



# New regulations on foreign ownership of Vietnamese companies

This briefing outlines the new regulations on foreign investors' participation in Vietnam's securities market effective from 1 June 2009.

Decision 55 dated 15 April 2009 on foreign investors' participation in Vietnam's securities market (Decision 55) applies to the purchase and sale of 'securities in Vietnam's securities market', in other words, to investments in listed companies, public companies and other entities subject to the Securities Law.

## Foreign investors

'Foreign investors' include:

- foreign individuals (including those residing in Vietnam);
- overseas Vietnamese who do not have Vietnamese nationality;
- entities established under foreign laws and their subsidiaries in Vietnam; and
- a local entity whose foreigners hold together more than 49 per cent of its capital.

Decision 55 clarifies when foreign-invested local investment funds should be considered as local investors or foreign investors. This issue was not addressed in the regulations until now. There were some grounds (see our Sector Update of January 2009 on Decision 121 of the Ministry of Finance dated 24 December 2008 issuing regulations on activities of foreign investors in the Vietnamese securities market) to argue that even 99 per cent foreign-invested local investment funds should be treated as local investors. It is now clear that local investment funds and local securities investment companies will be treated as foreign investors if foreigners hold more than 49 per cent of the units or shares issued by any such vehicle.

## Limitations applicable to foreign investors

Some of the foreign ownership limitation (FOL) remain substantially the same as before:

- foreign investment in local listed entities (49 per cent cap);
- foreign investment in local securities companies and fund management companies (49 per cent cap); and
- unlimited foreign investment in bonds (the only difference is that Decision 55 specifies that the issuer may impose limits in respect of the aggregate foreign ownership of its bonds).

The principal change is that the FOL threshold in respect of public companies, public investment funds and public securities investment companies has been increased to 49 per cent. This is an improvement compared to the prevailing approach taken by the Vietnamese authorities. Until now, although the legal grounds were debatable, the aggregate foreign ownership in companies traded on the over-the-counter (OTC) market and other public companies was limited to 30 per cent or 40 per cent of the capital of such OTC company.

Under Vietnam's Securities Law, 'a public company is a joint stock company falling within any of the following three category: (a) a company whose securities have been offered to the public; (b) a company whose securities have been listed in a Stock Exchange or Securities Trading Centre; (c) a company whose securities are owned by at least 100 investors, excluding professional securities investors and whose contributed charter capital is VND10 billion or more' while 'public offering

of securities means an offering of securities according to one of the following methods: (a) via the mass media, including Internet; (b) offering of securities to 100 investors or more, excluding professional securities investors; (c) offering to an unspecified number of investors'. Professional securities investors include commercial banks, finance companies, finance leasing companies, insurance companies and securities trading organisations.

Public investment funds and public securities investment companies are local investment vehicles supervised by Vietnam's State Securities Commission that are allowed to offer their shares or units (as the case may be) to the public.

The result of the foregoing change is that in aggregate foreign investors will now be entitled to own up to 49 per cent of the total shares of both listed and unlisted public companies. As before, this percentage could be lower if laws applicable to certain sectors provide lower caps (such as the specific FOLs rules in respect of credit institutions – the aggregate foreign ownership in a single bank is limited to 30 per cent and each foreign investment in an unlisted bank is subject to the approval of the State Bank of Vietnam). It can also be higher or lower if specific FOLs in Vietnam's commitments upon accession to the World Trade Organization ('Vietnam WTO Commitments') require it.

## Uncertainty in respect of acquisitions of existing shares in local securities businesses

Decision 55 only deals with foreign investors' 'capital contributions and purchase of shares for establishment of securities companies and fund management companies, but not with the transfer of existing shares to a foreign investor. Therefore, it is unclear whether foreigners are allowed to purchase existing shares from existing shareholders in securities companies or fund management companies. This uncertainty is unfortunate given that the securities authorities have recently revamped the regulations on establishment and operation of securities companies (Decision 27/2007/QD-BTC of the Ministry of Finance dated 24 April 2007, as amended by Decision 126/2008/QD-BTC of the Ministry of Finance dated 26 December 2008) and the regulations on establishment and operation of fund management

companies (Decision 35/2007/QD-BTC of the Ministry of Finance dated 15 May 2007, as amended by Decision 125/2008/QD-BTC of the Ministry of Finance dated 26 December 2008) and in light of the recent acquisitions by foreign investors in local securities firms and asset managers approved by the State Securities Commission.

Under Decision 55, foreign investment in local securities companies is only open to securities trading organisations, while only foreign insurance companies and foreign securities trading organisations operating as investment fund managers are allowed to invest in local fund management companies. For both local securities companies and local fund management companies, the aggregate foreign ownership in any single local entity is limited to 49 per cent of its charter capital.

## Grandfather clause

If an investment made by a foreign investor before Decision 55 breaches any FOL set out in Decision 55, the relevant foreign investor will not have to unwind its investment. Although Decision 55 does not clearly specify it, it is likely that the foregoing partial 'grandfathering' will be conditional upon the initial investment having been made under the applicable FOL rules at the time of investment.

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