

CERTIFICATE OF SECURITIES DEPOSITORY

What is certificate of securities depository?

1. In the world:

Depository Certificate is globally understood as Depository Receipts, in short DR. DR is a type of security traded at the domestic stock exchange, in the local currency and representing the shares of foreign companies

We have 02 types of DR internationally which are Global Depository Receipt (GDR) and American Depository Receipt (ADR).

GDR is the type of security issued outside the country where the stock market has the Company's listed share and outside the USA. GDR depository issuing Bank usually has its head office or branches in the country where the stock exchange has the DR issued.

2. In Vietnam:

Depository certificate is a type of security issued on the basis of security of an organization established and operating legally in Vietnam.

That of, pursuant to Law on Securities 2019, DR is a legal security in Vietnam. DR is formed based on the number of new shares actually issued as the basis for issuing depository certificates and the number of shares currently in operation according to Decree 155/2020/NĐ-CP¹.

As prescribed in the current Law on Enterprises², Depository receipts without voting rights have economic benefits and obligations corresponding to the underlying ordinary shares, excluding voting rights.

From the above-mentioned information, we can make a summary of Depository Receipts without voting right (also known as "NVDR": Non-voting Depository Receipts) as NVDR is a type of security, issued for the foreign investor, by the subsidiary of the Stock Exchange and the owner of this type of security in accordance with the legal provisions in Vietnam shall receive the economic benefits and obligations corresponding to the underlying common shares but do not have the right to vote.

In Vietnam, the underlying security used for forming NVDR is different from the world as the Law only mentions common shares.

¹ Clause 1 Article 79 Decree 155/2020/NĐ-CP: "Depository certificate issuers may only issue depository certificates on the basis of the number of shares, including: the number of new shares actually issued as the basis for issuing depository certificates and the number of shares currently in operation.";

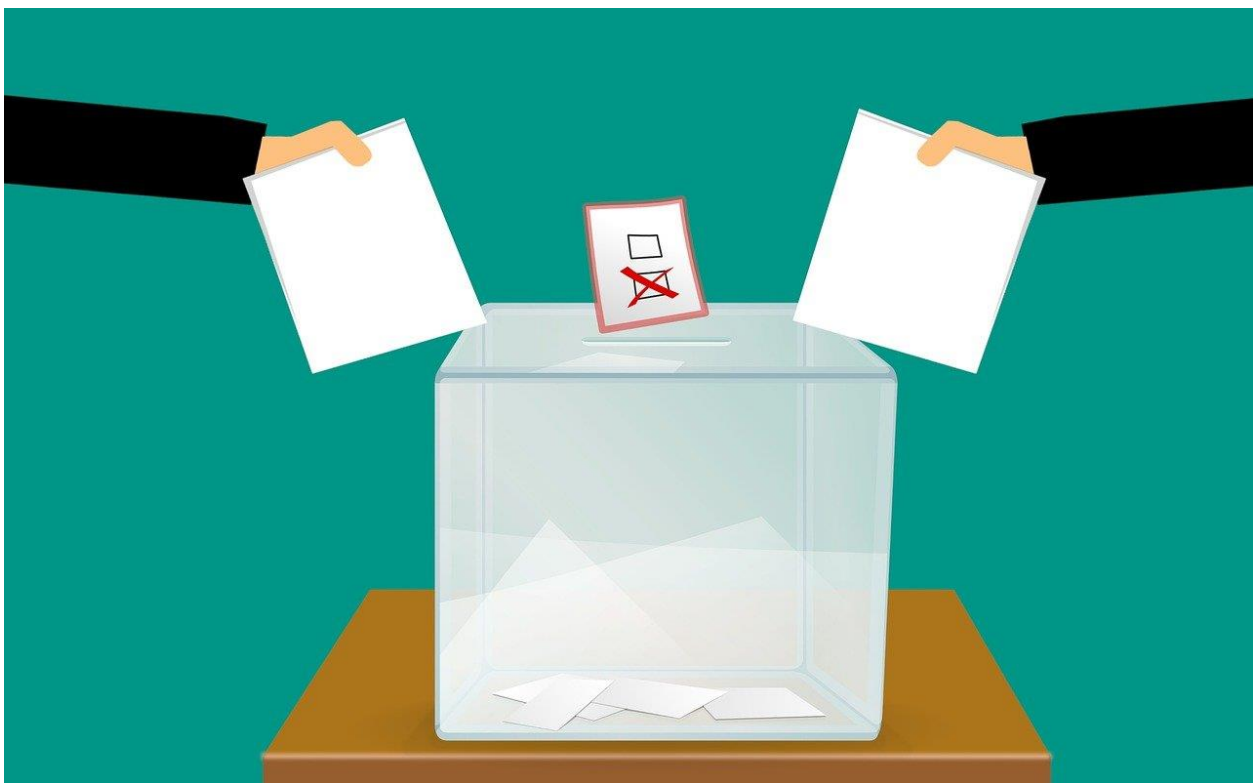
² Clause 6 Article 114 Law on Enterprises 2020: "Depository certificates without voting rights have economic benefits and obligations corresponding to the underlying ordinary shares, excluding voting rights."

This type of security is a solution for a complication of dealing with the risk of being acquired by the foreign investors while expanding the foreign ownership ratio³ cannot completely tackle the issue.

NVDR, appears as a bandage binding the wound of bleeding money stream out of enterprises by balancing 02 targets (1) attracting capital fund from foreign investor; (2) avoid the acquisition of foreign investors, especially those key business field or industries that the domestic enterprises are not sufficiently competitive.

However, until now, the legal framework for regulating NVDR still have many inadequacies, along with the list of questions related to this type of securities including:

- What is the issue rating of NVDR? How many NVDR can converted from one ordinary common share?
- Whether those owners of NVDR would receive the financial benefits directly or indirectly from those Companies having the common shares using for converting to NVDR?



NVDR 1 - Non-voting Depository Receipts – Source: Internet

³ The maximum percentage of shares that foreign individuals or organizations own for a share code in a joint-stock company that has or has not been listed on the stock exchange in accordance with the law.

Lessons learned from Thailand

1. Operating Method

Pursuant to Part 1 & 2 of the Prospectus about issuance of non-voting depositary receipts of Thai NVDR Company Limited, NVDR is a new type of security issued by an Issuer. The Issuer is the subsidiary of the Thailand Stock Exchange (SET) with the function of issuing NVDR and sells those to the investors based on the ownership of the underlying securities of the Companies listed on SET. The securities using as the basis of issuing NVDR: (i) Shares; (ii) warranty; (iii) the subscription right to purchase convertible shares.

According to Thailand regulations, any investor, inside or outside the country, has the right to own NVDR. The ownership of NVDR brings to them financial benefits only, they cannot interfere in any decision of managing the Company. However, when the Company has the plan to delist the underlying securities on the SET, the Issuer, in this situation is a shareholder, is entitled to exercise the voting right at the General Meeting of Shareholders. Besides, before exercise the voting right, the Issuer has to obtain the opinions of the owners of NVDR.

When the investors have the purpose to own this type of security, pursuant to Part 3 of the Prospectus about issuance of non-voting depositary receipts of Thai NVDR Company Limited, the investors need to place an order through an Agent on the SET. Based on the given order, the Issuer would determine the target Company as well as the number of shares to be purchased. Once the shares of the target Company have been purchased, the Issuer would use the owned underlying security as the basis of issuing NVDR, in a ratio of 1:1, for every share will be used for issuing an NVDR. And lastly, sell NVDR to those investors who have placed the buy order.

As the owner of NVDR, the investors have the right to resell NVDR to the Issuer, transfer NVDR to any other investors, exchange NVDR into other base security or vice versa, except in certain specific case.

When the investors completely own NVDR, they have to notice that any financial profits they received would be indirectly through the third party which is the Issuer.

For instance, when the target Company aims to pay dividends in cash, the Issuer as a shareholder would receive those profits. Then, they would send it back to those investors having name listed on the NVDR Registered Book.

2. Relationships between the involving entities

The relationship between the NVDR investors and the NVDR Issuer: Pursuant to the Part 5.1 of the Prospectus about issuance of non-voting depositary receipts of Thai NVDR Company Limited, NVDR is the The NVDR constitutes a direct, general, unconditional and unsecured obligation of the Issuer towards the NVDR investors. The Issuer would be

the intermediary of the NVDR investors and the target Company. When the Issuer receives any financial profits from the target Company, the Issuer would send it back to the NVDR owner with the corresponding provided ownership ratio. The NVDR owners will also execute their legal rights and obligations against their NVDR through the Issuer.

The relationship between the NVDR Issuer and the target Company: Basically, the NVDR Issuer is a shareholder of the Company as a result of owning the shares in the Company. However, because the purpose of owning the underlying security is to issue NCDR so that the voting right of the Issuer is restricted, except in certain specific case. However, in the General Meeting of Shareholders, the Issuer still has the right to distribute the number of votes for other shareholders to represent the Issuer execute the voting right.

The relationship between the NVDR investors and the target Company: There is no direct interaction between these two entities. The investors only receive the financial benefits through the Issuer.

Proposal for the legal framework of Vietnam on DR

The fact that Law on Securities 2019 and Law on Enterprises 2020 provide regulations over NVDR as a legal security helps creating new opportunity for foreign investors, promote the mobilization of foreign capital in a more effective way. Also, helping in untying the knot of restricting management rights as well as interfering with the policy and development orientation of enterprises from the owners of foreign cash flows.

However, the regulation of Vietnam only takes the first step as identify and provide basic regulations is still behind the daily developments. This would lead to an incompletely utilizing the function of NVDR. In addition, it can get to the consequence of misunderstanding the regulations and apply those wrong.

The ideal legal framework that Vietnam is reaching has to solve the following questions: (i) NVDR issuance mechanism; (ii) NVDR trading mechanism; (iii) NVDR operation mechanism; (iv) Mechanism of distribution of voting rights.⁴

The questions arises that the regulated underlying security used for issuing NVDR in Vietnam is shares, and the Issuer would issue the NVDR for the foreign investors based on those underlying security the Issuer owned, so, whether the Issuer has the rights and obligations as a shareholder of the target Company or not? What is the relationship between the foreign investors and the target Company?

⁴ LLM. Luu Minh Sang, Le Thi Thuy Duong – Building the legal framework of NVDR – Lessons learned from Thailand.

In the near future, the legal framework of Vietnam should provide more specific and stricter regulations about the NVDR to protect the lawful rights and obligations of not only the foreign investors but also the domestic enterprises.

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Best regards

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