an enterprise and an offer for the benefit of the company’s shareholders:
    - + As stated, it figures in recruitment, eliminating turnover, and can be a tool for sharing the company’s assets with its workers.
    - + It does not increase the cash requirements for funds for salary and bonus, which means that prices of company products are kept competitive, which positively impacts company profits.
  - This regulation should not be issued pursuant to Decree 109 (on transforming state-owned companies into joint stock companies) because preferential policy given to workers of a privatized state-owned company is the sole decision of the owner, i.e. the Government. However, preferential securities granted to workers at a 40 percent discount to the average auction price are, in some cases, not attractive; furthermore, they may even bring losses due to significant drops in

the security price – as seen in the cases of PVI, PV Trans., Kim Lien Hotel, and North and South Gas Companies.

2/ The regulation on “Quantity of securities granted to workers in an optional program within a period of 12 months shall not exceed 5% of company’s current privatized capital” should be removed:

- What is the legal base for the rate of 5% chartered capital? Five percent is too high for banks or large companies - not to mention the possible annual bonus. Then the 5% might be applied based on State regulation and can be easily applied in companies where the Government is the majority share holder.
- On the other hand, 5% is too low in small companies with rapid growth rates or large numbers of workers.
- So if 5% is unreasonable, why then is it necessary to specify in regulations? We should also ask if it is wise to intervene to such a degree in the management of company affairs.

3/ The provision “In case of a company partly owned by a state-owned shareholder, the organization in charge of state’s capital has to send a written notice to its owner’s representative about the right of state shareholders relating to additional issuance of securities given to workers in an optional program” should be removed.

- The company, in which the state-owned shareholder owns only one share, will have to wait for an official acceptance letter from the representative organization of the state share. In many cases, a state-owned company may buy securities in a public company without informing or asking for permission from the company’s management board. So why is it regulated that the joint stock company has to wait for acceptance from state organizations?
- Investment of state-owned companies in joint stock companies or in security markets is their own business, and not the business of joint stock companies. VAFI is afraid that if this rule remains, it will be similar to an apply and grant mechanism in which a company has to follow many complicated procedures before issuing preferential securities to workers.

4/ “A company is not allowed to buy back its own share in case it has overdue debts” stated in item 2.1.a – Part II, Circular 18/2007/TT-BTC should be amended.

- The term “overdue debt” should be clearly defined as overdue debt to be received and overdue debt to be paid in order to have a reasonable managing policy.
- A small amount of overdue debt to be received is common in most companies. If overdue debts to be received restrict a company from buying securities, many companies will be affected - even those in good financial health and/or those whose annual profit is 100 times higher than the overdue debt amount.
- To amend this rule, we should refer to point 3c, 3d, Part III, Circular 19/2003/TT-BTC providing guidelines on adjustments up or down of regular capital and management of shares in joint stock companies.

*Companies are not allowed to buy shares in following cases:*

- + The company has an overdue debt to be paid
- + Total overdue debt to be received is higher than 10% of total shareholder’s capital
- + It uses the capital borrowed from financial organizations, creditors and individuals, etc. to buy shares. (This is an important clause to make sure that a

company's financial status is healthy. However it is not mentioned in Circular 18/2007/TT-BTC dated 13/3/2007).

5/ VAFI's suggestion on legal regulations relating to issuance of preferential securities to employees are as follows:

- Principles to be followed: Issuance of preferential securities to workers is to promote the development of business, to take advantage of the security market, and increase worker benefits by making non-material payments - provided that current shareholder interest is not affected.
- To achieve this goal:
  - + The right people must be chosen to buy preferential securities
  - + Workers have the right to buy preferential securities provided that these securities are not allowed to transfer within the first 1-3 years. Any worker who desires to stop working at the company within stipulated time should give back the company all preferential securities.
- The above rules are guidelines to enterprises, not binding regulations; flexibility in enterprise management decisions is protected.
- The State should not regulate the quantity or selling price of shares. This should be decided by the company. At any collection of shareholder opinion, the board of directors has to propose a detailed plan to collect suggestions and votes from shareholders. Suggestions through the mail is easily abused and therefore must be forbidden.
- If the board of directors is using large state shareholders or large shareholders to propose a plan of preferential securities issuance that appear to be only in the interest of the company's board of directors and management, the actual result is not good and may badly affect the management board itself. As seen in several cases, the abuse of preferential securities issued to workers by the management board has been criticized strongly by investors and press, which led to a dramatic drop in the security price.
- VAFI agrees with the draft team on one point: "The Board of directors have to publicly inform the list of employees who have the right to take part in the issuance programme; the principles to define selling price, the way and time of implementation", but the following should be added:
  - Current shareholders and investors should be informed publicly, as it is done with reports through mass media.
  - The board of directors should present the benefits of the program in detail, such as the increase in profits, control of increase in salary and bonus fund, etc. so that the investors can understand the benefits of the issuance of preferential securities.

Votes for this issue in shareholders meeting should be done separately, not attached to other issues.