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Indirect investment in the form of shares acquisition

By Le Hong Phong

We expect that indirect investment in the form of shares acquisition of companies in Vietnam will soar in the coming months, given the country's accession to the World Trade Organization (WTO) and the opportunities created by the securities market. While the legal framework for the acquisition of shares of listed companies is helpful, there are certain obstacles that interfere with the acquisition of shares of non-listed companies.

Legal paths for foreign involvement

The Securities Law and related regulations govern the acquisition of shares of listed companies. Acquisitions can be of the currently listed shares or newly issued shares (not yet listed) of listed companies. Private placement with a company, for its newly issued shares, is a favorite route to secure the status of strategic investor when the State Securities Commission approves the issuance plan.

Buying shares of non-listed companies is another option for investors. While most of the acquisitions deal with shares of foreign invested companies, a substantial market of domestic companies records some foreign participation. This is attributable to the lack of enabling mechanisms in an area where legislators are puzzling with the parallel system of company registration in respect of the country's commitment to the harmonization of domestic and foreign investment. We expect that the new legislation will clarify the process and attract more foreign investment.

Foreign ownership and sectoral restrictions

Foreign ownership is capped at 49 percent (30 percent with banks) of the listed shares of a listed company, independently of sectors. Acquisition of shares of non-listed service companies is restricted to 30 percent in 2007 and open after that, with the exception of some sectors, as outlined by the WTO. Nonetheless, it seems that there is no restriction on purchasing shares of manufacturing companies. The differences in the market entry of various sectors could create difficulty in the acquisition of shares of non-listed companies active in multiple sectors, in terms of separating business and accounting for different transactions.

Notice requirements

To control takeover transactions, the Securities Law of Vietnam imposes various notice requirements on investors. An offer to acquire more than 25 percent outstanding shares of a public company will trigger a public offer to acquire (POA) procedure and the acquirer has to register the POA with the State Securities Commission and make a public offer to all shareholders of the target company. Additionally, the big shareholder who holds five percent (directly or indirectly) of voting shares of a public company must notify the target company, the State Securities Commission and the securities trading center where the shares are listed within seven days from the day it becomes big shareholder.

Acquisition and licensing procedure

The acquisition procedure varies, depending on the types of acquisition. The procedure is complex, especially when the deal activates the public offer process. Buying listed shares often involves securities companies and the requirement for a securities trading code from the authority. We advise that investors open a Vietnamise Dong indirect investment account in an authorised bank that has links to a reputable securities company. This facilitates the consummation of the transaction, the disposal of the acquired shares and ensures the deal's safety. We also recommend that the securities company regularly confirm the investors' trading activities to prevent system malfunction. Further consultation with local counsel is necessary to ensure the soundness of transactions.

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