

## Vietnam – Softening of foreign ownership caps on public companies July 2015



Decree 60/2015/ND-CP, which was issued last Friday and will enter into force as from **1 September 2015** ("**Decree 60**") contains long-awaited provisions that could **allow for majority and above control of public companies by foreign investors**. It is hoped that this development, together with the recent rationalisation of the Law on Investment and the Law on Enterprises effective 1 July 2015, will act as a catalyst for more foreign investment in the private and State-owned sectors in Vietnam.

By way of reminder, "public companies" include not only companies listed on the Ho Chi Minh and Hanoi stock exchanges, but also companies having conducted an IPO or companies with more than 100 shareholders and with a charter capital of VND 10 billion or more (being approximately USD 460,000). This means that the notion of a "public company" in Vietnam is much broader than listed equity.

Foreign shareholdings in such companies are currently limited at 49% in the aggregate. This foreign ownership cap has proved to be a real and practical hurdle to foreign investment not only in the major "blue chips" on the Vietnamese stock markets, where the "room" for foreign investment has been used up, but also on mid market acquisitions of unlisted joint stock companies with a large shareholder base.

The most relevant aspects of Decree 60, contained in Article 2a, are summarised and commented below. The items in **bold** set out the key changes and are departures from the previous draft Decree issued by the Government for comment earlier this month.

1. For public companies operating in sectors and/or business lines subject to foreign ownership limitation in international treaties, the maximum ratio of foreign ownership must be at the ratios stipulated in such international treaties. This is effectively means that the Government is confirming the current administrative approach of applying the minimum commitments under international treaties, such as the World Trade Organisation (WTO), as maximum foreign ownership thresholds. A number of sectors are covered and restricted by this clause, including telecoms and logistics.
2. For public companies operating in sectors and/or business lines subject to specific foreign ownership limitations in the Law on Investment or relevant specific sector laws, the maximum ratio of foreign ownership shall be as stipulated in such laws. This means that foreign investment in sectors such as banking, where foreign ownership caps are specifically set out in domestic regulations, will continue to be constrained by those caps. **The Decree goes on to stipulate that for public companies operating in sectors and/or business lines subject to conditions applicable to foreign investors but where no specific ratio on foreign ownership limitation has yet been issued, the maximum ratio of foreign ownership will remain 49%.**
3. For public companies operating across various different sectors, where the maximum foreign ownership cap may vary according to each different activity under Vietnamese law, the maximum ratio of foreign ownership cannot exceed the lowest ratio permitted for any one of the activities (unless otherwise provided in an international treaty).

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4. **For public companies operating in sectors and/or business lines other than the above, the ratio of foreign ownership is unlimited, unless otherwise provided in the charter of the company.**

The key uncertainty lies around the sectors which are "*subject to conditions applicable to foreign investors but where no specific ratio on foreign ownership limitation has been issued*" in item 2 above, and how this phrase will be interpreted by the authorities. We believe that it is unlikely that this phrase is intended to refer to the 267 conditional sectors listed in Appendix 4 of the new Law on Investment (of which many sectors apply equally to Vietnamese invested and foreign invested entities). Recent Ministerial declarations on this subject have been somewhat vague, although indications are that certain Ministries will issue further conditions for foreign investment in some specific sectors, which would trigger the application of the 49% cap on foreign investment in that sector. This is an area which we are continuing to monitor.

For completeness, please note that foreign ownership restrictions may apply where they are included in a company's charter pursuant to item 4 above (and in the context of an acquisition, the shareholders would need to vote for a change according to the voting thresholds set out in that charter).

Restrictions on private ownership which will impact on foreign investment may also continue to apply in the case of equitizing (privatising) State-owned enterprises (SOEs) in certain strategic industries pursuant to Decision 37/2014/QD-TTg of the Prime Minister dated 18 June 2014, on criteria and lists for the classification of SOEs.

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