

Client Alert

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Relaxation of the 49% Cap on Foreign Ownership in Vietnamese Public Companies

Recent developments

As an effort to attract foreign investors in Vietnam's stock market, on 26 June 2015, the Government issued Decree No. 60¹ amending and supplementing certain articles of Decree No. 58² ("**Decree No. 60**"). Among the changes, the most welcomed amendment is the relaxation of the overall 49% cap on foreign ownership in Vietnamese public companies. This Decree No. 60 will be effective as of 1 September 2015.

New provisions on foreign ownership ratio in Vietnamese public companies

We set out below the new provisions on foreign ownership ratio in Vietnamese public companies and our comments, as follows:

1. Definition

"Foreign ownership ratio" means the total ownership ratio of shares or capital contribution with voting rights of all foreign investors and economic organizations in which foreign investors hold 51% of the charter capital or more³ in a public company, securities trading organization or securities investment fund.

"Foreign investors" means individuals with foreign nationality or organizations established under foreign laws and conducting investment and business in Vietnam.

2. Foreign ownership ratio in Vietnamese public companies under specific circumstances

¹ Decree No. 60/2015/ND-CP dated 26 June 2015 by the Government amending and supplementing certain articles of Decree No. 58/2012/ND-CP dated 20 July 2012 by the Government detailing the implementation of a number of articles of the Law on Securities and the Law on amending and supplementing a number of articles of the Law on Securities ("**Decree No. 60**").

² Decree No. 58/2012/ND-CP dated 20 July 2012 by the Government detailing the implementation of a number of articles of the Law on Securities and the Law on amending and supplementing a number of articles of the Law on Securities ("**Decree No. 58**").

³ Decree No. 60 is silent as to whether the "foreign ownership ratio" would include investments made by an economic organization which is 51% owned by an economic organizations in which foreign investors hold 51% of the charter capital or more.

2.1 Where foreign ownership ratio is provided under international treaties

Decree No. 60 provides that in the case where international treaties in which Vietnam is a member contain provisions on foreign ownership ratio, such international treaties will apply.

This means that, for example, where Vietnam's WTO commitments currently allow foreign ownership in certain business lines to be more than 49% (such as 65% for non facilities-based telecommunication services, or 100% for catering services), then foreign investors may cumulatively hold shares in a public company doing business in such business lines up to the ratio allowed by Vietnam's WTO commitments.

2.2 Where foreign ownership ratio is provided under domestic law

In the case of public companies operating in business lines and industries to which investment laws and relevant laws provide for a foreign ownership ratio, the provisions under those laws will apply.

For example, in the aviation sector, the regulations currently provide that the level of foreign investment in an airline may not exceed more than 30% of its charter capital.

However, Decree No. 60 goes on to provide for another case where a public company operates in *business lines and industries with conditions applicable to foreign investors* but there is no provision on foreign ownership ratio, then the maximum foreign ownership ratio will be 49%.

This case may cause difficulty in implementation because there is no official list of "*business lines and industries with conditions applicable to foreign investors.*" The new Investment Law 2014 provides for a list of 267 conditional business lines and industries, but it is unclear whether this is the list referred to by Decree No. 60.

2.3 Where public companies operate in multiple business lines and industries

In the case of public companies operating in several business lines and industries with different provisions on foreign ownership ratio, then the foreign ownership ratio will not exceed the lowest ratio applicable to the business lines and industries (in which such companies operate) to which there are provisions on foreign ownership, unless otherwise provided under international treaties.

The application of the lowest foreign ownership ratio in this case means that public companies will need to consider what is their core business, and might have to restructure (for example, closing or selling the part of their overall business that is subject to a lower ratio), if they wish to have a higher foreign ownership.

2.4 In other cases

For public companies that do not belong to the cases mentioned above, the foreign ownership ratio is unlimited, unless the company's charter provides otherwise.

With respect to State-owned enterprises undergoing equitization in the form of public offering of securities, the foreign ownership ratio will be in accordance with the laws concerning equitization. Where the provisions of law regarding

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equitization is silent, this ratio shall be in accordance with the respective provisions as mentioned above.

Notably, current regulations on equitization do not have specific provisions on foreign ownership ratios (other than referring back to the relevant laws). However, on a case-by-case basis, the relevant government authorities may also impose certain specific foreign ownership ratio in an equitization plan for a specific company.

3. Investments in bonds and other instruments by foreign investors

3.1 Bonds

Decree No. 60 allows foreign investors to invest without restrictions in Government bonds, Government-guaranteed bonds, local government bonds, and company bonds, except otherwise provided by applicable laws or the bond issuers. However, for convertible bonds, the issuers must ensure that the foreign ownership ratio upon conversion into shares or upon the purchase of shares will be in compliance with the provisions in the previous section.

3.2 Other securities

Foreign investors may also invest without restrictions in securities investment fund certificates, shares of securities investment companies, non-voting shares of public companies, derivative securities, and depository receipts, except otherwise provided by the charter of the issuer.

Decree No. 60 imposes reporting obligations, as applicable, to public companies and listed companies to report to the State Securities Commission and disclose information regarding foreign ownership ratio on their websites, websites of the Stock Exchange and the Vietnam Securities Depository Center.