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## New policy can change owner limit approach

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Attracting international investment flows into state-owned enterprises by increasing foreign ownership limits will bring equal treatment between domestic and overseas investors. Tran Thi Thanh Huyen, partner at NHQuang&Associates, discusses the bottlenecks in the equitisation process and how important the revision of the relevant laws to international ventures is.



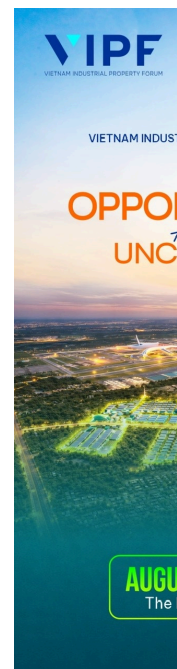
Revisions across several related laws will see state-owned enterprises open up for deeper investment  
Photo: Le Toan

Foreign investment supports the restructuring of state-owned enterprises (SOEs) and creates a source of quality goods for the stock market. It also promotes the transparency of the market, enhances efficiency of state investment, and contributes to speeding up the sale of state capital in enterprises that the state no longer needs to hold. In association, it also “ensures income sources in accordance with the medium-term public investment plan for the 2016-2020 period, and accelerates the restructure of SOEs in order to focus on key stages of the economy”, as pointed out in 2017’s Decision No.1232/QD-TTg on approving the list of SOEs undergoing divestment in the 2017-2020 period. In recent years, many leading SOEs have equitised and been listed on the stock market.



Looking back on policies of attracting foreign investment into SOEs in Vietnam, prudence has been found in the state’s development policies. The policy to allow equitised SOEs to sell shares to overseas organisations and individuals commenced with the prime minister’s regulations originating from Decree No.44/1998/ND-CP in 1998 on transforming SOEs into joint stock companies.

The specific foreign ownership limit (FOL) was officially recognised in Decree No.64/2002/ND-CP in 2002, whereby foreign investors are allowed to acquire shares with total value



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not exceeding 30 per cent of the purported enterprise's charter capital.

Documents regulating SOE transformation into joint stock companies from 2004 until now have continually recognised

foreign investors' right to own shares in equitised SOEs. Nonetheless, those documents do not specify the shareholding rate of such investors but drive them to comply with relevant legislative documents.

In the 2005-2014 period, relevant legislative documents comprise of the Law on Investment 2005 and its guiding documents. The most significant one among them is 2009's Decision No.88/2009/QĐ-TTg, which promulgates the regulation on capital contribution and share purchase of foreign investors in Vietnamese enterprises.

### **Legalities and regulations**

The regulation states that such investors shall contribute capital or purchase shares at the ratio approved by competent authorities in SOEs, but not exceeding the threshold prescribed by specialised regulations and relevant international treaties to which Vietnam is a signatory (for enterprises operating in trade and services), and not exceeding the ratio for the industry stipulated with the lowest shareholding of foreign investors (for enterprises operating in multiple industries).

Thus, the FOL in equitised SOEs rose from 30 per cent of the charter capital to a ratio to be specified in a sectoral regulation, or else, to an unlimited ratio (100 per cent), according to Decision 88.

After the FOL of 30 per cent was removed, the legal framework on limit for overseas investor ownership in equitised companies includes the Law on Investment, and the Law on Securities along with their guiding documents. However, these regulations then refer to other regulations instead of providing a certain number.

Decree No.60/2015/ND-CP issued in 2015 providing guidelines for the Law on Securities emphasises that when SOEs conduct equitisation by public offering of securities, the rate of foreign shareholding shall comply with regulations on equitisation.

If there is no relevant regulation, this ratio shall (i) follow international treaties to which Vietnam is a signatory; (ii) comply with specialised legislations; (iii) not exceed 49 per cent for conditional business lines but without specific provision for foreign ownership ratio; or (iv) not be limited if it is not subject to the cases in the first three situations. This guideline is considered to make it easy for foreign investment flow into equitised enterprises. International investors can own 100 per cent capital in enterprises with unconditional business lines, and it seems to meet the demands from SOEs that are hungry for capital resources and efficient business management skills.

In spite of these, these regulations do not reach the expected results. Several enterprises still meet obstacles in attracting foreign investment when they want to offer securities to the public. In fact, enterprises usually register many business lines for easily doing business, and those lines may contain conditional ones.

The Law on Securities and other regulations have not stipulated any comprehensive list of industries, conditional business lines for foreign ownership, and legal documents specifying the maximum ownership rate of overseas investors for conditional business lines are limited.

Moreover, the Law on Investment requests that economic organisations with more than 51 per cent of charter capital owned by such investors must register with the investment management agency. It causes troublesome registration procedures and compliant costs for public enterprises, especially listing enterprises of which the ownership ratios depend on market transactions, and for SOEs which have plans to transform into equitised enterprises, for the reason that SOE equitisation plans must show the foreign investment ownership in order to obtain competent authority approvals before an offering. This will cause delay in an offering for foreign investment.

### **Influencing management**

With the aforementioned provisions, it is requested to amend the Law on Securities for clarifying the definition and principles of determining the ownership ratio of foreign investors

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in the listing companies on Vietnam's stock market so as not to overlap with the Law on Investment, and ensure the transparency of legal provisions and ease of implementation.

Equitisation of SOEs has been strongly implemented in some other countries, such as Russia, the Czech Republic, Slovakia, Singapore, and China. Some researchers have pointed out that the foreign investors' participation impacts the profit and business management of equitised SOEs. The government is encouraged to divest in SOEs through asset sales, equitisation, and mergers and acquisitions.

In China, the government's efforts to equitise SOEs from 2014 so far have made their SOEs more competitive and also strengthened the state's ownership. The Chinese government does not only focus on the value of its share sales but also looks for opportunities to expand markets, and increase branding and business administration for Chinese corporations, such as the equitisation of Air China, China Construction Bank, and the Bank of China.

At present, the National Assembly is discussing the draft amendments to the Law on Securities, the Law on Investment, and the Law on Enterprises. A policy covered throughout three bills is the state's divestment and improvement of business efficiency in the current SOEs as mentioned in the prime minister Directive No.01/CT-TTg dated January 5 on boosting SOE restructuring.

In the government's proposal on revision of the Law on Securities, it suggests to revise current regulations on foreign ownership toward respecting (i) international commitments with provisions on ownership ratio of international investors; (ii) specialised laws that specify the foreign investor ownership ratio; (iii) conditional business lines with specified ownership ratio (where such provisions shall apply); and (iv) business lines for which foreign investment or ownership ratio has not been mentioned, then the ownership ratio of such investors will not be limited.

This proposal also suggests adding a definition on foreign ownership ratio in public companies, namely, it is the total ownership by all overseas investors and economic organisations over shares or capital contributions with voting rights, which equals 51 per cent or more of the total charter capital of a public company.

It is expected from the government that revisions of such laws will help attract foreign funding into SOEs, open up opportunities for innovation in business administration, and make divestment in SOEs more transparent. Moreover, increasing the limits of ownership in equitised SOEs will help such enterprises access overseas securities markets.

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