

Indirect investment in Vietnam

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Securities business in Vietnam is flourishing, even though there are many legal barriers. This article provides some legal alerts to investors when doing business in this sensitive business field.

Vehicles of indirect investment

Vietnam Investment and Securities Laws provide foreign investors with several vehicles for making their indirect investment transactions in Vietnam, such as through the formation of companies, companies' branches, representative offices or share purchase in Vietnamese companies.

Companies open to foreign investors include securities companies and fund management companies in the form of wholly foreign owned enterprises and joint ventures. As mentioned in Vietnam's Schedule of Specific Commitments in Services to the WTO (Service Schedule), only representative offices and joint ventures with a 49 percent foreign equity ownership cap are permitted upon accession. Five years after accession, wholly foreign-owned companies are permitted.

As stipulated in the Government's Decree 14, foreign securities investment companies and securities investment funds would be given two options for purchasing the shares of Vietnamese enterprises: if they do not establish companies or branches in Vietnam, they would have to entrust local fund management companies for their indirect investment transactions. Establishment of branches may be permitted upon Vietnam's accession to the WTO but the permitted services are limited to trading for own account or for account of customers on an exchange or an over-the-counter market as specified in the Vietnam Service Schedule. The branches are permitted to provide full services five years after January 2007.

Foreign ownership limitation

Under the Prime Minister's Decision 238/2005/QD-TTg, foreign investors are permitted to hold maximum 49 percent of the total shares of a listed company. No foreign ownership limitation in holding bonds issued by a listed company is given, but when such bonds are converted into shares, the 49 percent foreign ownership limitation shall apply.

As to shares of an unlisted Vietnamese company, foreign investors are permitted to hold a maximum 30 percent of that company's chartered capital. One year after WTO accession, this

limitation for acquiring Vietnamese enterprises is eliminated, except for shares of local banks and some other unbound sectors. Some legal regulations on limitation of foreign ownership in specific sectors are still valid, even they would not conform to Investment Law.

Foreign securities companies should be aware that, within the first five years of Vietnam's WTO accession, their equity ownership in a local securities or fund management company, either through share purchase or capital contribution, should not exceed 49 percent of a company's chartered capital. This foreign ownership limitation will be eliminated after that five-year duration. Additionally, a foreign investor, who holds at least 10 percent of voting stocks or contributed capital of such a company, and his related persons is not permitted to own more than five percent of voting stocks or contributed capital of another local securities or fund management company.

Possible conflict between Securities Law and Investment Law

Investment by foreign investors through vehicles stipulated in the Securities Law are defined as 'indirect investment' activities. The Securities Law does not require foreign investors to obtain investment certificates for their investment by purchasing shares of local companies and then participating in management of such companies. However, contribution of capital to and participation by foreign investors in the management of such local companies would fall within the concept of direct investment activities defined under the Investment Law whereby investment certificates would be required beforehand. In order to have a full understanding of the legal pathway they should take to protect their benefits foreign investors should study both Investment and Securities Laws carefully to clarify whether their indirect investment through this way would be subject to such investment certificates prescribed by the Investment Law or only relevant stipulations in the Securities Law would be enough.

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