

Vietnam's Draft Amended Law on Securities: Potential Implications for Pre-IPO Investments

Vietnam's listed equity market is entering a more active phase as market upgrade reforms improve foreign investor access, settlement mechanics and post-closing liquidity. FTSE Russell has confirmed Vietnam's reclassification from Frontier Market to Secondary Emerging Market status, effective from the open on 21 September 2026. Vietnam's market upgrade reforms should support more sophisticated foreign investments with greater execution certainty and improved liquidity.

This article highlights recent proposed amendments to the Law on Securities that could materially change how issuers and investors structure pre-IPO equity investments.

Under the current framework, an issuer undertaking an initial public offering (IPO) must sell a prescribed minimum percentage of its voting shares through the registered offering. The June 2026 draft would shift the focus to the issuer's shareholder structure after the offering. If enacted in its present form, the change could allow qualifying pre-IPO shareholdings to contribute to the distribution threshold assessed after the IPO.

This would give issuers greater flexibility in allocating shares between a pre-IPO investment and the public offering. It would not, however, remove the need to achieve a sufficiently broad shareholder base. Nor would it eliminate the separate public-float, foreign ownership, approval and lock-up considerations that apply to a pre-IPO investment.

September 2026



The proposed changes

Under the current Law on Securities, an issuer must generally satisfy the following distribution requirement as a condition of an IPO:

- at least 15% of its voting shares must be sold to at least 100 investors who are not major shareholders; or
- if the issuer has charter capital of VND1,000 billion or more, at least 10% of its voting shares must be sold to at least 100 investors who are not major shareholders.

A major shareholder is generally a shareholder holding at least 5% of the issuer's voting shares.

The present test focuses on shares sold through the registered IPO. Consequently, shares subscribed for or acquired in a private pre-IPO transaction ordinarily cannot be relied upon to reduce the minimum percentage that must subsequently be offered through the IPO.

The June 2026 draft takes a different approach. Rather than requiring the prescribed percentage to be sold through the IPO, it would assess whether, following completion of the offering, the prescribed percentage is held by at least 100 investors who are not major shareholders. The draft law proposes amending the relevant provisions of the Law on Securities so that an IPO would be cancelled if, following completion of the offering, the issuer failed to satisfy the following threshold:

- at least 15% of its voting shares, including shares distributed in the IPO, must be held by at least 100 investors who are not major shareholders; or
- for an issuer with charter capital of VND1,000 billion or more at the time of IPO registration, at least 10% of its voting shares, including shares distributed in the IPO, must be held by at least 100 investors who are not major shareholders.

The wording therefore appears to shift the regulatory focus from the percentage sold in the IPO to the percentage held by qualifying shareholders after the IPO. If adopted in its current form, it could affect the sequencing, size and allocation of both pre-IPO investments and public offerings.

Potential implications

The most significant implication is that shares held by qualifying pre-IPO investors may potentially contribute to the post-IPO distribution threshold. This could create more flexibility than under the current regime. For example, an issuer might complete a private equity investment with several investors before the IPO and then undertake a smaller public offering, provided that the issuer's post-offering shareholder structure still satisfies the applicable percentage and investor number requirements.

Transaction parties should avoid assuming that every pre-IPO investment below 5% will automatically qualify.

The proposed amendment could allow an issuer to undertake a smaller IPO where qualifying pre-IPO and existing minority shareholders already account for part of the required post-offering distribution.

This may be particularly valuable for large issuers for which a 10% public offering represents a substantial value or for those wishing to raise capital in stages. A smaller offering may be legally possible, but the issuer would still need an offering of sufficient scale and distribution to complete the IPO successfully and support the intended listing.



Structuring the **pre-IPO** investment

The proposed reform may affect the choice among a primary subscription, a secondary acquisition, or a combination of both.

Primary subscription

A primary subscription provides capital directly to the issuer and increases its total number of outstanding shares. It therefore changes the denominator used to calculate both the investor's percentage holding and the percentage held by qualifying non-major shareholders.

A subscription may be structured so that the investor remains below 5% after both the pre-IPO issuance and the IPO. This could allow the investment to contribute to the proposed shareholder-distribution test while avoiding major-shareholder status.

The calculation should be performed on a fully diluted and post-IPO basis. An investor holding less than 5% immediately after the pre-IPO investment could cross that threshold if the IPO is smaller than anticipated or if another planned issuance does not proceed.

Secondary acquisition

A secondary acquisition does not provide new capital to the issuer and ordinarily does not increase the total number of outstanding shares. It may nevertheless alter the distribution of shares between major and minority shareholders.

A secondary pre-IPO acquisition by a non-major investor could potentially contribute to the post-IPO distribution threshold. This would represent an important difference from the current minimum distribution test, under which a bilateral transfer completed outside the registered IPO should not be treated as shares sold through the offering.

Multi-investor pre-IPO rounds

The proposed test could make multi-investor pre-IPO rounds more attractive. Investments by multiple genuinely independent minority investors may count towards both the required shareholding percentage and the minimum number of qualifying shareholders.

Listing public-float test and major shareholder status

Even if the proposed amendment may change the IPO analysis, the issuer must separately satisfy the listing requirements applicable at the time of its listing application.

The IPO test assesses whether the public offering has satisfied the conditions for completion. The listing test separately assesses whether the issuer's shareholder structure meets the applicable requirements at the time of listing. The proposed amendment may make the two tests more closely aligned, but they remain separate legal and procedural requirements.

A pre-IPO investor holding less than 5% may potentially contribute to both:

- the proposed post-IPO distribution requirement; and
- the listing public-float requirement.

An investor may qualify immediately after the IPO but cease to qualify before listing because of further acquisitions, related person aggregation or changes in the issuer's capital. To preserve the possibility that the pre-IPO investor's shares will count towards the percentage held by non-major shareholders, the parties should carefully manage the 5% threshold.

Foreign ownership limits and statutory transfer restrictions

A pre-IPO investment remains subject to the foreign ownership room available to the issuer and any statutory transfer restrictions affecting the shares acquired by the investor or retained by the seller.

A secondary acquisition from a Vietnamese shareholder generally increases the foreign ownership percentage without increasing the number of outstanding shares. A primary subscription increases both the number of foreign-held shares and the issuer's total outstanding shares, requiring foreign ownership to be recalculated after the issuance.

A substantial allocation to a foreign pre-IPO investor may therefore reduce the room available for foreign investors in the IPO or in subsequent market trading. The issuer should model shareholder distribution and foreign ownership together rather than as separate workstreams.

Under the existing IPO framework, pre-IPO major shareholders must collectively commit to retain at least 20% of the issuer's charter capital for at least one year following completion of the IPO. A pre-IPO transaction may change which shareholders are subject to that commitment and whether sufficient shares remain available to support it.

Separate transfer restrictions upon listing may apply to shareholders who hold specified management positions, organisations represented by such managers, and major shareholders related to them. Those persons must generally undertake to retain 100% of their shares for six months from the first trading date and 50% for the following six months.

The IPO and listing transfer restrictions apply independently, although the same shareholder may be subject to both.

Conclusion

The June 2026 draft of the amended Securities Law could materially improve the flexibility available for pre-IPO investment in Vietnam. Its key proposal is not the removal of the 15% or 10% distribution requirement, but a change in how that requirement would be measured.

If enacted in its present form, the test would focus on the percentage of voting shares held by at least 100 non-major shareholders after the IPO, including shares distributed in the offering. This may allow qualifying pre-IPO holdings to contribute to the threshold and could reduce the minimum size of the subsequent public offering.



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Kinstellar Southeast Asia, in cooperation with Asia Counsel Vietnam Law Company Limited, is a leading law firm based in Ho Chi Minh City with over a decade of experience advising international and Vietnamese investors. Our team of more than 30 legal operatives combines deep local insight with international standards to deliver precise, business-focused legal advice.

In our corporate and capital markets practice, we advise issuers, pre-IPO investors, funds and financial institutions on equity fundraising, IPO readiness, listing requirements and shareholder structuring in Vietnam, including the foreign ownership, public-float and lock-up considerations that apply alongside the securities offering regime.

Our clients span multinational corporates, funds, financial institutions and Vietnamese enterprises across a range of sectors.

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