THE MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness

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CIRCULAR

GUIDING THE INCREASING AND REDUCING READJUSTMENT OF CHARTER CAPITAL AND MANAGEMENT OF TREASURY STOCKS IN JOINT-STOCK COMPANIES

Pursuant to the Enterprise Law and the documents guiding the implementation thereof;
Pursuant to the State's legal documents prescribing securities trading and securities market;
The Finance Ministry hereby guides a number of financial matters in the increasing and reducing readjustment of charter capital and management (of the purchase, sale and use) of treasury stocks in joint- stock companies as follows:

I. GENERAL PROVISIONS

1. Subject to the application of this Circular are joint-stock companies established and operating under the Enterprise Law.

For financial institutions, credit institutions, insurance organizations and securities organizations operating in the form of joint-stock company, the increasing or reducing readjustment of charter capital, the purchase, sale and use of treasury stocks shall comply with the provisions of the specialized legal documents.

2. In this Circular the following terms shall be construed as follows:

a/ Shareholders' capital at a time is that determined to be equal to the owner's capital minus the balance of reward and welfare funds and joint-venture capital received at that time.

b/ Treasury stocks are stocks issued and purchased back by companies themselves with their lawful capital sources according to the provisions of this Circular.

c/ Enterprise managers are the subjects defined in Clause 12, Article 3 of the Enterprise Law.

d/ Bonds converted into shares are bonds issued by companies and converted into share capital contributions to such companies under the conditions and within the time limit prescribed in the plans on issuance of convertible bonds already adopted by the shareholders' congress.

e/ Payment of dividends in form of stocks means the use of accumulated after-tax profit sources (including the State's tax exemption or reduction source) by the joint-stock companies to supplement their charter capital, and at the same time to increase shares for shareholders according to the share ownership proportion of each shareholder in such enterprises.

3. All activities of purchasing and selling treasury stocks or issuing new stocks to mobilize capital are not considered financial business activities of joint-stock companies. The increased amounts due to the purchase or sale of treasury stocks and the differences between issuance prices of new stocks being higher than their par values shall be accounted into capital increment

accounts, but not as enterprises' financial incomes. Enterprise income tax and value added tax shall not be imposed on such increments.

In cases where the selling prices of treasury stocks are lower than their purchasing prices and the selling prices of newly issued stocks are lower than their par values, the differences therebetween shall neither be accounted into expenditures nor offset by pre-tax profits, but they shall be offset with incremental capital. In cases where incremental capital is not enough, the after-tax profit source and funds of companies shall be used to offset.

II. INCREASING OR REDUCING READJUSTMENT OF CHARTER CAPITAL

Increase or reduction of charter capital must comply with the current provisions of law. Before making the increasing or reducing readjustment of the charter capital, joint-stock companies must conduct the tax settlement and financial statement audit according to the State's current provisions. The managing boards shall work out plans on increasing or reducing readjustment of the charter capital, then submit them to the shareholders' congress for approval according to the following provisions:

A. INCREASING READJUSTMENT OF CHARTER CAPITAL:

1. Charter capital of a joint-stock company shall be increased in the following cases:

a/ Issuance of new stocks to mobilize more capital according to the provisions of law, including case of restructuring of its debts by mode of conversion of such debts into share capital contributions according to agreements between the enterprise and its creditors.

b/ Conversion of already issued bonds into shares: The increase of charter capital shall be effected only when the conditions for converting bonds into shares as prescribed by law and stated in the plan on issuance of convertible bonds are fully met.

c/ Payment of dividends in form of stocks.

d/ Issuance of new stocks for merging part or whole of another enterprise into the company.

e/ Carrying forward of the capital increment source to supplement the charter company.

2. The carrying forward of the capital increment source to supplement the charter company of joint-stock companies (according to the provisions in Paragraph e, Point 1, Section A, Part II) must satisfy the following conditions:

a/ The companies are entitled to use the whole increase differences between selling prices and original purchasing prices of treasury stocks to increase their charter capital. In cases where the companies have not yet sold out their treasury stocks, they shall only be allowed to use increase differences between the capital increment source and the total original price of treasury stocks not yet sold to supplement their charter capital. If the total original price of treasury stocks not yet sold is equal to or larger than the capital increment source, the companies shall not be allowed to increase their charter capital with such capital source.

b/ For differences between selling prices and par values of stocks issued for executing investment projects, joint-stock companies shall only be allowed to use them to supplement their charter capital three years after such investment projects are completed and put into exploitation and operation.

For differences between selling prices and par values of stocks issued for restructuring debts or supplementing business capital, the joint-stock companies shall only be allowed to use them to increase their charter capital one year after the end of the issuance.

c/ The capital increment sources specified in Paragraphs a and b, Point 2, Section A, Part II above shall be divided to shareholders in form of stocks according to their stock ownership proportions.

3. The quantity of stocks planned to be additionally issued in the cases prescribed in Paragraphs c and e, Point 1, Section A, Part II of this Circular is determined according to the following formula:

$$\text{Quantity of stocks planned to be issued} = \frac{\text{Capital source planned to be used to increase charter capital}}{\text{Par value of one stock}}$$

4. Companies shall not be allowed to use price differences due to their self-revaluation of assets (pending the State's policies) to increase their charter capital.

B. REDUCING READJUSTMENT OF CHARTER CAPITAL

Charter capital of joint-stock companies shall be reduced in the following cases:

1. Reduction of charter capital upon the lessening of the companies' capital demands due to changes in their business lines and trades or their down-sized reorganization or forcible cancellation of their treasury stocks.

The reducing readjustment of charter capital and payment of money to shareholders shall be effected by the following modes:

a/ Companies shall purchase and cancel a quantity of treasury stocks with par value equal to the capital amount planned to be reduced according to the plans adopted by the shareholders' congress, or cancel quantities of treasury stocks which must be canceled. By this mode, companies shall not have to return money to their shareholders.

b/ Companies shall withdraw and cancel a quantity of stocks from shareholders with a total par value equal to the reduced charter capital amount. By this mode:

- Each shareholder in a company shall have a quantity of his/her shares withdrawn according to the proportion of capital amount planned to be reduced to the company's total charter capital at a time before the readjustment

$$\text{Quantity of shares to be withdrawn from each shareholder} = \text{Quantity of shares owned by such shareholder} \times \frac{\text{Capital amount planned to be reduced}}{\text{The company's charter capital}}$$

- Companies shall have to pay their shareholders a money amount calculated according to the following formula:

Money amount to be paid to each shareholder (=) quantity of shares withdrawn from each shareholder (x) share par value c/ Reducing readjustment of share par values without changing share quantity. By this mode, companies shall withdraw stocks from shareholders and issue new stocks with reduced par values. Companies shall have to pay to their shareholders a money amount calculated according to the following formula:

Money amount to be paid to each shareholder (=) quantity of shares of each shareholder (x) difference between old par value and new par value

d/ Combination mode:

Basing themselves on the actual situation, joint stock companies may apply the above-said modes in combination to effect the reducing readjustment of charter capital.

2. Reduction of charter capital after companies have conducted business operation at a loss for three consecutive years and suffer an accumulative loss equal to 50% or more of shareholders' capital but they have not yet lost their capability to repay due debts.

The modes for reducing charter capital shall comply with the provisions in Paragraph b or c, Point 1, Section B, Part II of this Circular, the joint-stock companies shall not return money to their shareholders.

III. TREASURY STOCKS

1. Joint-stock companies are entitled to purchase back no more than 30% of the total ordinary shares they have already sold, part or the whole of shares of other types already sold according to the provisions in Article 65 of the Enterprises Law. Joint-stock companies shall be only entitled to use the capital source of their shareholders to purchase treasury stocks in the following cases:

a/ They purchase back shares at their shareholders' requests according to the provisions in Article 64 of the Enterprise Law.

b/ They purchase back shares in order to temporarily reduce the quantity of outstanding stocks, raise the after-tax profit ratio per stock and increase their capital accumulations.

c/ They purchase back shares for resale to their laborers (including enterprise management boards) at preferential prices or give rewards in form of stocks to laborers according to resolutions of the shareholders' congress.

The use of treasury stocks as rewards must ensure that there are payment sources therefor from the welfare and/or reward funds.

The prices of treasury stocks sold to laborers shall be lower than market prices thereof at the time of sale, provided that they are not lower than their purchasing prices of treasury stocks.

d/ They purchase back shares for reducing readjustment of their charter capital according to resolutions of the shareholders' congress.

e/ They purchase back shares for use for other purposes, provided that the use thereof must comply with the provisions of the Enterprise Law, organization and operation charters of companies as well as resolutions of shareholders' congress.

2. Conditions for materializing plans on purchase of treasury stocks:

a/ Companies have plans adopted by the shareholders' congress, for cases where they purchase back over 10% of the total already issued shares; or plans decided by their managing boards, for cases where they purchase back under 10% of the total already issued shares.

b/ Companies have financial capabilities to ensure the full repayment of their debts and fulfillment of their financial obligations.

3. Joint stock companies are not allowed to purchase treasury stocks in the following cases:

a/ They are conducting business operation at a loss;

b/ They are carrying out the procedures for issuing securities to mobilize more capital;

c/ They have overdue debts;

d/ The total amount of their receivable debts is larger than 10% of their shareholders' total capital;

e/ They fail to fully meet the requirements for increase of charter capital or legal capital according to the current provisions of law.

f/ They use borrowed capital and capital being debt arrears owed to financial institutions, credit institutions, legal persons and/or individuals to purchase treasury stocks.

4. Companies are not allowed to purchase shares of the following subjects to use as treasury stocks:

a/ Enterprise managers and subjects being their spouses, parents and foster parents, children and adopted children, blood siblings (except for cases where they are entitled to purchase back shares according to the provisions in Article 64 of the Enterprise Law).

b/ Persons owning conditionally transferable shares as defined by law and company charters.

c/ Shareholders having controlling shares, except for cases where enterprises are entitled to re-purchase the State's shares.

5. Joint-stock companies shall decide at their own will on the sale of treasury stocks according to the current provisions of law.

In cases where the companies have purchased treasury stocks, but not used them for 3 years, and the capital of their shareholders is smaller than their charter capital, they shall have to cancel treasury stocks and at the same time reduce their charter capital.

6. The purchase and sale of treasury stocks by joint- stock companies which have registered for listing at the Securities Trading Centers shall also comply with the procedures prescribed in legal documents on securities trading.

7. Management and accounting of treasury stocks:

a/ Treasury stocks are under the common ownership of the companies and excluded from the division of dividends (dividends in cash and dividends in stocks).

b/ Values of treasury stocks on the accounting balance sheets are expressed as the reduction of the enterprises' owner capital in their business.

c/ Expenses for the purchase and sale of treasury stocks are accounted as follows:

- Purchase expenses: shall be accounted into original prices of treasury stocks.

- Sale expenses: shall be offset against the proceeds from the sale of treasury stocks.

d/ Shareholders’ congresses shall decide on the maintenance, use or cancellation of treasury stocks, and at the same time effect the reducing readjustment of their charter capital corresponding to the canceled stock volume.

IV. IMPLEMENTATION PROVISIONS

This Circular takes effect 15 days after its publication on the Official Gazette.

Any problems arising in the course of implementation should be promptly reported to the Finance Ministry for study, amendment and supplement.

FOR THE MINISTER OF FINANCE
VICE MINISTER

Le Thi Bang Tam