

Client Update: Vietnam Laws – 27 April 2007

Foreign shareholding in Vietnamese banks

In brief: On 20 April 2007, the Government of Vietnam passed Decree 69/2007/ND-CP on Purchase by Foreign Investors of Shareholding in Vietnamese Commercial Banks (**Decree 69**). Partner Bill Magennis and Lawyer Julia Howes look at some of the key changes.

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A much anticipated decree

The revision of regulations on foreign share purchases in Vietnamese shareholding banks, locally known as joint stock commercial banks (**JSCBs**), has been anticipated by foreign investors for a long time. The amendments were originally scheduled to be finalised by the end of June 2004 under Decision 109-2004-QD-NHNN of the State Bank of Vietnam, dated 30 January 2004.

Despite taking a number of key steps in 2005 and 2006 by drafting and releasing the decree for public comment, the release of the final decree was delayed. Technical difficulties in drafting the document were not the cause: Decree 69 is a straightforward decree of only eight pages. However, political sensitivities, other changes to the banking regulatory framework and World Trade Organization accession have all played a part in the delay.

Foreign shareholding caps

Decree 69 contains the following restrictions on foreign investment in JSCBs, including JSCBs that are listed and State-owned banks undergoing 'equitization' (a process akin to whole or partial privatisation):

- The maximum number of shares that can be owned by foreign investors and their affiliated persons combined is 30 per cent. This is consistent with Part II of the Schedule of Specific Commitments in Services to the *Report of the Working Party on the Accession of Viet Nam* (WT/ACC/VNM/48).

The new reference to affiliated persons of foreign investors is interesting. We understand that 'affiliated persons' includes joint venture banks and wholly owned, foreign invested banks licensed in Vietnam and, if so, reduces the attractiveness of establishing these entities.

- A foreign strategic investor can have a shareholding of up to 15 per cent of the charter capital of a JSCB, or 20 per cent if the specific approval is given by the Prime Minister on the proposal of the Governor of the State Bank of Vietnam. Therefore, the recent announcements made by some foreign investors (such as United Overseas Bank, HSBC and Deutsche Bank) that they have struck deals to acquire up to 20 per cent in a JSCB will still require specific State Bank backing and Prime Ministerial approval: Decree 69 does not give these investors a right to the entire acquisition.

A strategic investor is defined as a reputable foreign credit institution with financial capacity and ability to provide assistance to the JSCB during the development of banking products and services, raising managerial and executive capability, and applying modern technology; and which has strategic advantages connected with the strategy for development of the JSCB, and which satisfies the specific criteria stipulated by the JSCB.

A strategic investor must provide a written undertaking to provide assistance to the JSCB in relation to the matters listed above. In earlier drafts, the undertaking had to be made to the State Bank; in later drafts the undertaking had to be made to the JSCB; but in the issued Decree 69 it is unclear to whom the undertaking must be made. In the absence of direct language, we assume it is only to the JSCB.

- Other foreign credit institutions can have a shareholding of up to 10 per cent only of the charter capital of a JSCB.
- Foreign investors that are not a credit institution can have a shareholding of up to 5 per cent only of the charter capital of a JSCB.

Governor approval required

Decree 69 provides that the Governor of the State Bank must give written approval for the purchase by a foreign credit institution of a shareholding in a JSCB.

Limitations

A foreign credit institution may only participate in the board of management of up to two JSCBs and may be the foreign strategic investor in one JSCB only.

Conditions

The JSCB selling shares to foreign investors must satisfy the following conditions:

- Minimum charter capital of VND one trillion.
- Healthy financial status and meets the conditions (unspecified) of the State Bank.
- The management and executive structures, and the internal inspection and audit systems, all operate effectively.
- It has not received a penalty from the State Bank or another appropriate authority in the past 24 months for breach of any regulations on safety (for example, prudential regulations).

These conditions are new to the issued Decree 69; they did not appear in earlier drafts. Exemptions are contemplated under Decree 69 but only on the application of the State Bank to the Prime Minister, who is ultimately responsible for granting the exemptions.

A foreign credit institution purchasing shares in a JSCB must satisfy the following conditions:

- Minimum total assets of US\$20 billion.
- International operating experience in the banking sector.
- It has the required international credit rating.



Assignment

Foreign strategic shareholders are restricted from assigning their shares in a JSCB for a period of five years. Foreign credit institutions (that are not strategic shareholders) holding shares that equal 10 per cent of the charter capital of a JSCB are restricted from assigning their shares for a period of three years.

Effectiveness

Decree 69 is effective 15 days from publication in the official gazette. Publication had not occurred by the date of this *Client Update*.

Translation

An English translation of Decree 69 is available by clicking [here](#).

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