

Vietnam: foreign equity cap for public companies lifted

The Government on 26 June 2015 issued landmark Decree 60/2015/ND-CP (“Decree 60”) to lift the 49% foreign limit on ownership of equity in public companies, amongst others. This long-awaited Decree is issued at a constructive time, when the several new laws affecting investment are taking effect this July 2015. This Briefing summarizes the most important changes under Decree 60.

Decree 60 is intended to add vitality to the Vietnam stock markets and an extra boost to the equitization of State enterprises, as part of a plan to upgrade Vietnam from “frontier” market classification to “emerging” market classification at MSCI. It is reported that the shares with strongest liquidity on Vietnam stock exchanges are shares of issuers for which the 49% foreign equity quota has been used up.

Lifting of foreign equity cap

Under current securities laws, a foreign equity cap of 49% applies to all public companies. Decree 60 will lift this cap and, except in the following cases, a public company will no longer be subject to any foreign equity cap:

- If a public company operates in a sector where Vietnam’s WTO Schedule, an international agreement or relevant other Vietnamese laws provide for a foreign equity limit, the public company will be subject to such foreign equity limit, same as a

non-public company. As an example, a company, whether public or non-public, will be subject to the foreign equity cap of 65% if it engages in “non-facilities based on-line information and data processing services” because this is the level of commitment under Vietnam’s WTO Schedule.

- If a public company operates in a sector “conditional for foreign investment” where applicable relevant laws are silent on any specific equity cap, the public company will be subject to the cap of 49%.

Under Decree 60, “foreign equity” for the purpose of Decree 60 includes both (i) equity held by foreign investors and (ii) equity held by any entity incorporated in Vietnam in which foreign investors hold at least 51% of its charter capital.

The same foreign equity cap rules as above will apply to a State enterprise conducting an IPO in its equitization process unless the relevant laws on equitization provide otherwise.

Decree 60 also adds that there is no restriction on foreign investors investing in bonds, derivative securities issued in Vietnam or non-voting shares of public companies in Vietnam.

In the case of a public commercial bank, it is unclear whether foreign investors may subscribe for new non-voting shares after the “aggregate foreign shareholdings” in the bank reach the cap of “30% of its charter capital” as provided in current Decree 01/2014/ND-CP. Further guidance from relevant regulatory authorities appears necessary to resolve the conflicts among relevant regulations.

Permission for acquiring securities business entities

Foreign investors licensed in their home countries in any of the securities, banking or insurance sectors and having operated for at least 2 years in their home countries, if satisfying some other conditions, may acquire part or all of the equity of a securities company or a fund management company. Foreign investors not satisfying the above

conditions are limited to acquiring less than 51% of the equity of a securities company or a fund management company.

International offering and listing of investment fund

A fund management company may conduct an offshore offering to form an offshore investment fund or conduct an offshore listing of fund certificates issued by an onshore fund. The international offering or listing must be reported to the State Securities Commission.

More requirements on private placement of shares

A subsidiary of a public company issuer cannot buy its shares and additionally the public company issuer and a buyer of shares must not have the same parent.

In any of the following cases the offering plan submitted to the shareholders for approval must identify the specific buyer being offered shares:

- Offering to a buyer or a group of related buyers such that their equity holding can reach the threshold where a tender offer is required under the securities law;
- Offering to a buyer or a group of related buyers at least 10% of the charter capital in any issue tranche or in multiple tranches within a 12 months' period.

More requirements on conversion of debts to shares

Regardless of whether the issuer is a

public or non-public company, the offering plan submitted to shareholders for approval must provide (amongst other things) a list of debtors, value of their debts being converted, and the method and rate of conversion. A third party expert entity must be engaged to opine on the method and conversion rate. If their opinions are inconsistent with the intended conversion rate, the board of directors must submit an explanatory presentation to the shareholders.

If the issuer is a public company, the above third party expert entity must be an unrelated auditing firm or securities company with the appropriate license.

Easing restriction on redemption of shares

Decree 60 eases the restrictions on redemption of shares from certain types of shareholders. Current laws generally prohibit the redemption of shares from a manager of the issuer or its related persons, a holder of shares restricted from trading or a large shareholder. Decree 60 states that the above prohibition does not apply in the following scenarios:

- Redemption from shareholders in proportion to their shareholding;
- Redemption with a tender offer;
- Redemption pursuant to a court or arbitral order;
- Redemption of listed shares from a large shareholder via the automatic order-matching method.

Real estate investment funds ("REIF")

Decree 60 amends certain requirements for operation of an REIF. In particular:

- At least 65% of its net asset must be invested in qualifying real estate in Vietnam and/or shares of real estate companies of which at least 65% of revenues or income are derived from the real estate business;
- Government bonds should be excluded from the securities counted towards the investment in securities of one single issuer, which is capped at 5% of total asset value of the REIF.

Decree 60 also creates a legal framework for the contribution of capital in the form of real estate to a REIF.

Decree 60 will take effect on 1 September 2015.

If you have any questions in relation to the issues raised in this briefing please contact the authors below.

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