THE GOVERNMENT

Decree No. 01/2010/ND-CP

January 4, 2010, Ha Noi

DECREES

On private placement of shares

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Law on Enterprises;

Pursuant to the November 29, 2005 Law on Investment;

Pursuant to the June 29, 2006 Law on Securities;

At the proposal of the Minister of Finance,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree provides for activities of private placement of shares and sanctioning of administrative violations in these activities of joint-stock companies established and operating in the territory of the Socialist Republic of Vietnam (below collectively referred to as placing institutions).

www.LuatVietnam.vn

Joint-stock companies established and operating under foreign laws may not privately place shares in the territory of the Socialist Republic of Vietnam, unless otherwise provided by a treaty to which the Socialist Republic of Vietnam is a contracting party.

Article 2. Subjects of application

1. Joint-stock companies
2. Enterprises, excluding wholly state-owned enterprises transformed into joint-stock companies.

Article 3. Application of laws

Private placement of shares by enterprises engaged in conditional business lines must comply with this Decree and other relevant specialized laws.

Article 4. Interpretation of terms

In this Decree, the following terms are construed as follows:

1. Private placement of shares means a direct placement of shares or the right to purchase shares to any of the following entities not through the mass media:

a/ Professional securities investors;

b/ Fewer than 100 non-professional securities investors.

1. Public company means a joint-stock company satisfying the conditions specified in Articles 25 and 26 of the Law on Securities.

Article 5. Share par value

1. Shares to be privately placed in the territory of the Socialist Republic of Vietnam shall be denominated in Vietnam dong.
2. The par value of shares to be privately placed is 10,000 (ten thousand) Vietnam dong.

Chapter II

TASKS AND POWERS OF STATE AGENCIES COMPETENT TO MANAGE PRIVATE PLACEMENT OF SHARES

Article 6. State agencies competent to manage private placement of shares

State agencies competent to manage private placement of shares (below collectively referred to as competent state agencies) include:

1. The State Bank of Vietnam, in case placing institutions are credit institutions;
2. The Ministry of Finance, in case placing institutions are share insurance businesses;
3. The State Securities Commission, in case placing institutions are jointstock securities companies, joint-stock fund management companies and public companies (except public companies engaged in the credit or insurance domain);

www.LuatVietnam.vn

1. Provincial-level Planning and Investment Departments and management boards of industrial parks, export processing zones, hi-tech parks and economic zones, in case placing institutions are joint-stock companies other than those defined in Clauses 1, 2 and 3 of this Article.

Article 7. Tasks and powers of competent state agencies

1. To receive dossiers of registration for private placement of shares under this Decree and relevant laws.

In case of incomplete and invalid dossiers of registration for private placement of shares, competent state agencies shall, within 10 days after receiving these dossiers, request in writing placing institutions to supplement or modify their dossiers.

1. Within 15 days after receiving complete and valid registration dossiers, to notify such to registering institutions and publish on their websites lists of institutions registered for share placement under their management, made according to a set form provided in an appendix to this Decree (not printed herein).

In case placing institutions are enterprises engaged in conditional business lines, if relevant laws otherwise provide for, the order and procedures for receiving and processing dossiers must comply with these laws.

The order and procedures for receiving and processing dossiers for registration of private placement of shares shall be publicized at competent agencies.

1. No later than the 5th every month, to send to the Ministry of Finance (the State Securities Commission) written and electronic lists of institutions which registered for private placement of shares in the last month with complete and valid dossiers, made according to a set form provided in an appendix to this Decree (not printed herein).

www.LuatVietnam.vn

1. No later than the 25th every month, the Ministry of Finance (the State Securities Commission) shall sum up and publish a list of placing institutions of all economic sectors which registered in the last month, made according to a set form provided in an appendix to this Decree (not printed herein).
2. To supervise activities of private placement of shares and handle according to their competence violations of this Decree’s provisions on private placement of shares.

Chapter III

PRIVATE PLACEMENT OF SHARES

Article 8. Conditions on a private placement of shares

1. The placing institution is an enterprise defined in Article 2 of this Decree.
2. There is a decision of the Shareholders General Meeting or the Board of Directors adopting a plan on private placement of shares and a plan on use of proceeds from the placement according to the company charter or under the authority given by the Shareholders General Meeting to the Board of Directors (for joint-stock companies); or authority of the Members Council or the company owner (for limited liability companies transformed into joint-stock companies); the enterprise owner, for wholly foreign-owned